

These minutes were approved, with amendments, at the ZBA meeting on June 8, 2004

**ZONING BOARD OF ADJUSTMENT MINUTES
TUESDAY, MAY 11, 2004
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Henry Smith, Jay Gooze, Ted McNitt, John deCampi, Linn Bogle, Myleta Eng

MEMBERS ABSENT: Robin Rousseau, Sally Craft

OTHERS PRESENT: Tom Johnson, Code Enforcement Officer; Interested Members of the Public

MINUTES PREPARED BY: Victoria Parmele

Chair Smith noted the Board had 5 regular voting members and three alternates, but said one of the regular members was ill, and one of the alternates was also not present.

I. Approval of Agenda

Chair Smith noted that Items A, K and M would not be heard that evening. He said Item A, an application for variance by the M.J. Chase Revocable Trust, would come back to the Board at a later date; he said the application for variances by Geoff Sawyer would be heard instead at the June ZBA meeting; and he said the application for variances by Smithfield Construction would be heard at the continued May meeting. There was discussion on the date of this continued hearing, and Board members agreed it should be held on May 25th.

Ted McNitt MOVED to continue the hearing until May 25th if necessary. The motion was SECONDED by Jay Gooze, and PASSED unanimously.

II. Election of Officers

Chair Smith said he had attended the NH Office of Energy and Planning spring conference, and had learned that only regular voting members should vote on the election of officers.

Ted McNitt MOVED to appoint Henry Smith as Chair of the ZBA for the coming year. The motion was SECONDED by John deCampi.

Chair Smith said he would agree to serve, but said he would have preferred that the position rotate to another Board member.

The motion PASSED 3-0-1.

John deCampi MOVED to appoint Jay Gooze as Vice Chair of the ZBA for the coming year. The motion was SECONDED by Ted McNitt, and PASSED unanimously 4-0.

Jay Gooze MOVED to appoint John deCampi as Secretary of the ZBA for the coming year. The motion was SECONDED by Ted McNitt, and PASSED unanimously.

III. Public Hearings

- A. CONTINUED PUBLIC HEARING** on a petition submitted by M.J. Chase Revocable Trust, David J. Chase & Malcolm J. Chase, Trustees, Durham New Hampshire, for an APPLICATION FOR VARIANCES from Article IV, Section 175-27(B) and from Article III, Section 175-16(A) of the Zoning Ordinance to build two “A” dormers on the front of an existing building on a nonconforming lot. The property involved is shown on Tax Map 20, Lot 16-1, is located at 271 Durham Point Road, and is in the RC, Residence Coastal Zoning District.

Withdrawn per request of the applicant and will be resubmitted at a later date.

- B. PUBLIC HEARING** on a petition submitted by Christopher T. Regan, Bamford, Dedopoulos & Regan, Durham New Hampshire, on behalf of Joyce Tawney, Wilnot, New Hampshire for an **APPEAL OF ADMINISTRATIVE DECISION** from January 8, 2004 and February 3, 2004, letters from Zoning Administrator, Thomas Johnson regarding the occupancy of the dwelling. The property involved is shown on Tax Map 4, Lot 18-0, is located at 10 Woodman Avenue, and is in the RA, Residence A Zoning District.

Chair Smith appointed Linn Bogle as a full voting member on this Item.

Attorney Chris Regan spoke before the Board, and introduced his client, Joyce Tawney, noting her property was located next to the Unitarian Church parking lot. He said the property was currently taxed for 8 bedrooms, and said prior questions regarding the occupancy had been resolved. He noted the applicant had sought out the Fire Department to do an inspection of the property, and no issues had been raised about the number of people living there at that time.

He said there were currently 5 people living there, and said the applicant believed she should be able to continue with that occupancy, but noted that Code Enforcement Officer Johnson disagreed, based on his calculation of the square footage of the residence.

Attorney Regan provided details about the calculation of living area for the house, and said the calculation done by Mr. Johnson was not correct. He said Mr. Johnson had not included the bathroom area as living area, and said that based on language in the Zoning Ordinance, he should have included this area in his calculations.

