These minutes were approved at the May 10, 2005 Meeting.

ZONING BOARD OF ADJUSTMENT MINUTES
TUESDAY, APRIL 12, 2005
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL
7:00 P.M.

MEMBERS PRESENT:	Chair Henry Smith, Ted McNitt, John de Campi; Linn Bogle, Jay Gooze, Michael Sievert
MEMBERS ABSENT:	Myleta Eng
OTHERS PRESENT:	Thomas Johnson, Zoning Administrator; Interested Members of the Public
MINUTES PREPARED BY:	Victoria Parmele

I. Approval of Agenda

Chair Smith noted that the applicants for Agenda Item II.I had requested that they be moved up to be the first application heard, because Mr. Puffer had recently had major surgery, making it somewhat unreasonable to ask them to sit for several hours. Board members agreed to amend the Agenda to reflect this.

Mr. Bogle suggested that Item II.C be heard prior to II.B, noting this kind of thing had been done in the past when the Agenda contained an appeal of administrative decision as well as a variance request for the same property.

Board members discussed why the Items had been placed on the Agenda in this order. Mr. Johnson said he believed this was at the applicant's request, and provided details on this. There was discussion on the appropriate way to proceed on this.

It was agreed that Item I would be placed first on the Agenda.

Mr. de Campi said he thought the Board should let the applicant decide on whether the variance request or administrative appeal should be heard first.

Mr. Gooze said he agreed, and said if the applicant didn't mind the Board reversing the order of these items, it could do so.

Attorney Loughlin said they thought it would be better to have the variance first, but he said it was the Board's call as to how to handle this.

Mr. Bogle MOVED to amend the Agenda to reverse the order of Items II.B and II.C. The motion PASSED with John de Campi and Jay Gooze voting against it

The Agenda as amended PASSED unanimously

II. Public Hearings

A. PUBLIC HEARING on a petition submitted by Winthrop & Carolyn Puffer, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to permit a limited subdivision to create a 5 acre lot. The property involved is shown on Tax Map 17, Lot 50-1, is located at 172 Packers Falls Road, and is in the Rural Zoning District.

Chair Smith opened the Public Hearing.

Carolyn Puffer spoke before Board, and said that this application came about as a result of a conversation with the Nature Conservancy, which had shown great interest in obtaining 5 of their 13.9 acres. She noted that these 5 acres were located immediately adjacent to land the organization currently owned.

She explained that the previous December, Bob Miller of the Nature Conservancy had suggested that she and her husband ask the ZBA for a variance because if the property could not be considered a buildable lot, the Nature Conservancy probably would not be able to make the Puffers an offer they would be willing to give up their property for.

Mrs. Puffer asked the Board for a variance so that 5 acres of the Puffers' property could be considered a buildable lot. She noted that the property would be used exclusively by the Nature Conservancy**.**

Mr. Bogle asked if the Nature Conservancy had any intention of building on the lot.

Mrs. Puffer said they did not, as far as she knew. She stated that the 13.9 acre parcel contained a very deep kettle hole as well as a portion of a bog.

Mr. Bogle noted that these features would be retained on the Puffers' portion of the property.

Mrs. Puffer said she and her husband had started with an offer of 10 acres, which contained these features.

Mr. Gooze noted a 1983 Planning Board decision which had been provided to Board members, and asked what was subdivided at that time.

Mrs. Puffer said the area was previously subdivided into house lots, and said these lots had been built on. She said their land was next to and behind it.

Mr. Gooze noted that the Puffers' lot had previously been granted a variance for having less than the required frontage, and Mrs. Puffer said that was correct.

Mr. de Campi asked if the proposed lot would have any road frontage, and Mrs. Puffer said it would not, unless road frontage was created.

It was clarified that the application didn't involve road frontage, because the Nature Conservancy would be able to access the property through their existing property.

Mr. Gooze asked if the Nature Conservancy would still want to buy the property, but wouldn't give the Puffers as much for it, if it were not a buildable lot.

Mrs. Puffer said that was correct.

Chair Smith asked if there were any members of the public who wished to speak for the application for variance.

Holly Harris, 154 Packers Falls Road said she was an abutter, and had a letter from nine of eleven abutters to the property in question. She said the neighbors were delighted that the Puffers were planning to do this, and wanted to support the requested variance. But she said they would like the Board to include, in its approval of the variance, wording that the variance was being granted for the express purpose of selling the property to the Nature Conservancy, and that the organization agreed the property would forever be preserved for recreation and conservation, and would be protected from building and any other development.

Mr. Gooze asked if her group had contacted the Nature Conservancy, and she said no, noting this application had come up very suddenly.

Chair Smith asked Ms. Harris if the Nature Conservancy had received a copy of this letter, and she said they had not. He asked her to read the letter, and she did so.

Peter Cass, 168 Packers Falls Road, said he had signed this letter, and agreed with the comments in it. He asked for details on the Nature Conservancy's ownership of the land abutting the Puffers' property, and also asked whether this had any relevance to the application.

Chair Smith said the Board didn't know about this.

Mr. de Campi provided general information on the way in which the Nature Conservancy operated, but said he had no idea what the situation was with this particular piece of land.

Mr. Cass asked if there was someone from the Nature Conservancy present at the meeting, and it was determined that there was not.

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

Mr. Bogle said the property made a good addition to the Nature Conservancy land it abutted, and said he had no objection to the variance request, unless there was some situation he didn't know about.

Mr. McNitt said he also had no objection to the variance request, but said he would like to see a condition placed on the application, - that the land be used for conservation.

Mr. Gooze said if the land was used as stated by the applicant, the variance request met the hardship criteria, was in the public interest, met the spirit and intent of the ordinance, and wouldn't decrease property values of surrounding properties. But he said he wasn't sure about the idea of putting a condition on the application that the Nature Conservancy could never use it for anything else, when the organization was not represented at the meeting. He stated that if the Board could get around this in some way, he was all for granting the variance.

Code Enforcement Officer Johnson said if the Nature Conservancy was not happy with the decision, the Puffers could request a rehearing, and the Board could then bring the case back up next month. He also said the Nature Conservancy could appeal the decision. In addition, he noted the application would have to go before the Planning Board for subdivision and lot line adjustment approval.

Mr. Gooze said that given these things, he felt the application met the variance criteria.

Mr. Sievert said he was all in favor of granting the variance request, and said he felt it met all the requirements.

Mr. deCampi said he agreed, as long as the approval had a restriction in it similar to the one in the letter from the abutters.

Chair Smith said he agreed with what he had heard, and said he thought the condition was a really good idea.

Mr. McNitt read through the letter written by Ms. Harris. He noted the use of the word forever in it, and said forever was a long time. He said he would prefer that that word not be used.

Mr. de Campi said in this case, forever meant until it came back to the ZBA. But he said Mr. McNitt's suggested change was fine.

