

*These minutes were approved at the July 20, 2004 meeting.*

**ZONING BOARD OF ADJUSTMENT MINUTES  
TUESDAY, MAY 25, 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:** Sally Craft

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

**MINUTES PREPARED BY:** Victoria Parmele

Chair Smith explained that this meeting was a continuation of the May 11<sup>th</sup> ZBA meeting, because not all agenda items had been completed at that time. He noted that Robin Rousseau had resigned from the Board two weeks ago, and said there were now four full board members, with one vacancy. He introduced the Zoning Board of Adjustment members: Jay Gooze, Vice Chair; John deCampi, Secretary; and Ted McNitt. He said that alternates Myleta Eng and Linn Bogle were also present, and said that Sally Craft, also an alternate, was not present at the meeting.

**I. Approval of Agenda**

***Ted McNitt MOVED to approve the Agenda. The motion was SECONDED by Linn Bogle and PASSED unanimously.***

**II. Public Hearings**

- A. **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.

Chair Smith appointed Linn Bogle as a voting member and opened the public hearing. Susan Coombs said she and her neighbor Steven Fulton, who was unable to attend the meeting, would like to build a small farmer's porch on the front of the duplex they shared. She said there was currently a dangerous water problem at the front of the building when it rained, noting there was an electrical box underneath the stoop. She said she had lived in the building for 24 years, and this had been an ongoing problem, and that the contractor thought the farmer's deck would solve the problem and would also enhance the property.

Ms. Coombs also said she would like to rebuild the deck on the back of the building. She said she had wanted a 3-season porch, but had been told it would be better to

enclose it now so she would not have to come before the Board for that later on. She said there would be a small deck off of that enclosed room as another exit.

Mr. Gooze asked if the construction would encroach on any setbacks, and Mr. Johnson confirmed that all setback requirements had been met.

Chair Smith asked if any members of the public wished to speak for or against the application. He then closed the public hearing.

Mr. deCampi said this was purely a nonconforming lot problem because the lot did not meet the size requirements, and said he had no problem with the application as long as the construction met the setback requirements.

Mr. Bogle asked about the exit from the enclosed porch that was planned for the back of the house. There was discussion about the configuration of this, as well as about the foundation for the deck/enclosed room. Mr. Bogle also noted that Board members did not get a map of the property, so was not sure what roads in proximity to the property were considered when determining what the setbacks were. Mr. Johnson noted that there was a private road that did not figure into the setbacks.

Ms. Eng asked if the building would look different than the other surrounding duplexes on the street once the farmer's porch was built. Ms. Coombs said the other properties had added various structural changes, but noted that the other buildings had the same water damage problems that her building did, so perhaps other owners might want the same kind of work done.

Chair Smith asked if the applicant would be planning to rent the building and there was discussion about this.

Mr. McNitt received clarification from Mr. Johnson concerning the nonconformance of the lot based on the fact that it did not meet the lot size requirements (of both old and new Zoning Ordinances). He said the planned construction was fully in accord with both Ordinances, and appeared to be a reasonable approach.

Mr. Gooze said that under the new Zoning Ordinance, this kind of application would not need to come before the Board, and would be handled by the Code Enforcement Officer. He also noted that whether a building would be rented to students was not an issue for the Board to consider.

Chair Smith said he thought the application was reasonable, would have a positive result for the applicant, and would probably be good for the neighborhood.

Mr. Bogle noted the Board was approving more than the application had described. There was discussion about this, and the motion was worded to reflect this.

***John deCampi MOVED to approve the 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, and to***

*include a landing and exit stairs from the new room, conditional upon the construction meeting all setbacks requirements of the ordinance The motion was **SECONDED** by Jay Gooze, and **PASSED** unanimously.*

- B. **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.

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

Attorney John Bosen spoke before the Board and described the original application submitted by the applicant. He noted that the application had been denied, and asked the Board to reconsider its previous opinion about the property. He provided a brief history of the property and the structures on it, and then explained why the present application met the various variance criteria.

He said granting a variance would not result in diminution of property values, noting that the use intended would be compatible with other uses in the neighborhood; would not result in overcrowding; would not lead to an increase in fire and flood hazard; and in general would not be detrimental to the public welfare. He also said the complete building would look attractive.

Attorney Bosen said denial of the variance would result in a hardship to the applicant, explaining the great difficulty in complying with the Ordinance, given the lot size requirement. He also said that the work planned for the structure would make it less nonconforming, because the setback distances would be increased.