Attorney Regan said that based on his own calculation, 4.6 people were allowed in the residence, so at the very least, 4 persons should be allowed, and at the most, 5 should be allowed. He noted that his calculation assumed that the basement was

excluded from consideration as living area, but said his client felt the basement should be included.

Mr. Gooze asked what the square footage was for the permitted areas, and there was detailed discussion about these calculations.

Chair Smith asked if anyone wished to speak in favor or against the application. Hearing no response, he closed the hearing.

Mr. deCampi asked Mr. Johnson to respond to Attorney Regan's claim that his decision was incorrect.

Mr. Johnson said he had written his February 3, 2004 letter after inspection of the property with the Fire Inspector. He said that contrary to what was said by the attorney, he didn't believe the owner was there on that date, and that he was there with the Fire Inspector. Mr. Johnson said that the ordinance allows either the owner or occupants to grant permission to inspect and measure, and that the tenants had granted him the permission to inspect and measure.

Mr. McNitt asked if the original building design prints existed in the files.

Mr. Johnson said he had found a permit from the 1980s, but said there were not any additional permits in the file for any work done since that time.

Mr. Gooze asked Mr. Johnson about the difference of opinion as to whether bathrooms should be considered living area.

Mr. Johnson said habitable floor area as described in the Ordinance did not in his mind include bathrooms. He provided details of the calculations he had done.

In answer to a question from Mr. Smith, Mrs. Tawney explained that there had always been at least 6 people living in the house.

Mr. McNitt asked whether the building was considered a duplex or not, and Mr. Johnson said it was a single family house.

Mr. Bogle noted that Mr. Johnson had used the standards he always used to calculate living area, which would allow 3 people to live in the residence. He said he would therefore be reluctant to question this.

Mr. deCampi said that Mr. Johnson acted correctly in measuring the square footage, and said that in his own opinion, a bathroom was not considered living area. He noted however, that he found it difficult to say that a house with 8 bedrooms should be restricted to 3 people.

Mr. Johnson said he did not feel the house had 8 bedrooms.

Mr. Gooze said the issue boiled down to the size of the building. He said he agreed that bathrooms were generally not included as living area, and therefore

also agreed that 3 people should be allowed to live in the building. He noted that if the applicant could provide evidence that there was enough room for 4 people, he would accept that.

Ms. Eng said she would not consider a bathroom as living area.

Chair Smith said he agreed with other Board members regarding what the ordinance said about calculation of living area, and the standards set by the Code Enforcement Officer. He said he therefore believed that the Board should uphold Mr. Johnson's decision.

Mr. Bogle said he would have felt better if some of the applicant's information had been presented earlier, and said he would therefore prefer to continue the hearing if possible so that Board members could look at the material in more detail. He said he would like to hear how others felt about this.

Mr. deCampi said he had no problem voting on the application, based on what he saw. He said that if the applicant wished to continue the current usage of the building, she should come back to the Board with a variance request, and said he would be willing to hear that. But he said he did not see a case here for relief from an administrative decision.

Mr. McNitt noted that the Board's job in this case was twofold, - to see if the Code Officer had been in error, and to determine whether the applicant had brought in new information that would cause the Board to say the Code Officer's decision was questionable. He said that in view of the facts he had seen, he did not feel the Code Officer had made an error, and there was not enough new evidence to cast doubt on that decision.

Ted McNitt MOVED to deny the APPEAL OF ADMINISTRATIVE DECISION from January 8, 2004 and February 3, 2004, letters from Zoning Administrator, Thomas Johnson regarding the occupancy of the dwelling. The motion was SECONDED by John deCampi.

Mr. Gooze said the decision came down to measurement of the rooms. He said he would go with Mr. Johnson's measurements, and if the applicant can figure out some other way of doing it, they can always ask for a rehearing on the Board's decision.

There was discussion as to whether the "no more than 3 unrelated occupants" provision in the Ordinance overrode the square footage issue. Mr. Johnson noted that the no more than 3 unrelated occupants rule did not apply because the property was grandfathered.

The motion PASSED unanimously 5-0.