Ted McNitt MOVED to grant the APPLICATION FOR VARIANCE from Article XII, Section 175-54 of the Zoning Ordinance to permit a limited subdivision to create a 5 acre lot, with the condition that the property will be preserved for recreation and conservation and will be protected from any building or development. Linn Bogle SECONDED the motion and it PASSED unanimously 5-0.

B. PUBLIC HEARING on a petition submitted by James & Lisa Bubar, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIV, Sections 175-73, 175-72(A) and Article XII, Section 175-54 of the Zoning Ordinance, and Sections 175-74(A) and 175-76(A) of the proposed Zoning Ordinance to allow for the building of a new single family home within the shoreland setback and within the sideyard setback. The property involved is shown on Tax Map 11, Lot 11-6, is located at 4 Old Piscataqua Road, and is in the Limited Business Zoning District.

Chair Smith opened the Public Hearing.

Bill Schoonmaker said that he was representing the Bubars before the Board. He provided a large print version of a site plan presented at the previous meeting on this application. He explained that at the recommendation of the Board at the previous meeting, the proposed location for the new home had been pulled back somewhat from the shoreland, and yet was still in either a side setback or shoreland setback violation. He said the building design now located the house roughly 100 ft. back from shoreline, and said the applicant was requesting relief from the side yard setback and 25 ft of the shoreland setback. He provided details on this, using

the site plan, noting the location of the footprint of the proposed residence for the Bubars. He explained that it was still a one-story house, required for health reasons, and comprised about 2300 sq. ft.

He pointed out the duplex immediately adjacent to the property, and said there would be approximately a 13 ft. setback. He noted that when the Bubars bought the lot, the setback was only 10 ft., but said there was currently discussion by the Town about increasing this to 50 ft. for the RC zone

He noted the property was on town sewer and water, and also said the Bubars had no intention of clearing land any closer to the water than 150 ft., except for construction work that would occur. He said there would be a few plantings around the house, but nothing approaching navigable or marsh areas.

There was discussion that Mr. McNitt, Mr. Sievert and Chair Smith were not present at the previous hearing on this application.

Chair Smith asked if any major trees would be removed.

Mr. Schoonmaker said no major trees would be removed between the house and navigable water, and he provided details on modest cutting that would be needed. He noted that the previous design was an attempt to provide a low profile on the property, but would have involved more tree cutting than the present design would.

He said by pulling the house further up the slope away from the water, this brought it up to a more level area, which was better from a tree-cutting standpoint. He noted a flattened, lowered portion of the lot that needed to be worked on to improve grading, and also noted a stand of trees that would have to come down within the buildable lot area. But he said that between the house and the water, very little tree removal was expected.

Mr. Gooze asked if there was any other possible configuration that could allow the house to be reoriented so that it could be moved back even farther from the shoreland.

Mr. Schoonmaker said there probably was, but said the lot would lose some of its value to the Bubars. because it was purchased with a waterfront aspect. He said the house could be elongated in order to fit better into the buildable portion of the lot.

Mr. Gooze asked whether when the property was bought, with the setbacks in place at that time, if there was a need for any variances.

Mr. Schoonmaker said probably not, because there was a 10 ft. setback on the side next to the neighbor's house.

There was discussion about this.

Mr. Schoonmaker said the house was not designed before the lot was purchased. He said there was a 10 ft. sideyard setback at that time, but before he was able to start designing the house, this setback changed.

Mr. Gooze said the point he was trying to make was that although one might buy a property because of the view, if it was a lot where one could put house in a certain spot and then the Town changed the rules so a variance was required, that was one thing. But he said if the applicant would have had to apply for a variance anyway before the rules were changed, this was something different, in his mind**.**

Mr. Bogle received clarification that the lot was bought in October of the previous year.

Mr. McNitt noted the property had been in single ownership since before the Zoning changed. He also said the Zoning Ordinance changed on December 21, 2004, unless there was an earlier change he didn't know about

Mr. Bogle asked how much this application for variance was different from the variance that was turned down on the same property the previous year.

Mr. Schoonmaker said he couldn't speak to that, but said the previous applicant had the advantage of a 10 ft sideyard setback at that point, but was still looking for a 100 ft. setback from the tidal marsh.

Mr. de Campi said the normal shoreland setback of 125 ft., or if the Board granted this, the 100 ft. setbacks, was also the limit for soil disturbance. There was discussion on this. He said if the Board decided to grant this, if the applicant needed something to allow him to disturb soil further than 100 ft. in the westerly direction, and 125 in the southerly direction, the Board would like to know what that was, and could grant that as a limit**.**

Mr. Schoonmaker said to be clear, the applicant was not talking about septic construction because the property was on Town water and sewer. But he said he was talking about excavation for putting in a foundation, and temporary disturbance of 10 ft. along the building.

There was discussion about the current provisions of the Ordinance concerning this

Mr. Schoonmaker said it was not unusual to install erosion control methods during construction, and he provided details on this. He said the applicant was perfectly willing to use these erosion control measures.

Mr. deCampi said Mr. Schoonmaker had said what he needed to know, and said could live with a 10 ft. extension for soil disturbance beyond the house.

Mr. Sievert said it didn't appear the applicant would have needed a variance under the previous Ordinance, and he provided details on this.

Mr. McNitt asked Mr. Schoonmaker to describe the layout of the building, and Mr. Schoonmaker pointed out this information on the drawings.

There was additional discussion as to whether the building designed could be changed.

Mr. McNitt suggested that perhaps the house could be moved back so the side setback to the east was reduced, without changing the orientation of the house. He

noted that the side setback had been 10 ft. a few months ago when the Bubars had bought the land, so it wouldn't seem unreasonable if the Board allowed that setback distance.

Mr. Schoonmaker said the applicants' feeling was that it would be better if the Town gave a bit on a few setbacks, but the house was still 200 plus ft. from the river, and wouldn't be too close to the neighbor's house. He also said this would look better from the water. He said although there was an incursion into the shoreland area, the majority of the house lay beyond that.

Mr. McNitt said a key factor was that the shoreline in this area was particularly sensitive. He noted it had a substantial slope heading down to a bog, which was the breeding ground for all kinds of species in the area. He also said with the fairly steep slope, there could be a real problem with runoff.

He said unless it was a nuisance to the immediate neighbor, the idea of moving the house toward the duplex was less of a problem than incursion into a very sensitive shoreline. He said he was more concerned about protecting the shoreland than the side setback, which had been 10 ft. several months ago.

Mr. Schoonmaker said the applicants' preference was to have some elbow room between the two properties.

Concerning the issue of the distance between the two buildings, Mr. Bogle asked if the two units in the duplex were owner occupied.

The neighbor, Mr. Taylor, said they were under common ownership. He said he was renting them, and they might be sold.

Mr. Bogle noted that with renters, the property could be noisy. He also said there might be a noise issue if the property was moved farther back on the lot, closer to Route 108.