Attorney Bosen said granting the variances would not be contrary to the public interest because no public interest would be served by denying the request. He also said granting the variances would do substantial justice, noting that the Town recognized the structure for tax purposes, and the Hartmanns were in fact paying taxes on the property. He said granting the variances would not be contrary to the spirit and intent of the Ordinance because the end result would achieve more conformity with the Ordinance than the present situation.

He said the applicants' request was reasonable in light of the fact that they were coming before the Board in order to be able to finish construction on a project that had already been issued a building permit under the property's prior ownership. He said the applicants were hoping that reasonable minds would prevail, pointing out that the property had been vacant for three years, and had become an eyesore to the neighbors and the Town. He said it was reasonable to allow the Hartmanns to complete construction, and said the benefits would flow to the neighbors and Town as well as to the Hartmanns.

Chair Smith noted letters of approval from two neighbors.

Mr. Gooze said the Town had granted building permits to other residences in the neighborhood, and noted that most of the buildings there looked larger than what they had originally been built as. He asked if there was any information on how these properties had been changed.

Attorney Bosen showed before and after pictures of the house across the street from the applicant's property, which had been enlarged. He also described other nearby properties that were granted variances for additions.

**Gretchen Roussin, 20 Cedar Point Road** (current renter of the property in question) said she was in favor of the application. She said the proposed layout of the property was compatible with the established character of neighborhood, and would not have an adverse impact on it. She said the neighbors had watched the ZBA hearings on the property, would like to see the situation resolved, and wanted to see the project completed to the best of the Hartmanns' ability. She said the neighbors had been assured that the house would be a quaint bungalow.

**Tess Weglarz, 19 Cedar Point Road**, noted she had spoken previously before the Board concerning the Hartmann's property, and said she was generally in favor of the application, if all the applicant wanted to do was finish off the property. She asked whether the applicants would also have to apply for variances from the State Shoreland protection Act, and said her concern was this would draw out longer the process of finishing the property. She also noted that when her property was enlarged, the application met all of the shoreland protection requirements.

There was discussion between Ms. Weglarz and Board members concerning State and local shoreland protection requirements as they applied to this application. Ms. Weglarz suggested that if the building footprint could not be expanded out, perhaps the property could be expanded up in order to get more square footage.

Mr. Bogle discussed the dimensions and configuration of the structures on the property. He said he was concerned as to what was considered the original footprint, the 13' x 16' building or the 16' x 25' building which was later illegally moved.

**Dorothy Oliver, 22 Cedar Point Road**, noted that the Board had her previous letters and comments, and said her concerns about the property remained the same. She said the drainage problem caused by the work on the leach field there by the previous owner continued to grow and had become a significant problem on her property this spring, killing several trees. She said that originally she had said she was agreeable to keeping the property footprint, noting people bought property along the shoreline with the understanding that they couldn't expand beyond that. She said she would like to amend this however, because she realized that more square footage would allow them to rent the property.

Attorney Bosen said the dying trees had been brought to his clients' attention, and said they would help fix the drainage problem.

Mr. Gooze asked for more information on this problem. There was discussion about this, and whether the planned project, if approved, would have any impact on the drainage.

Ms. Oliver explained that the former owner, Mr. Gentile, covered the septic area with sand, which had become compacted so that the water drained down to where the trees, which were now gone, had been. She noted she had written to Mr. Gentile about this.

Terry Roper, Tess Weglarz's mother, spoke about the most recent revisions to the State Shoreland Protection Act as they related to the application.

Mr. Bogle noted that one of the bases for NHDES approving the moving of the modified structure was that it got it beyond 50 ft. from the shoreline. He said the small structure was originally 40 ft. from the shoreline, and the enlarged structure was 45 ft. from the shoreline, was moved back and got the retroactive approval because it was then beyond 50 ft. from the shoreline. There was discussion about the correct setback distance.

Mr. Gooze noted a July 2002 letter from Mr. Gentile that spoke of the 16' x 20' structure attachment to a smaller building rather than rebuilding on the same footprint. He also noted a letter from NHDES that spoke about amending the original permit to include attaching the buildings and moving the attached buildings back from the shoreline.

Ms. Oliver submitted a letter from Deborah Merritt written in 2004, and explained that she had lived in the property in question from 1994- 1998. Mr. deCampi read the letter, which described the structures and their location on the property. Ms. Oliver said the expansion of the footprint could have moved the property closer, not further back from the shoreline, and said exact measurements would be needed to determine how exactly the properties had been moved.