- C. **PUBLIC HEARING** on a petition submitted by Michael Bicks & Ellen Schlefer, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from

Article IV, Section 175-27(B) and Article III, Section 175-16(A) of the current Zoning Ordinance and Sections 175-54 and 175-30(A) of the proposed Zoning Ordinance to build an addition on a bathroom on a nonconforming lot. The property involved is shown on Tax Map 20, Lot 14-3, is located at 279 Durham Point Rd., and is in the RC, Residence C Zoning District.

Chair Smith noted a letter of support from an abutter. He appointed Myleta Eng as a voting member for this Item and opened the public hearing.

Mr. Bicks explained to the Board that he wanted to build a bathroom on the side of his house, and said he had had no idea the property was nonconforming. He said the side of the building that would be built on was not the problem, and said the bathroom would be about 90 feet from the property line. He noted that the other side of building was within the 50 foot side setback.

Mr. Gooze asked if the plans for the bathroom would involve any change in the septic system, and Mr. Johnson said they would not.

Chair Smith asked if anyone wished to speak for or against the application.

Jane McDonough said she was an abutter and had no objection to the application.

Chair Smith closed the hearing.

Board members agreed that this was a clear case where the applicant would not be increasing the encroachment on the setback, and said they did not have a problem with the application.

Ted McNitt MOVED to approve an APPLICATION FOR VARIANCES from Article IV, Section 175-27(B) and Article III, Section 175-16(A) of the current Zoning Ordinance and Sections 175-54 and 175-30(A) of the proposed Zoning Ordinance to build an addition on a bathroom on a nonconforming lot. The motion was SECONDED by Jay Gooze.

Mr. Gooze said the application met all 5 variance criteria.

The motion PASSED unanimously 5-0.

- D. PUBLIC HEARING** on a petition submitted by Stephen Harriman, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-28(B) and Article III, Section 175-16(A&B) of the current Zoning Ordinance and Section 175-54 and 175-30(B) of the proposed Zoning Ordinance to replace a home on an expanded footprint on a nonconforming lot. The property involved is shown on Tax Map 18, Lot 9-0, is located at 307 Newmarket Road, and is in the R, Rural Zoning District.

Chair Smith appointed Linn Bogle as a full voting member.

Michael Brown, Mr. Harriman's contractor, spoke before the Board on behalf of Mr. Harriman. Mr. Brown explained that Mr. Harriman had lost his house in a fire in November, and wanted to rebuild the house so that he could live there. He said it was determined that the foundation was not able to bear a new house, so what was planned now was a new house with a new foundation. He noted there were problems with the existing foundation. He said that in order to make use of the house to meet current codes, the new building has been elongated.

Mr. Brown said the reason for the request for variances was that Mr. Harriman's lot was nonconforming. He said the new building would still be within the setbacks, and would have 3 bedrooms, the same number as the previous building. He said the previous building had 941 sq. ft. and the new building would have 952 sq. ft., plus an 8' x 12' deck. He said this configuration would make better use of the property.

Mr. McNitt asked if the deck would be constructed on pillars, and was told it would be. There was additional discussion about the shape and square footage of the deck. Mr. Bogle asked how far off the ground it would be, and Mr. Brown said it would be about 5 ft off the ground.

Mr. Bogle noted there would be limited room for passage between the shed and the deck. Mr. Brown said the shape of the deck could be changed if this was a concern.

Chair Smith asked if anyone wished to speak for or against the application.

Nancy Pignatta, an abutter, said she had not seen the drawings for the proposed building, so was not sure whether she was for or against the application. She asked if the current foundation was not able to hold a new building, then was the current foundation going to be moved or would it remain at its current location. Mr. Brown said he had tried to stay within the footprint of the existing foundation, but said that because it was hard to fit a set of stairs in as a result of the present building code, the foundation had to be made a bit longer.

Ms. Pignatta said she had no more questions.

Mr. deCampi asked if there would be a cellar, and Mr. Brown said there would be. Mr. McNitt noted that the former house had a cellar.

Joe Pignatta asked for clarification about the nonconformance issues with the lot. He said he had not seen the plans for the reconstruction of the building, and asked if it would change the footprint of the structure.

Mr. Johnson said the footprint would be about the same. He said the reconstructed building would still be a single family home, with the same septic system, and the same number of bedrooms. He provided additional detail on the configuration of the building.

