

These minutes were approved at the July 12, 2005 Meeting.

**ZONING BOARD OF ADJUSTMENT
MEETING AGENDA
TUESDAY, MAY 10, 2005
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL
7:00 P.M.**

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

MEMBERS ABSENT: None

OTHERS PRESENT: Victoria Parmele, Minute Taker; Thomas Johnson, Code Enforcement Officer

I. Approval of Agenda

It was noted that the Agenda Item III E concerning the proposed Remax sign would not be heard that evening, and would be heard instead at the June meeting. It was also determined that discussion on whether to rehear the Puffer application would be take place as Agenda Item V A.

The Agenda as amended was approved by the Board.

II. Election of New Officers

Ted McNitt MOVED to nominate Jay Gooze as Chair of the Zoning Board of Adjustment. The motion was SECONDED by John de Campi, and PASSED unanimously 5-0.

Linn Bogle MOVED to nominate John de Campi as Vice Chair of the Zoning Board of Adjustment.

Mr. de Campi said if anyone else wished to be Vice Chair, he would be happy to stand aside. After discussion, Mr. Bogle withdrew this nomination.

Linn Bogle MOVED to nominate Ted McNitt as Vice Chair of the Zoning Board of Adjustment. John de Campi SECONDED the motion, and it PASSED unanimously 5-0.

Ted McNitt MOVED to nominate John deCampi as Secretary of the Zoning Board of Adjustment. The motion was SECONDED by Jay Gooze and PASSED unanimously 5-0.

III. Public Hearings

A. CONTINUED 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.

Mr. Montiero, the engineer for the applicant, spoke before the Board, and provided background on the application, noting he had presented this information at the previous ZBA meeting. He said the applicant had received clarification from Mr. Johnson on the correct procedure for calculating the size of the sign, and had a new proposal for the Board.

It was agreed the hearing should be reopened.

Mr. Montiero said the blank panels included in the previous sign shown to the Board had been taken out, and also said the height and width of the sign had been reduced. He said the size, including twin posts, totaled 58.2 sq. ft. and said this was smaller than the Gibbs sign, which with the poles was 75 sq. ft., and larger than the single pole 45.5 sq. ft. Cumberland Farms sign.

He said the height of the proposed sign was 16 ft. which was lower than the original height requested, 20 ft., and lower than the height of the Gibbs sign. Mr. Montiero explained that it was important to be able to see below the sign, and also said it was important to raise the sign higher than 6 ft. so it wouldn't be as easy to damage. He also noted that the width of the sign had been reduced from 6 ft. to 5.1 ft.

There was discussion about the measurements of the signs of the Gibbs station and the Cumberland Farms station.

Mr. McNitt said he would like to review the sign plan to see where the sign would sit on the site.

Mr. Montiero showed on the plan where the sign would be located, between the driveways to the service station on Route 108.

Mr. McNitt said he could see that the sign that was proposed would allow one to see through it, which was important for safety reasons. He asked how big the sign at the Irving station in Newmarket was.

Mr. Montiero said it was 30 sq. ft., and included an Irving logo and two price signs, but no identification of the store.

Mr. Bogle noted there was a convenience store at the Irving station in Newmarket, and said the sign for it was on the building itself. But he said the logo wasn't included on the sign, in the same way the Blue Canoe logo was proposed on the sign for the Irving station in Durham. He asked if this was because the Town of Newmarket wouldn't allow it.

Mr. Montiero said he didn't know the details on this.

Mr. Bogle asked if Mr. Mitchell, who had also developed the Irving station in Newmarket, was present at the meeting, and was told that he was not. Mr. Bogle said he would like to know why there was not a sign in Newmarket or elsewhere in the region that was as big as the one proposed for Durham.

Mr. Montiero noted that the Blue Canoe logo name was new for Irving, so this wouldn't be seen elsewhere. He also said there were several Irving stations with signs larger than the proposed sign.

Mr. Bogle said Durham didn't allow larger signs, although perhaps other towns did. He asked Mr. Johnson to clarify whether the Dunkin Donuts portion of the Gibbs sign was legitimate.