Attorney Bosen said the letter from Ms. Merritt should be disregarded because it was not written by the property owner, and was contrary to information in the NHDES documents, which specifically indicated that the structure was moved back from the water.

Chair Smith closed the hearing.

Mr. McNitt said this application was an interesting situation, where the property had been moved further from the water, and a new septic system was presumably constructed that was further from the water than the previous one, while the current idea was to enlarge the existing cottage, which would increase the encroachment into the shoreland area.

He said that summing everything up, on balance he favored approving the application. He said the proposed improvements to the house would be a blessing to the neighborhood, and described the present situation as a hardship. He said extreme effort would be required by the owner in order to use the property at its current size,

even if it was patched up. He said this was a situation where there was a trade for improving the shoreland situation, and this was the second phase of that trade.

Ms. Eng said she agreed with Mr. McNitt that it would be best if the work on the property could be completed, and said this work would not decrease the value of surrounding properties. She said the problem she saw was the original footprint, and that the property was illegally enlarged, and said she didn't see any new evidence regarding why the Board did not approve it the last time.

She said she was concerned that the application was against the spirit and intent of the Ordinance because the property was sitting so close to the shore, and was on the fence as to how to vote on the application.

Mr. Gooze said he also was on the fence about the application, noting that he voted against the application the first time. He said there were many factors involved, including what should be done when someone bought a property that appeared to have been approved, and then found out that it wasn't. He said he was giving more attention to the August 15, 2000 letter from NHDES which approved the change from the general footprint, by allowing the attachment of the two buildings for the following reasons: the project was in the previously developed upland tidal buffer zone area within 50 ft. of the salt marsh and was therefore classified as a minor impact project; the approval was consistent with other approvals in developed upland tidal buffer zone areas and would have met the criteria of Chapter 300 for approval of projects, if properly applied for; and the applicant had letters of approval from all abutters concurring with the work to be done. Mr. Gooze said that given everything, the application did meet the variance criteria, and noted that any one of these criteria could be argued either way.

Mr. McNitt said that almost all the other properties in the neighborhood had been expanded in some way, legally or illegally.

Mr. Gooze said approval of this application would be consistent with other approvals in the area in the tidal buffer zone, and noted that the Courts had recently been ruling that when a precedent had already been set, it was difficult to turn an application down.

Chair Smith noted that the new septic system had already been installed, and was certainly a positive improvement for the neighborhood over the previous nonconforming system.

Mr. deCampi said the Board had three options: to turn the application down; to approve a 16' x 25' structure, or to approve the 13' x 16' structure, which was the size of the original cottage that was removed. He said he had voted against the previous application, but had gone by the house since that time and the house seemed woefully small. He said the issue of hardship weighed heavier on him now, and said he was inclined to favor granting some enlargement, probably to 13' x 16' because that was the grandfathered size. He said he was concerned about the shoreland, and noted that the Attorney had showed other houses in the neighborhood, but none were as close to

the shoreland as this property. Mr. deCampi said that nonetheless, he leaned toward granting some kind of relief to the applicants.

Mr. Bogle asked for clarification about the fact that the property was purchased by the Hartmanns to live in, but someone else was presently renting the property.

Mrs. Hartmann explained that her family couldn't fit in the building in its present state, and so was temporarily renting it out.

Mr. Bogle said the impact on the Oliver property was of concern to him, and said that if the application were approved, a condition should be attached that the drainage problem should be solved so the Olivers were not impacted by any previous or further development on the nearby lot. He noted that the problem was not there before the work on the septic system was done.

Chair Smith said that in hearing the testimony and the Board's comments, this appeared to be a hardship issue. He said the applicants needed reasonable use of their property, and said it would be an unnecessary hardship to deny them this use. He said the property was close to the water, and he was very concerned about shoreland protection, but said in this case, the proposed work was thoughtfully considered, and the applicants were willing to work with Mr. Johnson. He said that with the condition attached that the drainage problem must be solved, he would lean toward saying the five variance criteria had been met and the application should be accepted.

Mr. Bogle noted that the drainage problem went back to Mr. Gentile, and the Hartmann's had inherited it. He said it was not fair to the Olivers that the problem persisted.

Mr. Johnson said he could see if the parties would agree to have Town Engineer Bob Levesque mediate a solution to the drainage problem that both parties agreed on. He said this way they wouldn't have to hire their own engineers, and Mr. Levesque could be required to do a final inspection to determine if the work satisfied both parties.