Chair Smith closed the hearing.

Mr. deCampi said it was a shame that Mr. Harriman had been faced with this fire, and said that as long as the reconstruction was within the setbacks of the requirements of the ordinance, and it has been testified that it is, then he had no problem with this application being approved.

Mr. McNitt said there would be no significant change to the nonconformance.

Mr. Bogle said his only comment was that it would be a good idea to be able to pass between the shed and the deck, and suggested the applicant could pull in the deck a bit.

Mr. Gooze said he had no problems with this application, but asked whether, if the ZBA approved it, this was implying that the building plans were part of the approval. There was discussion as to whether the Board should have as part of its approval the size being no larger than 952 square feet.

Ms. Eng went through the variance criteria, and said she was in favor of granting the variances.

Chair Smith said there would be no significant increase in the footprint if the building were replaced with the building that had been designed. He said this situation represented a true hardship, and said the application met all of the 5 variance criteria.

Jay Gooze MOVED TO approve an APPLICATION FOR VARIANCES from Article IV, Section 175-28(B) and Article III, Section 175-16(A&B) of the current Zoning Ordinance and Section 175-54 and 175-30(B) of the proposed Zoning Ordinance to replace a home on an expanded footprint on a nonconforming lot, with following condition – that the space between the proposed deck and existing shed be at least 30 inches. The motion was SECONDED by Ted McNitt, and PASSED unanimously.

Mr. deCampi said he would be happier if the application had been approved as described in the plan.

- E. PUBLIC HEARING** on a petition submitted by Scott Picard & Julie Batchelder, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B) and Article III, Section 175-16(A) of the current Zoning Ordinance and Section 175-54 of the proposed Zoning Ordinance to build a deck and a farmer's porch on a nonconforming lot. The property involved is shown on Tax Map 12, Lot 4-6, is located at 15 Watson Road, and is in the RC, Residence C Zoning District

Chair Smith designated Myleta Eng as a voting member on this application, and opened the public hearing.

Mr. Picard said he had previously been before the Board concerning an addition to his house, which was approved, but explained that as part of the construction of the addition, Mr. Johnson had inspected the work and had condemned the deck. Mr. Picard said he agreed with this, and said he would bring the deck up to code if he were allowed a few extra feet for it. He said that was why he was before the Board, and also was asking for the variance to allow a farmers' porch to be built on the building. He said the porch would complete the look of the house

Chair Smith noted that the plan was to enlarge the deck from 13' x 8' to 13' x 12'. He asked if this would involve extending the roof out.

Mr. Picard said the space increase they were asking for was not habitable space, but would simply make the area a bit more usable.

Mr. deCampi asked if any of this work would impact on any of the setbacks, and Mr. Picard said it did not.

Mr. Bogle noted that there were twin decks, but the applicant was only asking to expand one of them.

Mr. Picard said he would properly support the other deck, but otherwise would keep it as it was.

Mr. Bogle asked Mr. Johnson if he condemned the other deck. Mr. Johnson said he did not do an inspection on the deck because it was not part of the original variance. He said the variance was on the Picard residence side of the three-plex for the addition for the second story. Therefore, it becomes part of the code jurisdiction. Mr. Johnson said that because of the nature of the construction, he instructed Mr. Picard to either tear down the deck or fix it.

Chair Smith asked if anyone wished to speak for or against the application. There was no one who wished to speak, and Chair Smith closed the hearing.

Mr. McNitt asked if the applicant was thinking of increasing the occupancy above the present three-plex and what the impact of the 3-unrelated issue would be. Board members decided that the 3 unrelated issue was not relevant to this application.

Mr. McNitt said this application seemed to be a straightforward, trivial change to the property.

Mr. Gooze said there would be no encroachment on the setbacks, and the construction would do no harm to anyone, so he had no problem with it

Chair Smith said he had no issues with the application.

Ted McNitt MOVED to approve the APPLICATION FOR VARIANCES from Article IV, Section 175-27(B) and Article III, Section 175-16(A) of the current

Zoning Ordinance and Section 175-54 of the proposed Zoning Ordinance to build a deck and a farmer's porch on a nonconforming lot. The motion was SECONDED by John deCampi, and PASSED unanimously.