Mr. McNitt said when the duplex was built, the property owner could have expected that there would be a 10 ft setback on whatever was built there. He also noted that setbacks tended to be grandfathered.

Mr. Gooze suggested the idea that the applicant might be able to move back the northwestern portion of the house so it was located more within the buildable area.

Mr. Schoonmaker said that was true, but said the question was, would it be a house the Bubars would want. He said the answer was no. He said this would mean redesigning the house, and provided details on this. He noted the property was a one-story house, and said although it could be reconfigured to fit better onto the buildable area, this present design was what the applicant was requesting.

Chair Smith asked if any members of the public wished to speak for or against the application

Arnett Taylor, the abutter to the east of the property in question, said that in general he was supportive of what the applicant wanted to do. He said he

understood Mr. McNitt's concern about the marsh area, but said he liked the elbow-room the 35 ft. setback provided.

He also said his observation was that the applicant might actually have more room in the shoreland area than was thought, and he provided details on this. He noted there was a lot of fresh water runoff from the Jacques property, providing details on this, and said part of the marsh was therefore freshwater, not tidal. But he noted there had been no intensive study of this. He said these lots were difficult, and said some relief was in order to allow something that would be harmonious for everybody. He said the proposed design was a good one, without a lot of intensity.

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

Mr. de Campi said he didn't have a big problem with approving this application. He said a 125 ft. setback was better than 100 ft., but noted that a number of communities fronting Great Bay had 100 ft. shoreland setbacks in their zoning ordinances. He said he would hate to see the 100 ft setback violated. But he said he would like to put a limit in concerning soil disturbance so that the project didn't become a nightmare well beyond the limits proposed.

Mr. Sievert said this seemed to fit with an area variance, He said he thought the 50 ft. side setback was a bit restrictive anyway, and said it sounded like the abutter didn't have a major problem with the change. He said the variance worked.

Mr. Gooze said he didn't have a problem with the application, and said he believed it met the hardship criteria for an area variance; to allow the applicant use of the property, given the special conditions of the property. He said there were special conditions of the property, and also said the benefits sought by the Bubars could not be achieved by some other method that was reasonably feasible.

He said the only thing he had a problem with was whether the variance request met the spirit and intent of the Ordinance. But he said he thought the proposed house was far enough away from the shoreland, and would do little harm. He also said he thought Mr. de Campi's idea concerning requiring protection during construction was a good idea. He said he was in favor of granting the variance.

Mr. McNitt noted that the Board had been very protective about the shoreland area, and said when it had yielded on this; there had usually been something the Town received in trade. He said this application represented new building that was planned. He said he hated to see the Board easily yielding on shoreline setbacks, because not only were the setbacks there because of the intent of shoreland protection. He said if these provisions were violated all the way along the line, the Town didn't have a thing.

Mr. Bogle said he was torn on this issue. He noted that the Town created this lot, and then imposed these conditions on it. He said if it were his lot, he wouldn't want to build much closer to Route 108 than was proposed here. He said the slope below the house, in the 100 ft. area between the house and the tidal marsh, was well wooded, and said he didn't think there would be issues concerning drainage

from the house into the marsh. He also noted that the abutter had no objection to the side setback encroachment.

He said he found this to be a difficult lot, and said that to a certain extent, a hardship existed. He said the alternative was to move the house north 25 ft., closer to Route 108, but noted this would add to the noise situation. He said he was therefore inclined to go along with the proposal.

Chair Smith said he agreed with Mr. McNitt that shoreland protection was an extremely sensitive issue, and was very important to the Town. He said he was torn because there were several factors involved - noise issues, trees that might be taken out, the proximity to a navigable water way and the tidal marsh. But he said he could live with the variance if the Board added a very clear condition regarding soil disturbance, so the waterways could be carefully protected.

Mr. Gooze asked how this would be worded. There was detailed discussion by Board members about the wording of the condition concerning soil disturbance.

John de Campi MOVED to grant the APPLICATION FOR VARIANCES from Article XIV, Sections 175-73, 175-72(A) and Article XII, Section 175-54 of the Zoning Ordinance, and Sections 175-74(A) and 175-76(A) of the proposed Zoning Ordinance to allow for the building of a new single family home within the shoreland setback and within the sideyard setback, with the condition that soil disturbance during construction shall be limited to 10 feet in those directions marked on the plan as being 100 feet from the tidal marsh, on the western corner of the house. Jay Gooze SECONDED the motion, and it PASSED 4-1, with Ted McNitt voting against the motion.

Mr. McNitt said he considered approximately 1/3 of the sq ft of house lay in the shoreland, and was new construction, so this was definitely against the intent of the ordinance.

C. PUBLIC HEARING on a petition submitted by Christopher & Alex Auty, Durham, New Hampshire, for an **APPEAL OF ADMINISTRATIVE DECISION** from an opinion of Zoning Administrator, Thomas Johnson, regarding the maintaining of two existing docks instead of just one. The properties involved are shown on Tax Map 12, Lots 21-0 & 22-0, are located at 34 Colony Cove Road and 32 Colony Cove Road respectively, and are in the Residence C Zoning District

Chair Smith noted he had letters in support of the administrative appeal from abutters Ms. Benning and Nancy Barrett. He also said the Board had been given an estimate of the possible cost of removing one of the docks. He then opened the Public Hearing.

Attorney Loughlin asked if the letter he had submitted on Feb 24th relating to this property could become part of the record, so he would not have to go over it again. He also asked that his April 1st letter be made part of the public record.

He said the appeal was a response to Section 175-72 of the Zoning Ordinance, setbacks and permitted uses, which dealt with landowners being allowed shoreland frontage sufficient for development of one access point. He explained that when

the original application for variances was submitted, Code Enforcement Officer Johnson said that by eliminating the lot line, this would mean there were two docks on one lot, which would violate this section.

Attorney Loughlin said that he recognized Mr. Johnson's responsibility to follow a strict interpretation of the Ordinance, but when he looked at all the pertinent regulations, he saw that this was not the appropriate decision, for a number of reasons.

He described the Auty property, and said as part of this appeal, it was important to do a balancing test, considering both the rights of the public to regulate land, and the right of landowners to enjoy private property rights. He noted that the Simplex case spoke about a policy that was more considerate of the constitutional right to enjoy private property, and said he thought that was where the courts were going, which reflected the reawakening of the idea that this balance was needed.

He said there were a number of reasons why the restriction concerning docks was not intended to apply to the applicants' situation. He said eliminating the lot line and then having two docks on one lot were not strictly prohibited, and said he didn't see any prohibition on multiple docks on a lot.

He also referred to RSA 674:19 provided that shall not apply to existing structures, but to alteration of building…". He said the Autys were not altering a building in any way, were not changing the use of the dock, and were just asking that the dock continue to be used the way it had been used for 50 years. He said he felt these provisions were designed to protect a situation like this, when the landowner was not making change that affected use.