Ms. Eng asked if the application were approved, whether the current 16' x 25' structure or the grandfathered 13' x 16' structure would be allowed.

Mr. Gooze noted that the foundation was already in place for the larger one. He said that since the 16' x 25' structure had been approved by NHDES, in this special situation, he would go with it, although he noted that he would not otherwise have approved the larger size.

There was discussion about how many stories the building could have, and how many bedrooms were allowed. It was agreed that the building would have one story, and three bedrooms, and that these details should be included in the motion.

***Jay Gooze MOVED to approve 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, consisting of a 16 ft. x 25 ft. one story addition with three***

*bedrooms to the main house, which is already underway, with the condition that the Durham Public Works Department engineer be used to mediate the drainage problem between their property and the property at 22 Cedar Point Road, and further that the certificate of occupancy be contingent upon the corrections with three bedrooms total in the house. The motion was **SECONDED** by Ted McNitt and **PASSED 5-0**.*

- C. **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.

Chair Smith designated Linn Bogle as a voting member and opened the public hearing.

Joe Caldarola of Smithfield Construction Company spoke before the Board, and explained that his proposal was to remove a variety of invasive plants and a stand of non-native scotch pines from acreage in the back yards of several lots to be built on, on Fellows Lane. He said forester Charles Moreno had been hired to develop a plan for how the area could be improved.

Chair Smith noted that the buildings to be constructed on the lots in question had already been approved.

Mr. deCampi asked for detail concerning the forest plan that had been designed by Mr. Moreno for the property.

Charlie Moreno said the shoreland zone was 75 ft wide, extending along Littlehale Creek, and said the subject area was an approximately 250 ft long segment of this zone, comprising approximately 0.4 acres. He said he had studied the area carefully and had determined that it was planted with Scotch pine about 20-30 years ago. He noted that Scotch pine was a non-native tree, had no commercial value, and was not especially valuable for native wildlife. He said the area had also been completely infiltrated with dense growth of non-native invasive plants, and said this was a concern, because invasive plants not only would take over a site, but also created seed and spread to other sites.

Mr. Moreno said he had developed a plan to improve and manage the site over the long term. He said he was recommending complete removal of nonnative vegetation, including all of the scotch pines, most of which were between 1" - to 9 inches in diameter. He said 38 of the pines to be removed were over 6" in diameter, and said that a white pine as well as an elm over 6" would also be cut. He said he was recommending that in their place 10 each of the following native species would be planted: black cherry, red oak, maple, and apple.

Mr. Moreno said he had suggested that a 75 foot wide vegetation gradient be developed, where the 25 foot area closest to the creek would retain native, generally



larger trees; the middle 25-50 foot section would contain primarily shrubs and small trees such as apple, high bush blueberry, dogwood; and the 25 foot area closest to the building site would contain grasses, herbaceous plants, perennials and a few shrubs. He said the plantings would complement what was already there, and said the vegetative gradient would provide a nice transition zone into the forest, and good habitat for wildlife.

Mr. deCampi asked how large the 40 trees to be planted would be.

Mr. Moreno said he was recommending that the trees be a maximum of 2 inches in diameter, and 6-10 ft high, noting that it was preferable to have transplants that were smaller because there would be less root damage, and the plantings would cause less disruption of the site. He said he would cluster together some of the trees, and also spread out some of them.

Mr. deCampi noted the importance of the water holding capacity of trees and shrubs, and asked if the site would end up with a reasonable canopy.

Mr. Moreno provided additional information about the vegetational gradient he planned for the site, and noted that the key to preventing erosion was not disturbing the duff layer.

There was discussion between Board members and Mr. Moreno about the contour of the land, and views for homeowners in the area. Mr. Moreno said the land was more or less level, but dropped off where the tree area was. He said that area at present was very dense year round because of the Scotch pine foliage, and said the plan for the site was to build in a bit of a line of sight into the forest. He noted that most of the trees would be broad-leafed, so would drop their foliage in the winter.

Ms. Eng asked why one of the elm trees would be cut, and also asked what kind of treatment would be used to get rid of the invasive plants. She said she was concerned about this because of the proximity to the river.

Mr. Moreno said the elm to be removed was not very large, but was overtopping some of the native vegetation, and said there were plenty of other elms (16) left on the site. Concerning the invasive plants, he said treatment with Roundup, applied correctly, was the most effective process for getting rid of them. He said the technique was to cut the trees and then to paint the stumps with the Roundup, but not to broadcast the chemical. He also said the area should then be rechecked and if there was any sprouting, a wand applicator could be used on the leaflets.