There was discussion about this.

Chair Gooze asked if any members of the public wished to speak for the application for variance.

Bill Hall said he would hope the sign on this property would be competitive with the Gibbs sign, and said the wording of the variance should probably say "not to exceed 60 ft." in order to allow a margin of error. He also noted the proposed sign should be compared to signs in Durham, not Newmarket. He said he had heard the store in Durham would be a step above the one in Northwood, which itself was famous in the region.

Chair Gooze asked if any members of the public wished to speak against the application. Hearing no response, he closed the hearing.

Mr. Sievert said the proposed sign seemed adequate, and said the business should be able to have a sign that advertised the store.

Mr. McNitt noted that the gas station business was very competitive, and signs were important. He said the applicant shouldn't be penalized by requiring a sign that was substantially out of line with what was already in the area. He also said he heartily endorsed taking the blank panels off the sign, for safety reasons.

Mr. deCampi said the visibility gained by the opening on the bottom of the sign was significant. He said the size requested was reasonable, in view of the signs that already existed in that area, and said he could support the variance proposal.

Mr. Smith said he was glad the applicant had reconfigured the sign and had reduced its size, but said a problem he had with the proposed sign was that sign poles were not permitted by the Ordinance. He questioned whether this would set a precedent, and said it seemed to be against the spirit and intent of the Ordinance. He also said the sign represented a huge increase in size.

Mr. Bogle said he agreed with Mr. Smith, noting that pole signs were no longer allowed under the Code. He said there was also a question in his mind as to why, if this were granted, it wouldn't be reasonable for Cumberland Farms to come in and say it needed larger signs to compete with Gibbs and Irving. He said he didn't see how the Board could deny this if it did so.

He said the Gibbs sign was not pretty, and said the Irving sign would add a lot of clutter and distraction to the corridor. He said he would like to see the sign cut down to the size of the sign at the Newmarket Irving station, which didn't name the chain of stores, and he also said the name Blue Canoe didn't mean anything to him. He said he felt the sign could be lower, and said he would prefer to see that.

Ms. Eng said she thought the proposed sign was a good compromise between the Gibbs sign and the Cumberland Farms sign, and was not higher than the Gibbs sign. She also said it was her

understanding that Blue Canoe was now a part of the Irving name, and said she didn't have a problem with having it on the sign.

Chair Gooze said he felt the proposed sign met the variance criteria, and noted he felt it met the hardship criteria under an area variance. He said Mr. Bogle had asked a good question concerning whether allowing this sign would invite bigger signs, but he said the applicant had the right to say there were special circumstances here because of the other signs in the area.

Mr. Bogle said the Board also had the right to say the code had changed, and the applicant therefore had to meet this new code. He said he suspected this was what Newmarket and other towns in the area had done.

Chair Gooze said he agreed, but said it was a somewhat unique situation in Durham, where the gas stations were facing each other.

Mr. Smith said the applicant could combine the Irving and Blue Canoe signs in order to make the sign much smaller. He said he was concerned about the precedent that would be set, and also said he was concerned about sign clutter, noting the Ordinance was intended to prevent those things from happening. He said it was hard to see how the variance could be approved, based on this, and said he would like to see the sign reconfigured in order to reduce its height and square footage.

There was discussion as to whether the proposed sign was a pole sign.

Mr. Johnson provided details on this, and explained that by raising the sign up, it was now considered a pole sign. There was additional discussion about possible confusion over this.

Mr. McNitt noted that outside of this area of Town, the Board had been quite tough on signs. But he said these proposed signs were typical of gas stations, and said asking someone to operate a gas station with anything substantially smaller than what was proposed would be a hardship. He also said this was a limited area of Town where gas stations were allowed, and said it would be a hardship if the applicant were asked to go in that area without having competitive signs.

He also said that in terms of the spirit and intent of the sign ordinance, anywhere else in Town this sign was proposed would be an aesthetic nightmare, but he said as proposed in the middle of the gas station site, the Board was obliged to allow it.