He said a third reason the restriction concerning docks did not apply in this situation was that Section175-75 of the Zoning Ordinance provided that structures and uses existing prior to the date on which this article was enacted could continue, as long as the use was not expanded further to encroach upon the shoreland or designated buffer zone. He said the applicants were not further expanding or encroaching on the shoreland in any way, and said the Ordinance meant to protect structures such as the dock.

Concerning the Ordinance provision that there shall be no new development, Attorney Loughlin said this didn't seem to apply. He said the applicants were not developing anything, and just planned to continue to use a structure that already existed.

He also noted that removal of the dock would require State approval, so there was some question as to where the Town's jurisdiction lay. He also said that the shoreland overlay provisions didn't talk about docks as being access ways.

Attorney Loughlin said the present interpretation of the Ordinance by the Town lead to an incongruous result, because the Ordinance talked about having one access point, yet there was no prohibition against having two dwelling units on a lot in this zone. He said one would have assumed that when the lot line was

eliminated, the Ordinance would have required that the second dwelling be removed, but he said this didn't seem to be the case.

He noted the property could also have a second septic system and driveway, yet under this interpretation of the Ordinance, the property couldn't have another dock. He said this seemed to be an incongruous, illogical result, and cited a court case somewhat similar to this one, where the court came to this kind of conclusion.

Mr. Bogle said Section 175-75 did not deal with subdivision or merger of lots, and he said to his mind, the fact that the applicants were merging the lots complicated the situation. He said to him, the applicants were redeveloping the lot in tearing down the house, taking out a septic system, etc, so to him were developing the lot in a different direction.

He also noted that Section 175-72 B did in fact speak about boat docks.

Mr. Bogle said to him, the fact that a State permit was required to remove the dock was immaterial to the issue in question. He said the fact that the applicants were merging lots, and bringing the whole new lot into the new, current code, created a problem. He said he thought that was the way Mr. Johnson had interpreted the situation, and said the question was whether this interpretation was incorrect.

Attorney Loughlin said the answer to that last question was clearly yes. He also said he apparently had misspoken in saying there was no mention of docks under Section 175-72 B. But he said Section 175-75 didn't say anything about subdividing or redevelopment, it spoke about structures and uses existing prior to the date on which this article was enacted may be continued, provided that they were not expanded further. He said he didn't think this could be any clearer.

Attorney Loughlin said the applicants were not changing the use of the property, and in fact were substantially de-intensifying this use.

There was discussion between Attorney Loughlin and Mr. Bogle concerning the percentage of the Auty's land that was presently used, and could be used, for access ways. Mr. Bogle noted that the map showed a broad access to the dock on the Auty's current property. There was discussion about this.

Chair Smith asked if any members of the public would like to speak in favor of or in opposition to the request.

Mr. de Campi said he would like to hear Mr. Johnson speak on this, because there was nothing in writing concerning the Administrative Decision being appealed.

Mr. Johnson said he told the Autys at his original meeting with them that he interpreted the Ordinance to say that they would have to take down everything on the second lot, including the dock, as part of the variance. He said he made the comment at the previous public hearing that when they came in for a demolition permit, he would have to reject it because it did not include the dock. He said this was a verbal administrative decision he had made.

Chair Smith closed the hearing.

Mr. McNitt said Mr. Johnson had been conscientious, and had made the strictest possible interpretation with what he had. But he said there was a big difference between creating a dock and allowing an existing dock to stay there. He said he didn't see how getting rid of other items on the property meant the dock also had to be removed. He said the dock was an asset to the neighborhood, and had substantial value. He said he felt that in this situation, while he was proud that Mr. Johnson had taken the strictest approach, it was not reasonable in this situation.

Mr. Sievert said he agreed with Mr. McNitt, and said with all respect to Mr. Johnson, he didn't think the dock had to be removed. He said he didn't think the Ordinance was intended to require anything existing to be removed, especially when the applicants were not developing anything. He noted that if the house had stayed there, the dock would be able to remain, and said it was therefore absurd to require removal of the dock.

Mr. Gooze said he also commended Mr. Johnson for taking a conservative approach, using Section 175-72B, but he said he felt 175-75A applied here and took precedence - that structures existing prior to the date on which this article was enacted may be continued, provided that they were not expanded further. He said the Board should therefore overturn the administrative decision, as a clarification of Mr. Johnson's decision.

Mr. de Campi said it seemed the applicant was changing something, making one lot out of two, and he said he would have been much happier if this matter was handled as a variance because this was a gray area. He said he didn't necessarily feel that Mr. Johnson's decision was wrong, but also said he didn't have a big problem with the dock staying.

Mr. Gooze asked whether, if the Ordinance only allowed one structure on a lot, and two lots were merged, each with a house, if a property owner would be allowed to keep the second house on the lot.

Mr. Johnson said the Ordinance didn't really address this, and said the Planning Board would have to address this issue under the lot line adjustment process. He said accessory dwelling units were allowed in this zone, so theoretically, there could be two dwelling units on a lot. He noted there would probably be more of these kinds of cases as people tore down existing structures and rebuilt properties.

Chair Smith said removing everything but the dock seemed illogical, and also said the Board need to be very careful and consistent concerning the shoreland area. He said he thought Mr. Johnson made the correct decision in interpreting the Ordinance concerning one access point, and said he would oppose the appeal of administrative decision.

Mr. Sievert noted that the applicants had chosen to remove the structures in order to better the situation.

There was discussion about this among Board members and Mr. Johnson.

Ted McNitt MOVED to uphold the* APPEAL OF ADMINISTRATIVE DECISION *from an opinion of Zoning Administrator, Thomas Johnson,

regarding the maintaining of two existing docks instead of just one, because tearing down the dock is not required by our zoning. Jay Gooze SECONDED the motion, and it FAILED 2-3, with Mr. McNitt and Mr. Gooze voting in favor of the motion.

D. PUBLIC HEARING on a petition submitted by Christopher & Alex Auty, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIV, Section 175-72(B) of the Zoning Ordinance to maintain two existing docks instead of just one. The properties involved are shown on Tax Map 12, Lots 21-0 & 22-0, are located at 34 Colony Cove Road and 32 Colony Cove Road respectively, and are in the Residence C Zoning District.

Chair Smith opened the Public Hearing.

Attorney Peter Loughlin spoke before the Board on behalf of the applicants, and went through the variance criteria as they applied to this application. He said all five criteria for variance were met.

He said the dock had been there for half a century, and could stay there if the Autys didn't plan to merge the lots. He said it wouldn't diminish in any way surrounding properties, and noted this was not a small lot, with a dock that would overwhelm it. He said there weren't too many people buying up lots and merging them, and said this was a good thing for a Town.

Attorney Loughlin said the purpose of the Ordinance was to limit the number of access ways that were developed, but he said the Autys were not developing any new access. He said it was not contrary to the public interest to have the dock remain, so that the Autys could use the dock rather than having to pull their kayaks out of the water on the salt marsh.