There was discussion about the importance of generally avoiding spraying of the vegetation to be removed, in order to avoid runoff of the herbicide into the river. Mr. Moreno said he would recommend that Mr. Caldarola obtain an opinion from someone who was a licensed applicator of herbicides, and perhaps someone from the New Hampshire Wildlife Society. He said at this time he would recommend cutting the plant and try painting the stump with herbicide. He would then recheck the plant a few weeks later, and if there were any remaining sprouts, then use a wand applicator to spray the leaflets around the stump.

Mr. Gooze asked if the backyard portion of the lots would be mowable, so that they might be available to homeowners for use.

Mr. Moreno said the area would not be mowed, and said that the intent was for the plants and shrubs to sprout and grow to their natural height.

Mr. Gooze said he was not sure that this area would not be used as back yards for the properties.

There was discussion about the trees Mr. Moreno had chosen for the re-planting of the area. Mr. Bogle received clarification that American elm would be planted, and also asked if Mr. Moreno was planning to include different varieties of apple trees so that they could propagate. He also noted that the forest plan recommended follow-up in five years, and asked who would do this and who would pay for this, explaining that the apple trees could get diseased if they were not tended properly.

Mr. Moreno said he believed that the homeowners' association would set up a procedure for keeping track of this. He also said the apple trees provided a number of benefits for the site: they flowered, animals ate their fruit, and their limbs created a low canopy structure, which was good for birds. He said the apple trees would produce less fruit if not pruned, and also said he hadn't noticed that fruit rot caused disease in apple trees, but said the situation could be fixed if necessary. There was additional discussion about the apple trees and other tree species that were planned for the acreage.

Mr. McNitt asked if there would be a period following cutting of the trees when there would be bare ground.

Mr. Moreno said the main ground disturbance would be when the trees were planted, and said hay and straw bales would help to minimize erosion. He also noted that transplanting relatively small trees would minimize erosion.

Mr. Gooze asked whether mowing the field once a year would be adequate.

Mr. Moreno said it would be, and would result in tall grass and some wildflowers. He said the field could also be mowed every 3-5 years, which would keep the herbaceous plants there.

Mr. Caldarola said the key to maintenance was making it clear to homeowners that their homes were on woodland sites and not mowed lawns, and educating them as to what this involved. He said this kind of home site would attract certain people, and also said he was planning to put it into the condominium declaration that the homeowners' association had the responsibility of enforcing and maintaining this type of habitat. He said a lot of people didn't really want lawns. However, he noted that in the long run, he could not enforce vegetation maintenance.

Rich Hallett of the Conservation Commission said he had done a site walk of the property with other Commission members and had also read Mr. Moreno's report.

He said his overall impression of the plan was favorable, noting that the majority of the vegetation to be removed was on the upper part of the site away from the stream. He said he agreed that invasive species were a huge problem, and noted that the herbicide to be used had a fairly short residence time, so didn't travel a great distance. He also said there would be no transport of the herbicide if the stumps were painted.

He noted one of the concerns of the Commission was how the vegetation management plan would be enforced, and said he had talked with Mr. Caldarola about this. He said it was agreed that homeowners would be educated, and it would also be put in the condominium covenant that the intent is for vegetation management so that in the future a ball field, for example, is not built in that area which would require using fertilizers and taking out the filter strip activity in that area. Mr. Hallett said the Commission was also concerned about tree cutting, which should be done with care. He said that the larger trees by the water should not to be cut.

Mr. Hallett said the tree planting approach that had been recommended would minimize soil disturbance, and also said removal of the scotch pines was reasonable and would create an area that was more aesthetically pleasing, ecologically healthier, and would help to maintain the shoreland area.

Mr. McNitt asked if the proposal was within the purpose and intent of the shoreland protection provisions of the Zoning Ordinance, and read these provisions.

Mr. Hallett said the proposal was a good fit with some of the aesthetic and wildlife aspects of the provisions, but noted that any activity in the shoreland zone created some risk to water quality. But he said the benefits outweighed the risks.

Chair Smith said the Board might want to include parts of the Conservation Commission's recommendations in its motion.

Chair Smith closed the public hearing at this time.

Mr. deCampi said it came down to trusting the applicant to do the right thing, and said if the project was completed in the spirit in which it was proposed, he didn't have a problem with it.