Ted McNitt MOVED to approve an APPLICATION FOR VARIANCE from Article II, Section 175-7 of the Zoning Ordinance to permit a convenience store sign having a size not to exceed 60 square feet, and a height not to exceed 16 feet, as shown in the exhibit marked "Revised Free Standing Sign Proposal", strictly for the purpose of a gas station. John de Campi SECONDED the motion.

Mr. Smith said he thought that if the Board approved this variance, it would be setting a precedent, in terms of sign clutter, and the size of the sign.

Mr. deCampi said the precedent set was with the Gibbs sign, and said the issue of basic fairness was to give the third business a sign that was competitive.

The motion PASSED 3-2, with Linn Bogle and Henry Smith voting against it.

B. **CONTINUED PUBLIC HEARING** on a petition submitted by Stephen Weglarz, Jr., Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54, Article XIV, Section 175-75(B)(3) and Article IX, Section 175-30(A) of the Zoning Ordinance to permit the building of an addition within the sideyard setback on a nonconforming lot. The property involved is shown on Tax Map 12, Lot 1-20B, is located at 19 Cedar Point Road, and is in the Residence Coastal Zoning District.

The applicant, Stephen Weglarz, recapped the reasons he was requesting this variance. He explained that the setbacks when his house was built were much less than they presently are. He said he was working to make the best use of the property, and wanted to preserve the green space that existed there, including the trees. He noted he and his wife owned the abutting property, and said this property was on the same deed as the house he was asking to expand. He said the two lots had a common water supply, so it was unlikely they would ever be sold off as separate properties. He said he had considered other options for enlarging the house, but said what was presently being asked for seemed the most functional, and would allow his family to enjoy a view of the bay.

Chair Gooze noted the Board had held a site walk of the property, and he read the minutes from the site walk. He then asked if any members of the public wished to speak for or against the application. Hearing no response, he closed the hearing.

Ms. Eng said because the applicant owned the adjoining property, she was in favor of granting the variance. She noted there was a letter of support from another abutter saying the variance didn't present a problem. She said she didn't see how the applicant could change the configuration of the proposed addition and move it back, as the Board had talked about. She noted that because of the way the land sloped down, this would cut off much of the backyard.

Mr. Bogle said he still felt the way he had felt at the previous Board meeting on this application, and was not in favor of granting the variance to encroach on the side setback. He said that less than 260 sq. ft. of expansion was proposed, and said even with the raised septic system in the back, he felt there was room to add on the square footage that as currently proposed would encroach into the setback.

He said he understood the Weglarzs' owned the adjacent lot, but he said it was a lot of record, so could be sold, and a well might be dug for the property. He said he therefore didn't see this as an argument in favor of going against the intention of the Ordinance.

Mr. Smith said the two properties were taxed separately, could be sold, and wells could be dug. He said the properties were located in the shoreland protection district, and said he was

concerned about encroachments on setbacks in this district. He said he didn't see that the variance request met the hardship criteria because the applicants had room to expand the building back rather than side ways. He said granting the variance would fly in the face of the spirit and intent of the Ordinance.

Mr. de Campi said he was conflicted concerning this application. He said he believed the garages could be moved closer to the house and the road, and the family room could be put behind the garage, so that the Ordinance could therefore be met. But he said having visited the property, he didn't see any real harm in letting the applicants encroach on the side setback, noting it was a victimless crime.

Mr. McNitt said he agreed with Mr. de Campi that there were pros and cons to this application. He first said that he didn't think the location for the proposed expansion was in the shoreland protection district. There was discussion about this among Board members, and it was generally agreed it was not.

Mr. McNitt said he was leaning toward the pro side of Mr. de Campi's argument, because of the special nature of the property. He said there were several aspects of this special nature, and said the first was that the lots were created and the original buildings were put on them well before the more recent zoning changes. He also said that across the street, virtually every property ignored the current setbacks. He said he felt this was enough of a special situation to warrant allowing a 10 ft. encroachment into the side setback, a setback which was not observed on the majority of houses in the neighborhood.