- F. PUBLIC HEARING** on a petition submitted by Barlo Signs, Hudson, New Hampshire on behalf of Ocean National Bank, Portsmouth, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-102(A)(1) and Section 175-102(G) of the Zoning Ordinance to place wall and free-standing signs in excess of the required number on and around a commercial building. The property involved is shown on Tax Map 2, Lot 14-5 is located at 70 Main Street, and is in the CBD, Central Business Zoning District. Chair Smith designated Linn Bogle as a voting member for this Item, and opened the public hearing.

Don Reed, employed by Barlo Signs as a designer, represented the applicant, Ocean National Bank. Mr. Reed provided color copies of the proposed sign changes for the property. He said they essentially involved changing the name of ownership of the bank from Granite Bank to Ocean National Bank.

He said the signs that were planned were smaller than the previous signs on the site, and met other provisions of the Ordinance. He said it was essential to be able to provide good directional signage for customers at the site. He said the application met all the variance criteria and went through each of these.

Chair Smith asked Mr. Reed if the free standing sign was being replaced with another sign. Mr. Reed responded that the sign was a new directional sign to introduce people into the drive through.

Mr. Reed provided clarification concerning paperwork that had been provided to the Board concerning the signs. There was detailed discussion about the various signs that were proposed.

Mr. deCampi said that other than the proposed free-standing sign, it appeared that all of the signs would be the same or smaller than the signs they replaced. Mr. Reed said that was correct.

Chair Smith asked if members of the public wished to speak for or against the application. There was no response, and he closed the hearing.

Mr. Gooze said he had no problem with replacing the signs that had already been there, noting the signs had been visible to the Town for quite some time, and said he would have a difficult time saying the use should not continue. But he said he did have a problem with the free standing sign because if this were allowed, others could say they wanted free standing signs, and it would be difficult to allow them for the bank but not other businesses. He noted free standing signs were not permitted in the Central Business Zoning District, and said he would vote to allow the variance, but with the condition that there would be no freestanding sign.

Mr. deCampi said he had no problem with any of the signs except the free standing sign. Further, he did not see the need to have a sign at the entrance of the driveway since there are signs at the front and back of the building which clearly identify the building. Therefore, he said he would be inclined to deny approving the free standing sign.

Ms. Eng said she agreed with the other Board members, and was in favor of all the signs but the freestanding sign.

Mr. McNitt said the Granite Bank signs hadn't been there that long, noting Durham Bank occupied the site before that. He said this property had more signs on it than any other place in Durham and said he wondered if so many needed to be there. He said the Town in general had not permitted signs to be that numerous.

There was discussion as to whether the existing signage had been approved at some point in the past.

Mr. Bogle said he couldn't imagine the Town would have approved so many signs. But he said he had no problem with everything but the freestanding sign.

There was discussion about the ATM signs that were planned, and why so many were needed. Mr. Reed said these signs could not be seen from the road.

Mr. Gooze said he had a hard time thinking the previous signs on this property had not been seen by the proper authorities, and said he therefore felt that the Board couldn't tell the applicant their signs couldn't be there.

Mr. McNitt said he tended to agree with Mr. Gooze that this was a good case for replacing existing signs with smaller, more acceptable signs. But he said the Board could recommend as part of approval of this application, that it would like the bank to look at whether it needed so many signs. He said the present number of signs was out of line compared to other businesses in town and the sign ordinance.

Mr. deCampi said that overall this application didn't seem unreasonable, and that the signs served a purpose for the most part. He said he could see approving this application except for signs J, N and M (which is the freestanding sign at the back driveway).

Mr. Reed said he appreciated Board members' concerns about the number of signs, but said that many of the signs were not obtrusive, and served a purpose.

Jay Gooze MOVED to accept the APPLICATION FOR VARIANCES from Article XII, Section 175-102(A)(1) and Section 175-102(G) of the Zoning Ordinance to place wall and free-standing signs in excess of the required number on and around a commercial building, with the exception of sign M

*(freestanding) shown on original plan as A on sheet 7, sign J and sign N. The motion was **SECONDED** by John deCampi.*

Chair Smith said he was opposed to this application. He said he felt the number of signs was out of proportion, and said the freestanding sign was not permitted.