Ms. Eng said she did not have problem with the proposal after hearing from Mr. Hallett, noting that application of herbicides had been her major concern. She said that Mr. Moreno had provided a thorough plan, and said all of her questions about the proposal had been answered.

Mr. McNitt said this plan was clearly important, but said he would like there to be a condition put in the condominium agreement that a specific management plan must be followed for 15 years.

Mr. Bogle said the proposal was reasonable, noting that the area in question was terribly overgrown with invasive plants, which otherwise would only get worse.

Mr. Gooze said it was a fine proposal. He said he would like the recommendations from the July 2002 report, pages 8-14 as well as the recommendations from the

follow-up report of October 2003, pages 7 and 8, to be followed as a condition of granting approval for the application and also to become part of the condominium agreement.

Chair Smith said he agreed with others that the proposal seemed to be well thought out and prepared, but said the critical thing was for the vegetation plan to be followed up on and adhered to. He also said he would also like the recommendations from the Conservation Commission report to be followed, in addition to the recommendations noted by Mr. Gooze.

There was detailed discussion about the herbicide application that would be used to remove vegetation from the site.

***Jay Gooze MOVED that the Zoning Board of Adjustment approve the Application for variances from Article X, Sections 175-81, 175-83 and 175-85 by Smithfield Construction to remove non-native and invasive trees and shrubs and replace with native species within the shoreland setback, and further as a condition of this approval, that recommendations per Mr. Moreno's vegetation study of July 16, 2002 and the follow-up report of Oct 3, 2003 be followed along with the Durham Conservation Commission's recommendations of May 22, 2004; further that these recommendations be included in the condominium association agreement; further that any chemical removal of vegetation be done by a licensed herbicide applicator, predominantly by the stump application method; and that adequate follow-up be done to assure that these recommendations and conditions have been met. The motion was SECONDED by Ted McNitt and PASSED unanimously.***

### III. Board Correspondence and/or discussion:

Chair Smith said he had to leave the meeting, and turned the meeting over to Vice Chair Gooze.

Mr. Gooze noted recent court cases involving the Town. He also noted that Robin Rousseau had resigned from the Board.

### IV. Approval of Minutes – April 13, 2004

**Page 3**, include space between paragraphs at bottom of page.

**Page 5**, 1<sup>st</sup> full paragraph, should read "...and that someone had fallen off..."

**Page 8**, 3<sup>rd</sup> paragraph, should read "...a month ago to sign a petition".

5<sup>th</sup> paragraph should read "...she did adjust to it.... and felt it was better not to say anything." Also 5<sup>th</sup> paragraph, should read, "She said she called the previous building inspector..."

**Page 9** – 3<sup>rd</sup> paragraph – 4<sup>th</sup> sentence, should read "...for its intended use."

**Page 10** – Where question in large letters was.

2<sup>nd</sup> paragraph should read "...the proposed addition was against the spirit and intent of the ordinance."

**Page 13**, last word on page should be "zone".

**Page 14**, 1<sup>st</sup> paragraph, should read “..the subdivision was done that allowed the hospital to be built. Also, same paragraph, should read “..and the lot was subdivided to make provision for the veterinary hospital.”

**Page 16**, 3<sup>rd</sup> paragraph, should read “...wondered if it could be added on the side..”

**Page 17**, 4<sup>th</sup> paragraph, should read “..had misunderstood this.”

**Page 19**, first line, motion **FAILED 2-2-1** (because Robin Rousseau abstained)

**Page 22**, under “Other Business”, add John deCampi, and correct spelling of ADJOURNED in last paragraph.

***Ted McNitt MOVED to approve the minutes as amended. The motion was SECONDED by John deCampi and PASSED unanimously.***

**V. Other Business**

- A. Board members discussed how to proceed regarding the reappointment of the full voting member, and Mr. Johnson said this was in process.

Mr. Gooze asked when the Board denied an application, if the document that went out to the applicant provided the reasons for this denial. There was discussion about this.

Mr. Johnson said he was waiting for a clean copy of the new Zoning Ordinance, and noted that he had already issued some building permits for properties that formerly would have had to go through the ZBA.

- B. Next Regular Meeting of the Board: **June 8, 2004\*\***

**VI. Adjournment**

***Ted McNitt MOVED to adjourn the meeting. The motion was SECONDED by John deCampi, and PASSED unanimously,***

Adjournment at 10:00 pm.

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John de Campi, Secretary