Mr. McNitt said he felt the purpose of the residential coastal district was to protect water quality and the rural quality of the shoreland area, but he said Cedar Point Road was not exactly a rural area to begin with, and said protecting it was not a critical issue. He said the house was one row of houses back from the water, so protecting scenic views from the water was not a factor. He said the proposed expansion would not in any way change the character of the district, and said he was therefore in favor of granting the variance.

Mr. Sievert said he hadn't been at the site walk, but said he agreed with Mr. McNitt. He said 50 foot setbacks on small lots in this zone were excessive, especially for existing lots. He said he didn't think the present situation had any bearing on whether or not the lot could be sold in the future, and said the Board was dealing with what was happening there now. He said the proposed expansion didn't seem like a big encroachment into what was an excessive setback. He said he had done work in the Cedar Point area and realized it was a tight area, and that it didn't look like other properties there met the setbacks. He said he didn't have a major problem with the request for variance.

Mr. Bogle said the Board had to deal with code as it was at present. He said the property was nonconforming, noting it already encroached on the setback on the other side. He said granting this variance would be increasing the violation, which the Board was not supposed to do. He said granting the variance was contrary to the spirit and intent of the Ordinance in that the

setbacks were violated. He said he didn't feel the application met the hardship criteria, noting there wasn't a real hardship because there was room both in front and in back to expand without moving into the 50 ft. setback.

Chair Gooze said from his standpoint, the application met the variance criteria. He said he didn't think granting this variance would be contrary to the public interest, because he didn't think it would do any harm to the public. He said he thought the variance request met the area criteria for hardship, given the special conditions of the land based on what the applicants wanted to do with it. He said granting the variance would be consistent with the spirit and intent of the Ordinance, noting the setbacks were intended to reduce congestion, but in this case, the area was already congested. He said he didn't feel it would do any harm to go into the 10 ft. setback because the applicant was the abutter, so the only harm would be to himself if his property was worth less because of the encroachment.

There was discussion about a purpose of setbacks, to reduce congestion, and whether this was relevant in this particular area.

Mr. Bogle said Chair Gooze seemed to be saying that the applicants had a right to do what they wanted to do, despite the Ordinance.

Chair Gooze noted the Boccia decision - concerning special conditions of the property, and there was discussion about this.

John deCampi MOVED to grant the APPLICATION FOR VARIANCES from Article XII, Section 175-54, Article XIV, Section 175-75(B)(3) and Article IX, Section 175-30(A) of the Zoning Ordinance to permit the building of an addition within the sideyard setback on a nonconforming lot variance, as shown on their drawing of March 2005, marked as JN879. Ted McNitt SECONDED the motion.

Mr. McNitt said he saw nothing in this application that was contrary to the public interest. He said there was a hardship for the applicant because of the special nature of property, which was laid down before the side setback increased from 20 ft. to 50 ft. in 1983. He said another special feature was that the neighborhood had twice as many houses that had almost no setbacks as houses that met the setback requirements. He said the combination of the area and this house was enough of a special nature for the property.

He said granting the variance would be consistent with the spirit and intent of the Ordinance, to the extent that the Ordinance had to apply on Cedar Point Road. He read the provisions of the Ordinance concerning the shoreland area, and said granting the variance wouldn't affect surface water quality, and wouldn't impact rural character and the scenic beauty of coastal areas, including the view of the shore as seen from the water. He said it wouldn't impact the natural and scenic quality of the area, noting that this was a crowded area, and that the lot in question was one of few in the area that had any open space around it.

Mr. McNitt said granting the variance would provide substantial justice, and would not negatively impact the value of surrounding properties.

Chair Gooze said that Mr. McNitt had spelled out the special circumstances well. He said it was the special circumstances that were key, and said under normal circumstances, just because someone wanted to do something concerning a property, it wasn't necessarily allowed under the Boccia decision. He said the special conditions were that the other properties around the property in question had hardly any setbacks, so this was a unique area. He said if the lot sizes in the area were normal, he didn't think the application would meet the special circumstances.

The motion PASSED 3-2, with Henry Smith and Linn Bogle voting against it.