Mr. McNitt said he felt strongly about the excessive number of signs, but said that under the existing Ordinance the Board was obliged to allow everything with the exception of the freestanding sign. He said he would appreciate the applicant giving consideration to possibly reducing the number of signs.

*The motion **PASSED 4-1**, with Chair Smith voting against it.*

- G. PUBLIC HEARING** on a petition submitted by David Murphy, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article X, Section 175-83(A) and Article III, Section 175-16(A) of the current Zoning Ordinance to replace a deck and build an “A” roof extension on a nonconforming lot. The property involved is shown on Tax Map 20, Lot 15-0, is located at 283 Durham Point Road, and is in the RC, Residence C Zoning District.

Myleta Eng was designated as a voting member, and Chair Smith opened the public hearing.

Mr. Murphy explained that his deck was not in good shape, and the proposed replacement deck would be smaller and further from the setback than the old deck. He also said there was a leak in the building caused by an inverted dormer, which they wished to repair by building an “A” roof, approximately 3 ft. deep over a doorway at an existing second floor deck. He explained that this roof would divert water away from the deck and door, and would therefore alleviate the longstanding leak problem.

Ed Valena, 9 Bagdad Road, said he wished to speak in favor of this application, but also said he wondered how the Zoning rewrite would affect the applicant’s situation. There was discussion about this.

In answer to a question, Mr. Johnson clarified that the screened porch on the sketch provided by the applicant did not exist.

Mr. McNitt asked Mr. Johnson if there was any other nonconformity besides the shoreland setback issue, and Mr. Johnson said not that he was aware of.

Mr. Gooze clarified that the deck itself was outside the shoreland setback, but the building was not. He said the application met all of the variance criteria, and stressed that taking the deck out of the shoreland setback would not be changing the footprint. He said he supported the application.

The other Board members all agreed that this application was essentially a minor expansion of an existing deck, and had no problems with it.

Jay Gooze MOVED to approve the APPLICATION FOR VARIANCES from Article X, Section 175-83(A) and Article III, Section 175-16(A) of the current Zoning Ordinance to replace a deck and build an “A” roof extension on a nonconforming lot. The motion was SECONDED by Ted McNitt, and PASSED unanimously 5-0..

- H. PUBLIC HEARING** on a petition submitted by Wolfgang & Cecilia Nauck, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B) and Article III, Section 175-16(A) of the current Zoning Ordinance and Section 175-54 of the proposed Zoning Ordinance to replace a deck with a 3-season porch and extend a deck on a nonconforming lot. The property involved is shown on Tax Map 11, Lot 16-8, is located at 17 Shearwater Street, and is in the RC, Residence C Zoning District.

Chair Smith designated Linn Bogle as a voting member for this Item, and opened the public hearing.

Cecilia Nauck and her contractor, Ron Dixon spoke before the Board. Mr. Dixon explained that Mrs. Nauck wanted to replace the existing deck and the egress from the kitchen area with a new deck and a 3-season porch, noting that she presently had two separate decks. He said that while the house was on a nonconforming lot because of a few inches, the deck itself and the 3-season porch would meet setback requirements. He said the dimensions of the proposed structure would be only slightly larger than those of the current structure.

Chair Smith asked if the 3-season porch would be heated, and Mrs. Nauck said it would not.

Mrs. Nauck said that the existing small deck was not structurally sound. She also said the new structure would be more attractive and useful, and noted that the homeowners association at Johnson’s Creek had approved the plans.

Mr. Gooze asked if the edge of the deck would be 50 feet from the lot line.

Mr. Dixon said it was approximately 47 ft from the lot line.

Mr. Bogle asked what the 3- season room would sit on, and Mr. Dixon said it would sit on piers, about 5 ft. off the ground.

Mr. Bogle asked Mr. Dixon what his definition of a 3-season room was, and Mr. Dixon said it was a room that was not heated.

Mr. McNitt asked if the porch would be used for sleeping, and Mrs. Nauck said it would not.