He asked the Board to look at this current application as part of the package presented to the Board the previous month, and said what was being done by the Autys was clearly in the public interest. He said they were decreasing the density, decreasing the intensity of use, were pulling the remaining dwelling unit further away from the water, were eliminating a septic system, etc.

Concerning the substantial justice variance criteria, he spoke of the balancing test that should be used in determining benefit to the public versus harm to the landowner, and said he was not sure what benefit there would be to the public from removing the dock. He said removal of the dock might even result in damage to the crib for the dock. He said the dock was valued at least $20,000, and said it added to the enjoyment of the owners.

Concerning spirit and intent of the Ordinance variance criteria, Attorney Loughlin said the wording in the Ordinance didn't appear to indicate that existing docks had to be removed. He also noted that the Autys had 250 ft. of frontage, and said it seemed incredible that the Ordinance would allow expansion of a structure, continuation of an existing septic system and would permit continued use of the dock, except in the case of the improvement they were making to the property. He said the dock was a permitted use, not a nonconforming use.

Attorney Loughlin said denial of the variance would result in unnecessary hardship to the owner seeking it because: a zoning restriction as applied to their property interfered with their reasonable use of the property, considering the unique setting of the property in its environment; no fair and substantial relationship existed between the general purposes of zoning and the specific restriction on the property; and the variance would not inure the public or private rights of others.

He said the preservation of the dock was a reasonable use especially considering that it was already in existence, and there was no relationship between the prohibition against creating a new access point and the continued use of an access point that had existed for half a century. Attorney Loughlin read from a recent case that referred to the Simplex case, and explained in detail how it applied to this particular situation.

Chair Smith noted that Attorney Loughlin had said that removal of the dock could cause environmental damage, and asked him if there was a study that indicated this.

Attorney Loughlin said he had expected to have someone speak on this at the hearing, but that person couldn't make the meeting. He said this was an expression of an opinion.

Chair Smith asked what the proposed use of the dock was.

Mr. Auty said his 21 ft. boat completely took up the current dock on his property making it impossible to launch his family's kayaks and canoes. He said they wanted to use the second dock for this, and also wanted it to be available for occasional guests. He said he had no intention whatsoever of renting the dock, noting he had lived on this property with renters next door for 15 years. He said the whole purpose of merging the lots was that they didn't want to have renters 50 ft. from them for the rest of their lives, and said they did not want to develop the property.

Chair asked Mr. Auty if he anticipated that the boats would be coming in and out with some frequency.

Mr. Auty said absolutely not.

Mr. Bogle said he had no sense that the Autys wanted to rent the dock, but he said the variance would go with the property, so that a future owner might want to do this. He said he had a problem with this.

Chair Smith asked if any members of the public wished to speak in favor or against the application. There was no response.

Mr. Gooze said he believed the application met the five variance criteria. He said that for the most part, he agreed with Attorney Loughlin's reasoning concerning the variance criteria, although noting that some aspects of his presentation were somewhat general in terms of why the variance should be given.

He said to him the key things were what the Town gained by elimination of some of the structures on the property, and the fact that the dock was there already. He said this didn't mean that the Town would give two docks to everybody with properties that were big enough, and said this was a unique situation.

Mr. de Campi said he agreed with Dr. Gooze, and said there was not a lot to be gained by tearing down the second dock. He said he felt the applicants' plans concerning their property served the Town well, and said he was delighted they wanted to do this.

Mr. Sievert said he agreed that the variance should be granted, and said it was unfortunate that the applicants had had to come back before the Board, when this could have been handled under one variance application.

Mr. Bogle said he didn't agree that the variance should be granted, and said he thought it set the precedent of increasing pressure on shorefront properties. He said the Board would be faced with this kind of situation more than once, and said he didn't think granting the variance was in the public interest. But he said he was probably alone in thinking the dock should be removed.

Mr. McNitt said he didn't know of anything in the Zoning Ordinance that would require a variance in this case. He said neither the grandfathering provisions nor the shoreland provisions said anything about having to remove an existing dock

Chair Smith said he couldn't see that granting the variance would be in the public interest, noting that it would go with the land. He said the Autys had proposed some fine things, but said his concern was what would happen once someone else owned the property. He said the shoreland was a sensitive area, and said he wanted to discourage requests like this. He said he did not think the variance should be granted.

Mr. de Campi said he didn't see that a precedent was being set here, noting this was not someone who wanted to construct a second dock. He said the probability that this kind of thing would happen very often was limited.

Chair Smith noted that his concern was what would happen to the property down the road.

Mr. McNitt asked what the Board was giving the variance for, questioning where in the Ordinance it said the Autys couldn't keep an existing dock. He said if one read 175-72B carefully, it said a property owner couldn't develop access to a dock, but he said the Autys were not doing that.

There was discussion about this.

Jay Gooze MOVED to grant the* APPLICATION FOR VARIANCE *from Article XIV, Section 175-72(B) of the Zoning Ordinance to maintain two existing docks instead of just one. John de Campi SECONDED the motion, and it PASSED 3-2, with Chair Smith and Linn Bogle voting against it.

E. PUBLIC HEARING on a petition submitted by Roberta Woodburn, Secretary, Great Bay Rowing, Durham, New Hampshire on behalf of the Town of Durham, Durham, New Hampshire, for an **APPEAL OF ADMINISTRATIVE DECISION** of the Code Enforcement Officer, Thomas Johnson, regarding the issuance of a building permit for a temporary storage tent. The property involved is shown on Tax Map 11, Lot 11-4, is located at 8 Old Piscataqua Road, and is in the Limited Business Zoning District.

Chair Smith opened the Public Hearing.

Roberta Woodburn, Secretary of Great Bay Rowing, provided details on the previous variance granted by the ZBA for a storage shed to store boats at Jackson's Landing. She explained that after receiving the variance, she was told a building permit would be needed for the tent. She said she was perplexed about this, but filled one out, and said it had neither been approved nor denied by Mr. Johnson.

Ms. Woodburn said the onerous requirements of the State Building Code made it better if the tent was considered a shed, and not a structure. She said Mr. Johnson was in a position where he needed to look at the strict interpretation, but she said the ZBA could grant relief in this situation.

Mr. Gooze said the Board's previous decision concerning this was quite definite in determining that this was not a structure, and he asked Mr. Johnson why a building permit was therefore needed for it.

Mr. Johnson said the Board's decision was based on Zoning criteria, but he explained that only one and two family dwellings, and accessory structures to these dwellings, were exempt from the State Building Code.

He explained that this present application was not an appeal of a Zoning decision, it was an appeal of inaction by the Code Enforcement Officer. He said according to the Town Code, if he didn't act on the building permit within 30 days, the applicant could go to the ZBA, and the Board could decide on whether to grant the building permit.

He said if he signed the permit, he would then have to do a proper plan review, and would have to reject the plan because there were no drawings, and it didn't comply with the State Building Code. He said the appeal process would then have to be done through the State Building Code Review Board in Concord. But he said if the Board granted the appeal that evening, the issue would stay in Durham, and he recommended this.