- C. **PUBLIC HEARING** on a petition submitted by Marilyn Dewey, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance for setback requirements. The property involved is shown on Tax Map 17, Lot 17-0, is located at 191 Packers Falls Road, and is in the Rural Zoning District.

Chair Gooze noted a memo the Board had received from the applicant, Marilyn Dewey.

Julian Smith, Packers Falls Road, said Ms. Dewey was unable to attend the meeting, and asked that he be able to speak on her behalf.

The Board agreed that Mr. Smith could speak for Ms. Dewey as part of the public hearing, and Chair Gooze opened the hearing.

Mr. Smith provided background information on his acquaintance with the Deweys over many years. He explained that Ms. Dewey had been embarrassed that it hadn't occurred to her to get a variance as part of the work being done on the property. He said he had observed the preliminary work being done before moving the house, and therefore knew some of the constraints Ms. Dewey was coming up against, including digging into the ledge. He said the applicant was asking to intrude into the right of way 8 ft. closer than that which was permitted by the front yard setback.

Mr. Smith said Ms. Dewey had made the important point that the house at present was 90% nonconforming, and would be 90% plus conforming when the work on it was done. He said it would be a hardship in a number of ways for her if the work were delayed another month. He said the work would be a benefit for the Town in terms of improving the sight lines around the corner, and said he didn't see the down side of granting the variance. He noted that other variances had been granted for other houses in town that lost their grandfather status but were allowed to be modified as long as there was no greater intrusion into the setbacks.

Chair Gooze noted Ms. Dewey had mentioned a roadbed, and asked for details on this.

Mr. Johnson said the 22 feet the applicant showed was to the property line, but he said there was additional unpaved Town right of way beyond that.

Bill Hall said he knew the Deweys, and said it was remarkable that this house was going to be moved. He said the applicant was making the best of the situation, noting there was granite around the house. He said it was being moved away from the road, and said it was to the applicant's credit that she was making the property as conforming as was possible. He said that moving the house off from the corner to give better sight distances was a very good idea.

Chair Gooze asked if any other members of the public wished to speak for or against the application. Hearing no response, he closed the hearing.

Board member Henry Smith said he saw that the applicant was making the best of a difficult situation, and he said the project would provide an overall benefit. He said he thought it was wonderful that Ms. Dewey would be preserving this historic house, noting that historic preservation was very important to the Town. He said he believed the application met the variance criteria. Mr. deCampi and Mr. McNitt both said they agreed with the points made by Board member Mr. Smith.

Mr. Sievert said the proposed work sounded like a big improvement, and said that hopefully the applicant wouldn't plant trees on the corner to obstruct views. He noted that the ledge on the property represented a hardship, and said it looked like the application met the variance requirements.

Mr. Bogle said he agreed with the other Board members and Mr. Hall, and said he was in favor of granting the variance.

Ms. Eng said she agreed with what other Board members had said. She noted that she walked by the applicant's property every day, and said she was looking forward to being able to see around that corner on Packers Falls Road.

Chair Gooze questioned whether there might be any future plans for the road bed in front of the house that the Town owned.

It was clarified that the applicant would be exceeding the setback as measured from the road, but would not actually be in the road bed itself.

Chair Gooze said he had no problem with this application for variance, and said it met all of the criteria.

Henry Smith MOVED to approve the APPLICATION FOR VARIANCE from Article XII, Section 175-54 of the Zoning Ordinance for setback requirements. The motion was SECONDED by Linn Bogle and PASSED unanimously 5-0.

Mr. Johnson noted that the building permit had already been issued for the new location, a conforming location. He said the applicant would be proceeding at her own risk for the next month, noting there was always the possibility that there would be an appeal of the ZBA's decision.

- D. **PUBLIC HEARING** on a petition submitted by Deborah J. & Richard T. Casey, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIV, Section 175-72(A) of the Zoning Ordinance to place a septic system within the shoreland setback. The property involved is shown on Tax Map 12, Lot 2-3, is located at 239 Piscataqua Road, and is in the Residential C Zoning District.