Gary Webster, 15 Shearwater Street, said he supported the project, and noted he was the only neighbor who would see the porch and deck. He said the project would be nothing but an improvement to the property.

Chair Smith asked if there was anyone else who wished to speak for or against the application. He then closed the hearing.

Mr. Gooze said this application was easy to approve, because it met the setbacks, although the house itself was nonconforming.

Other Board members agreed with Mr. Gooze's summation.

John deCampi MOVED to approve an APPLICATION FOR VARIANCES from Article IV, Section 175-27(B) and Article III, Section 175-16(A) of the current Zoning Ordinance and Section 175-54 of the proposed Zoning Ordinance to replace a deck with a 3-season porch and extend a deck on a nonconforming lot, with the condition that the final structure meets all of the setbacks. The motion was SECONDED by Jay Gooze and PASSED unanimously.

- I. **PUBLIC HEARING** on a petition submitted by Brian & Armida Geiger, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article VIII, Section 175-70(C)(1) of the current Zoning Ordinance and Article XXI, Section 175-116 of the proposed Zoning Ordinance to continue the use of a second curb cut on a nonconforming lot. The property involved is shown on Tax Map 1, Lot 9-35, is located at 6 Hampshire Avenue, and is in the RA, Residence A Zoning District.

Chair Smith designated Myleta Eng as a voting member on this Item, and opened the public hearing.

Brian Geiger spoke before the Board. He explained that he had plans to do a lot line adjustment between two of his lots and then subdivide the larger lot into two lots. He said Mr. Johnson had said he could either abandon one entrance or seek a variance. He noted he had asked the Public Works Department to look at the driveway to see if it would have any problems with the curb cut if he got the variance. He said the department had determined that it did not have a problem with the curb cut.

Mr. deCampi asked what the frontage of the lot with the driveway was, and Mr. Geiger said it is 160 feet.

Ms. Eng asked why keeping the U shaped drive would be necessary.

Mr. Geiger said it gave the house curb appeal, and kept tenants from driving on the lawn. He noted that 3 students were presently living in the building.

Patrick Shannon, 16 Edgewood Road, spoke in favor of the application, describing Mr. Geiger as a good friend, neighbor, and landlord.

Todd Zimack, 41 Emerson Road, spoke in support of Mr. Geiger. On a separate matter, Mr. Zimack said that the Town should give more attention to the Zoning and Code Enforcement department.

David Giroux, 8 Hampshire Avenue, said he had come to support the application, but said that based on Mr. Geiger's presentation that evening, he could not do so. He said he had no problems with the driveway, but said his letter of support was contingent upon keeping 160 ft of frontage.

Stephen Brunet, 7 Hampshire Avenue, said he was an abutter across the street from the property in question. He said that he had no objection per se to the driveway, but said he would like the variance to say the driveway should keep its U shape, noting the previous owner had been bad about this. He also said the 160 ft. of frontage was acceptable, but said that a further reduction of the frontage from 160 ft. would be a concern.

Patty Bedker, 5 Hampshire Avenue, said she agreed with those people who wanted to keep the frontage to 160 feet. She also noted that she had submitted a letter to the Board. Board members acknowledged receipt of Ms. Bedker's letter.

Mr. deCampi also noted that the Board had received letters from Rene Mayer and Richard Ager.

Mr. Geiger noted that if the Planning Board approved the lot line adjustment for his property and the frontage was reduced, it would probably drop to about 130 ft.

Chair Smith closed the hearing.

Mr. Gooze said that simply because the driveway had existed there, this didn't mean it could be there forever. He also said that after listening to testimony, and based on the statement by the Town Engineer that the curb cut is not a problem, he would have no problem keeping the frontage at 160 feet and he would be inclined to grant the variance on the condition that the curb cut remains at 160 feet. He noted that the Zoning Ordinance states that required frontage for a second curb cut is 200 feet.

Mr. deCampi said that Mr. Gooze raised a good point with regard to the Zoning Ordinance requiring 200 feet frontage for a second curb cut. He said making the retention of the second curb cut conditioned on a frontage of at least 160 feet made sense to him.

Ms. Eng said she also was in favor of Mr. Gooze's idea.