Mr. Gooze asked what the liability issues for the Board were, if it granted the building permit, and then something happened because the code issues weren't taken care of.

Mr. Johnson said the tent would be on Town-owned property, the ZBA had already determined it was a temporary structure, and whatever agreement the rowing club had was between it and the landlord. He said the club claimed the tent would be used strictly for boats, and said if a hurricane took the tent down and boats were damaged, that would be its problem.

Mr. McNitt noted that these kinds of canvas tents existed around the State, and asked how other places dealt with them.

Mr. Johnson said if it was a commercial tent, it had to be built according to the State Building Code, and he provided details on this. There was discussion about this by Board members.

Jay Gooze MOVED to grant an **APPEAL OF ADMINISTRATIVE DECISION** ***of the Code Enforcement Officer, Thomas Johnson, regarding the issuance of a building permit for a temporary storage tent. John de Campi SECONDED the motion, and it PASSED unanimously 5-0.***

F. PUBLIC HEARING on a petition submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire, on behalf of Harold & Maria Smith, Newmarket, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article II, Section 175-7 of the Zoning Ordinance to permit a convenience store sign having a size of 59.3 square feet and a height of 20 feet. The property involved is shown on Tax Map 5, Lot 4-2, is located at 2 Dover Road, and is in the Limited Business Zoning District.

Chair Smith opened the Public Hearing.

Attorney Peter Saari said he represented the applicant.

There was discussion as to whether Mr. Mitchell had standing concerning this application, and it was clarified that he did.

Attorney Saari said Mr. Mitchell was proposing to demolish the existing building on the property, and replace it with another building that was somewhat smaller, which would be a service station with coffee donut shop attached to it. He said the sign for the business would be located in the center of the lot, where the current gas pumps were. He explained that the original location planned for the sign was near the Courthouse building, but said it was decided this location would be too close to the building, and would detract from its appearance. He said if the sign was put where the pumps were, there would be less disruption, and he provided details on this.

He said the problem for the applicant was that the Ordinance limited him to a freestanding sign of 6 sq. ft., 5 ft. high, which was extremely small. He said the size problem could be avoided by putting the sign on the side of the building, but said there were two problems with this: it would look bad, and people looking for gasoline would be looking for a freestanding sign. He said the proposed location was a more readily visible spot for the sign, and wouldn't force people to crane their necks when looking for the price of gasoline.

Attorney Saari said the sign would be limited to displaying only two gas prices, regular and diesel. He said the applicant hadn't had a lot to go on in deciding what would be a fair size for the sign, and said what was proposed was similar in appearance and other features to the Gibbs sign, in order to be consistent with the

neighborhood. He said the overall size of the proposed sign was 59.3 sq. ft., the same size as the Gibb sign.

He said the project was caught in the middle, because the property was located in what was presently the Limited Business District, but was proposed to become the Courthouse District. He said the applicant would have to meet the requirements of both districts, with the more restrictive applying. He said the application met all of the requirements of the Ordinance except for the sign requirements.

He noted the applicant would be going before the Planning Board the following day for a Conditional Use permit. He said the properties around the site were generally commercial, and said that since the sign proposed was similar in nature to others around it, it wasn't felt it would impact the values of those properties. He noted that the current use of the property was not especially attractive, although functional.

He said it was not contrary to the public interest to post fuel prices, and said that being able to advertise in a way that was readily apparent was important. He said the public would not gain by having a smaller sign, and in fact, would lose. He also said the applicant was not asking for something that was not common in this area already.

He said this was a dimensional variance, not a use variance, and said the hardship consisted of the fact that there was no way the applicant could advertise the business without a sign, or with a sign that was not readily readable. He also said the applicant had tried to keep the sign to a minimum, and although it wasn't yet known what coffee shop it would be, it would be only that. He said having the sign was the only way to accomplish this use.

Attorney Saari said in this instance, denying the business owner the right to have a sign to advertise his business would not be granting substantial justice. He also said having a sign of the size requested, which was not particularly large, was a benefit to the public.

Concerning whether the variance request met the spirit and intent of the Ordinance, he said the Ordinance presently allowed the service station as a conditional use, but said this use could not be accomplished without some kind of advertising. He said as proposed, the total signage for the business would measure 96 sq. ft., which was allowed under the Ordinance, with 59 sq. ft. for the freestanding sign and the rest of the square footage for other signs to be put on the site. He said the question for the Board was whether it was better to have the signage laid out this way, or some other way. He said having it out front was the best and fairest way to advertise, when looking at the competing needs of the Town and the property owner.

Mr. Bogle noted the design for the free-standing sign showed four panels that were filled, and three that were not, and asked if these three panels were meant for additional advertising signs.

Attorney Saari said these panels could be used for advertising, but said the applicant would have to come back to the Board for this.

Mr. Bogle said if one was only talking about the top panels, since there were two sides, this would amount to 120 sq. ft., which was more than the Ordinance allowed.

There was discussion as to whether the Ordinance spoke about both sides of a sign.

Mr. Bogle said if the additional four panels were included, this meant the applicant would be putting up a sign that was 6 ft. by 20 ft., on two sides, for a total of 240 sq. ft, which was way more than the Ordinance allowed.

Attorney Saari said that at this point, the applicant was asking for a variance from the definition of a free standing sign.

Mr. Bogle said it concerned the concept of the sign as well.

Attorney Saari said the applicant felt the proposed sign was a reasonable size.

Mr. Bogle noted that the thickness of the proposed sign was 2 ft., 3 inches. He also said he had observed the signage at an Irving station in Newmarket, which included a fairly large convenience store, and said the signage there was nothing more than a free standing sign, with an Irving panel and two price panels underneath it. He said he would guess that this came closer to what Durham's code allowed than the present application, which was very large and would really stand out.

Chair Smith asked Mr. Johnson what he thought the size of the sign was.

Mr. Johnson said that based on the drawing the applicant had provided, he had come up with 120-130 sq ft. per side, because the entire supporting structure, including the panels not labeled, needed to be measured He said the application said it was 59.3 sq. ft. including all panels.

Frank Montiero, the engineer for the project, said the additional panels on the bottom, if permitted in the Town, would be used for signs. But he said the intent in Durham was not to use those panels, and said these could be deleted, and the sign could be lowered. He said the panels were not intended to be used for signs, although he said he realized it could be interpreted that way.

Chair Smith asked why the panels were included, if the applicant wasn't intending to use them.

Mr. Montiero said that was the look they were trying to achieve, instead of seeing the poles, but he said if the applicant couldn't have the bottom piece, it would be taken out of the design.

Attorney Saari said the applicant had no objection to making the sign the size of the Newmarket sign, or the pole style sign of Gibbs, without the extra panels.

Mr. Mitchell noted to the Board that he and Mr. Montiero had been involved in the development of the Irving Station in Newmarket, and could do this.