Sandy Breton of NH Soil Consultants spoke before the Board on behalf of the applicants. She explained that the applicants' current septic system, which had been in place for over 40 years, was highly stressed, and said they wished to replace it before selling the property. She said the new system had been designed so that it would be placed in approximately the same location as the original system.

Ms. Breton noted the various setbacks existing on the property: the Town's 150 ft. shoreland setback - the setback from which the applicant was seeking a variance; a 100 ft. NHDES tidal buffer setback, and a 75 ft. NHDES shoreland septic setback. She said they had chosen to put the system back in the same location because the only setback it wasn't meeting was the Town's shoreland setback. She noted they could not otherwise meet the 50 foot front or side setbacks. She said a test pit had indicated the water table was at 16 inches, which was better than had been expected in that area.

She said granting the variance would not decrease property values, and said the improvement would in fact enhance them. She said the variance would not be contrary to the public interest, because the current system was antiquated. She described the proposed new septic system in detail, explaining that it was an aerobic pretreatment system which had three chambers. She said that by the time the effluent reached the third compartment, it was approximately 95% free of suspended solids and BOD, so a much smaller leach bed was needed than was the case with a traditional system.

Ms. Breton said not granting the variance would represent an unnecessary hardship, noting that the applicants were trying to improve the septic system before it became a problem. She also said she had installed systems like this on other properties around the Bay, and noted they fit better aesthetically with the landscape than mounded systems.

Mr. de Campi asked why it would be impractical, impossible or undesirable to put the septic system closer to Piscataqua Road, which would put it further back from the water.

Ms. Breton noted the applicant would still need a variance if the septic system was put closer to the road because of the front setback.

There was discussion about the well for the property, and Ms. Breton said it was encased in the foundation for the house.

Mr. De Campi asked if the septic system could be put in the southwestern corner of the lot, outside of the well radius and the 150 ft. shoreland setback.

Ms. Breton said it could be done, but said a mound would be required, noting she wasn't sure if they would hit ledge in that area. She also noted this location would be up slope of the well, as compared to the proposed location for the septic system, which was down slope. She said it was sufficiently far enough away from the well and down slope so that it was very unlikely that it would ever cause a problem.

Mr. Smith said locating the system in the southwest corner could be done, and would then conform to the 150 ft. setback and would still be 75 ft. from the well.

There was discussion that a setback variance would still be required.

Mr. McNitt asked if the system could perhaps be put in the southeast corner, and Ms. Breton noted the setback limitations in this area as well.

Ms. Eng asked Ms. Breton to explain what she meant when she said raising the leach bed would create serious and unnecessary aesthetic issues.

Ms. Breton provided details on this, and said the homeowner would essentially be looking out their front window at the top of the mound.

Mr. Sievert asked if the leachfield could be put out beyond the 75 ft. well radius, and Ms. Breton said it was already out as far as it could go in terms of the 50 ft. side setback. She also noted there was a tree there that they were trying to save.

There was discussion about the relatively small size of the proposed leach field.

Mr. de Campi asked Ms. Breton if her experience suggested there was absolutely not a threat to the well in terms of where the system was proposed to be placed.

Mr. Sievert said he had done the peer review when the system was invented, and said it was a superior system. He said the water coming out of the third tank was almost at drinking water standards, and said this wouldn't cause a negative impact to the well. He said the improvement to the Bay would be astounding because the present system was probably sitting in the water table.

Mr. de Campi said he was looking for assurance that by putting the system in the proposed location, as compared to where it might be a visual eyesore, closer to the road, it did not become a greater threat to the water.

Ms. Breton said no one could completely sign off on such a thing, but she noted that the proposed system represented 40 years of improved technology.

Mr. Bogle said he would like to be convinced that a raised system was not appropriate there.

Ms. Breton said the proposed location would grade better into the lot.

Mr. Bogle said the proposed system had a bottom that was 24 inches above the water table instead of 48 inches.

Ms. Breton said the applicant had asked for a waiver for this, which was a standard waiver for replacement systems on pre-existing lots, due to the hardship that no one wanted to put a 4 ft. mound in their yard.