Mr. McNitt said he was not sure how long the driveway had been there, but said he didn't think there was another U shaped driveway in that immediate neighborhood. He said the argument in favor of it was that it had existed, and no one had complained up until now. But he said he agreed with Mr. Gooze about the frontage and agreed with the 160 foot frontage.

Mr. Gooze said if Mr. Geiger got his lot line change, and the frontage changed, he would have to get rid of one of the cuts.

Mr. Bogle said he agreed with Mr. Gooze's comment.

Chair Smith said he agreed that the minimum frontage should be 160 ft., and said if the status of the property changed, the frontage issue would have to be looked at again.

Jay Gooze MOVED to approve an APPLICATION FOR VARIANCES from Article VIII, Section 175-70(C)(1) of the current Zoning Ordinance and Article XXI, Section 175-116 of the proposed Zoning Ordinance to continue the use of a second curb cut on a nonconforming lot, noting the variance criteria were met, but with following condition that the minimum frontage remain at the present 160 ft to allow the two curb cuts. The motion was SECONDED by John deCampi, and PASSED unanimously.

- J. PUBLIC HEARING** on a petition submitted by Susan Coombs & Steven Fulton, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-25(B) and Article III, Section 175-16(A) of the current Zoning Ordinance and Section 175-54 of the proposed Zoning Ordinance to re-build a deck, to enclose a room and to build a farmer's porch on a nonconforming lot. The property involved is shown on Tax Map 4, Lot 20-3(A&B), is located at 2 & 4 Coe Drive, and is in the RA, Residence A Zoning District

Not heard because of 10:00 pm time limit.

- K. PUBLIC HEARING** on a petition submitted by Geoff Sawyer, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B) and Article III, Section 175-16(A) to build a doggie daycare barn, to build parking areas, to build an accessory apartment and to build an addition on a commercial business within the side-yard and rear-yard setbacks. The property involved is shown on Tax Map 6, Lot 11-7, is located at 27-35 Newmarket Road, and is in the RC, Residence Coastal Zoning District.

Application rescheduled per request of the applicant.

- L. PUBLIC REHEARING** on a February 10, 2004, decision of the Zoning Board of Adjustment to deny a petition submitted by Andrew & Kecia Hartmann, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IV, Section 175-27(B), Article III, Section 175-16(A), Article V, Section 175-41(A) and Article X, Section 175-83(A) to build an addition on a single family dwelling on a nonconforming lot. The property involved is shown on Tax Map 12, Lot 1-21, is located at 18-20 Cedar Point Road, and is in the RC, Residence C Zoning District

Not heard because of 10:00 pm time limit.

M. PUBLIC HEARING on a petition submitted by Smithfield Construction, Portsmouth, New Hampshire for an **APPLICATION FOR VARIANCES** from Article X, Sections 175-81, 175-83 and 175-85 to remove non-native and invasive trees and shrubs and replace with native species within the shoreland setback. The properties involved are shown on Tax Map 1, Lots 16-20(3&4) and 16-20(7&8), are located at 9-12 Fellows Lane, and are in the RA, Residence A Zoning District.

Application rescheduled per request of the applicant.

IV. Board Correspondence and/or discussion:

Mr. Johnson said that based on a problem with a recent case, he would begin having plans approved at meetings stamped as “approved” with a date and then have the Chair sign a copy at the meeting so there will be a record of what was approved that evening.

Chair Smith said he and Myleta Eng had attended the NH Office of Energy and Planning conference, and said one of the workshops dealt with ZBA Related Supreme court decisions. He provided some detail on the workshop, and Board members said they would like to see his notes from the workshop.

Ms. Eng noted she had received some useful handouts at the conference, and it was agreed that copies would be made of these for Board members.

Mr. Johnson provided an update to Board members on recent court cases.

V. Approval of Minutes – April 13, 2004

This was postponed until the May 25th meeting.

VI. Other Business

A. Next Regular Meeting of the Board: June 8, 2004**

VII. Adjournment

Jay Gooze MOVED to adjourn the meeting. The motion was SECONDED by John deCampi, and PASSED unanimously.

Adjournment at 10:05 pm

John W. de Campi

John deCampi, Secretary