Mr. Gooze asked what the heights were of the Gibbs and Cumberland Farms signs.

Mr. Saari said the Gibbs sign was 20 ft. and said he believed the Cumberland Farms sign was slightly lower.

Chair Smith asked if anyone wished to speak for or against the variance request. There were no members of the public who wished to speak, and he closed the public hearing.

Mr. Gooze asked Mr. Johnson about the signage discussion that took place during the Gibbs application.

Mr. Johnson said he was not employed with the Town when the site plan review application was reviewed, but he said the signage was grandfathered so they were allowed to keep it.

Mr. de Campi said he felt there was certain fairness to allowing the applicant something like the signage of Cumberland Farms and Gibbs, so it was likely that some relief would be in order. But he said the present design seemed to be a bit much. He said that taking out the panels at the bottom would help some, but said he was concerned that permitting more square footage for the free-standing sign than was allowed under the Ordinance might set a precedent the Board would later regret. He said he was not sure this was the ideal configuration, and said he would like to see the signage at the Irving Station in Newmarket, in more detail. He recommended that this application be continued in order to do allow this.

Mr. Bogle said he would be happy to continue this application so other members of Board could look at other signage in order to get ideas. He said that as proposed, the sign was too big, and was not acceptable, and said he thought a re-design was preferable. He said he would prefer to see it scaled down, and said he thought the Newmarket sign was better.

Mr. McNitt said he would be happy to continue the application, but said he recognized that if the Board didn't allow something that was comparable to other signs in the area, it was not creating perceived hardship, it was creating a real hardship. He said he hoped the sign would not be as unattractive as the ones across the street, but said it had to have essentially an equivalent impact.

Mr. Sievert said if the Board knew what kind of sign it was looking for, he was not sure it needed to continue this Item. He said he agreed the business should have a sign, and it should be freestanding. He said for safety reasons, it should be located as proposed, so it would be easy to see.

Mr. Gooze said he thought the sign needed to be competitive, and said a pole sign 5 ft. x 6 ft. wouldn't meet what the other signs in the area were. He said he would like to take a look at the sign in Newmarket and others, but said perhaps this wouldn't be necessary. He provided additional comments on this.

Chair Smith said he agreed that continuing this Item and getting more information would be a very good idea, so the Board could get a better sense of what it would be willing to allow.

Ted McNitt MOVED to continue the application to the May meeting. John de Campi SECONDED the motion.

Mr. Johnson asked if, with the permission of the Board, he could defer taking the materials for this application, because they would be needed for the Planning Board meeting the following evening. He said the applicant could be prepared to leave these materials for the Town's files at the second meeting on the application.

The motion PASSED unanimously 5-0.

Mr. Montiero asked if the Board wanted the applicant to submit a new design for the sign.

Mr. de Campi said it would be helpful if the applicant could provide square footage comparable to Gibbs, including the supporting structure, and a design that was cosmetically preferable to the Gibbs sign. He said what had been presented was not comparable to the Gibbs sign.

The Board discussed the need to continue the meeting until the following Tuesday, because it was almost 10:00 pm. It was agreed that Items H and I would be heard the following Tuesday at 7:00 pm.

G. PUBLIC HEARING on a petition submitted by Richard & Gail Houghton, Madbury, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XXIII, Section 175-133(F) of the Zoning Ordinance to permit new store signage which will exceed the 48 square foot limit. The property involved is shown on Tax Map 4, Lot 8-0, is located at 6 Jenkins Court, and is in the Central Business Zoning District.

Richard Houghton said there were two groups of signs on the building. He said one group was parking signs for Young's employees, which he hoped would be excluded from this application, and the other group was retail signs for his hardware store. He described the existing signs on the store, a metal roof sign above the door in the front of the building; two signs in the back facing the parking lot, a Blue Seal sign and a Benjamin Moore sign, each about 3 ft. x 6 ft.; and another Houghton Hardware sign along one of the sides of the building

He said these 4 signs totaled about 148 sq. ft., had been up since the early 1980's, and were weatherworn, so needed to be replaced. He said he was proposing to take down the existing signs and replace them with two signs totaling 126 sq. ft. He said the signs proposed were similar to the signs on the Exeter Ace Hardware store, and had a rustic look. He said they were not internally illuminated, but instead were top mounted florescent lights shining down, which were somewhat safer and wouldn't send light skyward. He said he thought the signs would be more in keeping with what was happening in Town, and also said the signs should be easier for customers to see. He said he hoped that by reducing the overall size, and providing something more fitting, he would be allowed to go over the size limit.

Chair Smith asked if the proposed 14 in. by 42 in. sign would replace the current roof sign, and was told it would. He also asked if the third sign presently on the side of the building would be replaced, and was told it would not be replaced.

Mr. Houghton said the 42 in. x 22 in. sign would go on the wall where the Benjamin Moore sign presently was. He provided details on this, noting the present signs on this wall were hard to see, were not attractive and didn't serve the public well. He said the new roof sign in the front would be more eye-catching, and attractive as observed from Main Street.

Chair Smith asked why new roof sign couldn't be 48 sq ft., as compared to the proposed 49 sq. ft. so it would be within the requirements of the ordinance.

Mr. Houghton explained that this was needed to allow the letter A to be a certain size. There was discussion about this.

There was also detailed discussion about the other sign planned for the back of the building. Chair Smith noted that 77 sq. ft. was being asked for, for this sign, when 48 sq. ft was allowed.

Mr. Bogle noted the sign on top of the entrance was a roof sign, which was not allowed in Town, unless it was grandfathered.

It was clarified that this sign was in fact grandfathered. Mr. Johnson said that the Ordinance required that an existing sign be maintained, which the applicant wanted to do. He said what he was asking for was something slightly larger, which would stay in the same space.

Mr. McNitt asked if the roof sign was currently illuminated, and was told no. He asked how many hours after dark the business was open each year.

Mr. Houghton said in the winter, it was dark between 4-6 pm, and said there would be floodlights on the front sign over the front door. He said the two signs at the rear didn't have lighting.

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

Mr. de Campi said he was normally not concerned too much about the issue of precedent, because each case was new, but he noted that with signs, when the Board started letting people have bigger signs, this made it harder to say no to someone else.

But he said the signs proposed in this application were reasonable for the area of the building they were going on. He said the one on the front was only one square foot more than what was allowed, and said the one in back was substantially larger, but certainly not out of proportion for the wall it was on.

Mr. McNitt said the applicant was also reducing the total square footage of the signage for the building. He also pointed out that neither of the proposed signs faced on a road.

Mr. Gooze said he thought the variance request met the criteria for hardship, noting the signs need to be visible. He also said that in terms of precedence, it was not likely there would be a competing hardware store in Town. He said if this was something new, he wouldn't be in favor of the extra signage in the back, but he said the signage would be taking the place of other signage that was coming off the building, and there would actually be a reduction of the total square footage of signage.