There was discussion about the status of the waiver request.

Chair Gooze asked if there were any members of the public who wished to speak for or against the application. Hearing no response, he closed the hearing.

Chair Gooze noted that mounded systems were done in the area.

Mr. Sievert referred to the fact that he was a professional engineer, and said this was a state of the art system, and the proposed application was a great use for it, replacing an existing system. He said the analogy to this kind of system was a wastewater treatment system, and said it would result in about a 90% reduction in leach field size. He said he had done analyses of groundwater mounding on these systems, and said there wasn't a significant increase as compared with regular leach fields. He said perhaps the system could be put in a different location on the site, but noted there were a lot of setback restrictions.

Mr. McNitt said he felt the variance request met all the requirements. He said it would be a hardship not to be able to do something like this, and he noted that two experts said this was the best solution.

Mr. de Campi said he would rather see the septic system put back further from the Bay for pollution reasons, and further from the well, but he noted Mr. Sievert was far more knowledgeable in this area than he was, so he was happy to accept his opinion on this.

Mr. Smith said he appreciated Mr. Sievert's perspective, but said he was saying that it was the nature of the design of the system that it would work in this location but also in other locations. He said he was uncomfortable with the system being replaced in the same spot, which was much closer to the shoreline than if it were put someplace else. He said when the applicant described serious aesthetic issues, this raised a question in his mind concerning the idea of hardship. He said he didn't think the variance request met the unnecessary hardship criteria, since the system could be placed somewhere else.

Mr. Bogle said he also had reservations concerning this application, and said he was not convinced it couldn't be put farther into the southwest corner of the property, where the temporary storage hut was located. He said if it was possible to get the septic system out of the shoreland setback, this should be done. He said if the proposed system was so safe, it would be just as safe closer to the southwest corner as it would be at the 100 ft. mark back from the water frontage. He noted it would be higher above the water table in that corner, and he also said that even if a side yard setback variance were required, this would be better than putting the system within the Town's shoreland setback. He said that even if the leach field had to be raised more in that location, that would be all right, noting that other properties in that neighborhood might have raised leach fields.

Ms. Eng said she agreed with Mr. Bogle that the septic system could be put in the southwestern portion of the property, and also said she agreed with Mr. de Campi that this location should be outside of the well radius.

Chair Gooze asked how new the design of the proposed system was, and Mr. Sievert said it was about 10 years old. Chair Gooze asked if the waiver was standard, since this was such a good system.

Mr. Sievert said such a waiver could be obtained even with standard system designs.

Chair Gooze said putting the septic system in the southwest corner would require some setback variances, and said the question was whether these setbacks or the shoreland setback were more important, given this proposed system. He said with a normal system, he would definitely go with putting the system in the southwest corner, where it would exceed the side setbacks. But he said he would take the experts' opinion on this, so would be in favor of granting this variance from the shoreland setback for this system.

Mr. McNitt said the question that needed to be asked concerning possibly locating the septic system in the southwest corner of the lot was whether it would be better to have a septic system 90 ft. uphill from the well, or 75 ft. downhill from the well. He said he'd rather have the system where it was proposed, downhill from the well.

Mr. de Campi said the well could be moved if there were a problem, but if the Bay was contaminated by a septic system, there was no easy solution. But he said he was comfortable enough, although not totally comfortable, with the proposed location for the system.

Chair Gooze said the Board in approving this would be saying that this was a good enough system to put into the shoreland area, when an applicant came before it and said they didn't want to put a mounded system in front of their house.

Mr. Sievert said he would recommend not confusing this issue with aesthetics, and said he would look at the system as one that could be placed closer to the water because of the advancement of technology. He said the system could stand on its own environmentally.

Chair Gooze said he thought this was a unique situation, so keeping that in mind, he was in favor of granting this variance.

Mr. Smith asked what was unique about this situation.

There was detailed discussion about this. There was also discussion as to the current setbacks in relation to evolving technologies.

Mr. de Campi said there was something to be said for allowing the replacement system to be placed in the same location, unless there were good reasons for enforcing a change. But he said he didn't think the Board would not be nearly as generous for new construction.

John de Campi MOVED to grant an APPLICATION FOR VARIANCE from Article XIV, Section 175-72(A) of the Zoning Ordinance to place a septic system within the shoreland setback, in accordance with NH Soils drawing submitted May 10, 2005, and marked “NHSC Job 05-0014” at the top, and “ZBA Handout “at the bottom. The motion was SECONDED by Ted McNitt.

Mr. McNitt said this was definitely a plus to the public interest. He said the special nature of the property was that nobody should have put a house there in the first place, but he said leaving the current system there was an infinitely worse threat than the system that was proposed. He said the new system would be a significant improvement, and also said the setback encroachment would not be made any worse than it presently was. He said the improved system would enhance the value of surrounding properties.

Chair Gooze said he was comfortable with the fact that this was a unique situation, in terms of being a replacement for the existing system, and said if it was new property, he would be very uncomfortable with granting this. He also said he believed the proposed system lent itself to this, so the request met the variance criteria.

Mr. Bogle said he felt the septic system could be moved farther from the water, and closer to the southwest corner of the property. He noted this would require a variance for the setback, and the system might have to be raised, but he said the farther the system could be moved from the water, the better, or else the shoreland setback became more and more meaningless.

The motion PASSED 3-2, with Henry Smith and Linn Bogle voting against it.

- E. **PUBLIC HEARING** on a petition submitted by Sandra Wattendorf & Debra McCosker, Remax Central Edge, Durham, New Hampshire, on behalf of Rockingham Properties LLC, Belmont, Massachusetts, for an **APPLICATION FOR VARIANCE** from Article II, Section 175-7 of the Zoning Ordinance to place a non-conforming, free-standing sign on the property. The property involved is shown on Tax Map 11, Lot 8-0, is located at 56 Dover Road, and is in the Limited Business Zoning District.

(Will be heard at June ZBA meeting at the request of the applicant).

IV. Approval of Minutes -- April 12, 2005

Page 1 - 3rd paragraph should read “at the applicant’s request.” Also, remove comments concerning the motions at the bottom of the page.

Page 2 - 5th paragraph, should read “..so that 5 acres...”

Page 4, bottom paragraph, should read “.. And yet was still in either...”

Page 5, 6th paragraph from bottom, should read “..back even farther from...”

Page 6, 1st paragraph, should read “..where one could put a house..” Also, 5th paragraph, should read “..but was still looking for...”

Page 8, 3rd full paragraph, should read “..fronting Great Bay had 100 ft.....would hate to see the 100 ft. setback violated.” 2nd paragraph from bottom should read “He said he hated to see the Board easily yielding on shoreline setbacks . He said if these provisions were violated..”

Page 10, 3rd full paragraph, should read “..and then having two docks on one lot..”

Page 11, 2nd full paragraph, should read “He said the applicants were redeveloping..”

Page 21, bottom paragraph, should read “He said the signs proposed were similar..”

Page 24-25, check spelling of Zagieboylo (correct spelling)

Linn Bogle MOVED to approve the April 12, 2005 minutes as amended. The motion was SECONDED by Henry Smith, and PASSED unanimously 5-0.

V. Other Business

A. Discussion on Puffer request for rehearing.

Mr. de Campi said he personally didn’t see anything in the letter that would justify a rehearing.

There was detailed discussion on the letter from the Puffers concerning the lot to be subdivided, and whether the Board could have erred in its decision that would cause it to want to rehear the application.

Board members agreed that if there was any doubt, the application should be reheard.

Henry Smith MOVED to grant the request from the Puffers for a rehearing of their application, based on the fact that there was a shadow of doubt that the Board may have erred in one sense. The motion was SECONDED by John de Campi and PASSED unanimously 5-0.

It was agreed the application would be reheard at the June 14th meeting.

Henry Smith MOVED to adjourn the meeting. The motion was SECONDED by John de Campi, and PASSED unanimously.

Adjournment at 9:15 PM.

John de Campi, Secretary