He said he was not sure why the sale sign had to be attached to the other sign, and said perhaps it would be better if it was separated and moved over. There was discussion about this.

Mr. Johnson said the Ordinance only allowed one sign on each face of the building.

Mr. Gooze said it therefore had to be done in the way proposed by the applicant, by putting the sale sign on the wall next to the ACE sign. He said it didn't make sense to put the sale sign on another side of the building, where it wouldn't really do them much good. He said the application for variance met the hardship criteria as well as the other variance criteria.

Ted McNitt MOVED to grant the APPLICATION FOR VARIANCE from Article XXIII, Section 175-133(F) of the Zoning Ordinance to permit new store signage which will exceed the 48 square foot limit variance, on the basis that it is essentially a tradeoff with something that is grandfathered. John de Campi SECONDED the motion.

Mr. Gooze said he was in favor of this variance because it was an area variance being requested. He said there was a hardship, and the variance was needed in order to allow the applicant the use of the property, given the special conditions of property. He said the benefits sought could not be met by another method. He said granting the variance was consistent with the spirit and intent of the Ordinance, noting that because of the way the store was situated, one didn't see the side street. He said substantial justice would be done in granting the variance, and said the value of surround properties would not be decreased in doing so. He said he believed the application met all the variance criterion,

Chair Smith said he had questioned whether granting this variance would be contrary to the spirit and intent of the Ordinance, but he said this was grandfathered. But he said he had wondered why a roof sign couldn't be replaced at the same size. He said he realized a lot more square footage was being taken down, than was being put up. But he said he was concerned about the size of the sign on the back, compared to what was allowed, and whether this was in keeping with the spirit and intent of the Ordinance.

Mr. Gooze said to him the spirit and intent of the Ordinance was to keep clutter down, in areas that would affect residents, but he said because of the location of this particular store, it wouldn't affect residents.

Mr. Bogle said the proposal was exceeding the Ordinance to the extent that it included the special sale sign. But he said the applicant was taking down the Blue

Seal sign, which was 18 sq ft., and said he agreed there should be a tradeoff of the Blue Seal sign for the special sale sign. He said the other signs were the Young's Restaurant employee parking signs that had to stay.

Mr. McNitt said he was concerned with the overhead illumination that was planned, and said he would prefer to see spot lights continued.

Mr. Gooze said he agreed with Mr. McNitt on this, and said he thought changing the lighting could affect the grandfathering. There was discussion about this.

Mr. Johnson noted the applicant was before the Board regarding the number of signs, and the square footage. He said he would work with him on the lighting issue, noting Mr. Houghton wasn't aware of the lighting requirement when he ordered the sign. He said it might turn out he would have to come back to the Board for a variance concerning this.

Mr. de Campi asked if the signs would be illuminated when the store was not open.

Mr. Johnson said according to the Ordinance, this was not allowed after the store closed.

The motion PASSED unanimously.

III. Board Correspondence and/or discussion

A. REQUEST FOR REHEARING on a February 8, 2005, Zoning Board denial of a petition submitted by Stephen Zagieboylo, Hampton Falls, New Hampshire, for an **APPLICATION FOR VARIANCE** Article II, Section 175-7 of the Zoning Ordinance to allow more than three unrelated occupants to reside in a single family home. The property involved is shown on Tax Map 6, Lot 3-10, is located at 28 Mill Road, and is in the Residential A Zoning District.

Chair Smith noted the letter from Mr. Zagielboylo saying he had reduced the number of tenants from nine to five, and also noting that three more girls would be moving out at the end of May, at which point he would no longer be in violation.

Mr. Gooze said he didn't see any new information that had been submitted. He said what was different was that he had dropped the number of tenants, but he said Mr. Zagielboylo was still not in compliance with the no more than 3 unrelated provisions.

Mr. Zagielboylo said his March 10th request was for a strictly limited variance that would not last longer than until May 31st, which would allow the tenants to stay until the end of the semester.

Mr. Gooze asked if there was new evidence that would cause the Board to have a new hearing for this. He noted other circumstances where the Board had agreed to work with applicants to allow something for a limited period of time. But he said this was a situation where the applicant was aware from the start that he was in violation. He said the question to be asked was whether the Board had made an

error on this, and he said he didn't see any evidence that the Board's previous ruling was incorrect.

Chair said he agreed with Mr. Gooze on this.

Mr. Sievert said the Board had thrown out the previous application right away when it heard that the Fire Department had a problem with the property.

Mr. Johnson said at the time, he had told the Board it was out of his hands because the Fire Department had jurisdiction on five or more, and they were pounding at the door.

Mr. Sievert said what Mr. Zagielboylo was saying here was that the fire inspection issue had gone away, so that was something new.

Mr. McNitt said he thought the applicant had done something new.

Mr. Gooze said he didn't think the previous discussion had hinged on what the Fire Inspector had said or done. There was discussion about this.

Mr. Bogle said even if there were a rehearing, it wouldn't be heard until May. He suggested that perhaps Mr. Johnson should work something out with Mr. Zagielboylo, and said he didn't think it was appropriate to grant a variance that expired on May 31st.

Mr. de Campi noted that this whole thing could be stalled by going to court. He said there was some merit to having something on record that the Board had worked out something with Mr. Zagielboylo, and said this would save him from going though the process of filing a case just to stall the situation. He said the Board should allow the rehearing, and noted that there was nothing to be gained by sending the tenants out.

Chair Smith said the Board could grant the request for rehearing, and in the meantime Mr. Zageilboylo could perhaps work out something with Mr. Johnson.

Ted Mc.Nitt MOVED to grant the request for rehearing, to be scheduled for the May 2005 meeting. John de Campi SECONDED the motion.

Mr. Johnson said if this was scheduled for May, the Town would have to spend money for letters to abutters, etc. He said if the intent was to grant relief, perhaps the rehearing should be schedule for the June meeting, and applicant could perhaps withdraw his request on May 26th.

Mr. deCampi said he would like to see it in the file that there was an agreement that this property owner understood the more than 3 unrelated rule. He said he would like to grant the relief through May 31st, and would like to discuss this at the May meeting.

Mr. Zagielboylo said he would promise to withdraw his request, if the Board waited and scheduled the rehearing for the June meeting.

Mr. Gooze said the Board should grant the rehearing and schedule it for June, and said that if the Board didn't grant the variance at that time, the applicant didn't

have anywhere to go from there. He noted his concern about having carried this issue on for so long, and the precedent that set.

Mr. Johnson said that was all the more reason not to have another public hearing in May.

Jay Gooze MOVED to amend the motion, that the rehearing be rescheduled for June, and in the interim, Mr. Johnson will work with the applicant to have a formal agreement to come into compliance by May 31st, 2005. John de Campi SECONDED the motion. The motion as amended PASSED unanimously.

IV. Adjournment

10:40 pm adjournment

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John de Campi, Secretary