

**ZONING BOARD OF ADJUSTMENT
TUESDAY, SEPTEMBER 13, 2005
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL**

MEMBERS PRESENT: Chair Jay Gooze; Ted McNitt; Linn Bogle; Myleta Eng; Michael Sievert

MEMBERS ABSENT: Henry Smith; John deCampi

OTHERS PRESENT: Code Administrator Tom Johnson; Victoria Parmele, Minutes taker

Chair Gooze noted that alternates Myleta Eng and Michael Sievert would be voting members that evening because Mr. deCampi and Mr. Smith were absent. He said applicants whose applications were denied that evening and then wished to appeal the decision should first appeal as a request for rehearing before the ZBA, before appealing the case to Superior Court.

Chair Gooze said Board members had conducted site visits to the Hartmann, Kleinmann, and Christiansen properties.

I. Approval of Agenda

Chair Gooze said there was a Request for Rehearing on the Agenda, but said it would be removed because the Minutes from the previous ZBA meeting indicated this had already been granted, on a 4-0 vote. He said this request would be replaced by a Request for Rehearing regarding the 10 Madbury Road application from Town Planner Jim Campbell and Scott Chesney of UNH, in separate letters received before the meeting. He asked Board members if they had the chance to read these letters. He said he would like to put this on the Agenda.

Chair Gooze said there had been a request for postponement concerning the Hartmann application, and said this would be continued to the next meeting

Chair Gooze said there had been a request from an applicant, Dr. Bragdon to move his application up on the Agenda because he had regular office hours on Tuesday meeting. Chair Gooze recommended hearing this application after the Christensen application.

Chair Gooze also said there had been a request to withdraw Agenda Items II I and J, noting these applications both involved the same building. He suggested that Mr. Johnson send the applicant a letter explaining that she had missed the deadline for an appeal of administrative decision, and would have to apply for a change of use, if she wanted to have the Board consider the building as a duplex.

Ted McNitt MOVED to amend the Agenda to reflect the above changes. Linn Bogle SECONDED the motion, and it PASSED unanimously 5-0.

II. Board Correspondence and/or Discussion

A. REQUEST FOR REHEARING 10 Madbury Road

Mr. Bogle said he would recuse himself from the discussion because he was not present for the original hearing on 10 Madbury Road. Ms Eng said she would do the same, for the same reason.

Mr. Gooze said with a request for rehearing, having 3 board members to vote on it was sufficient. He then read from the letter from Town Planner Jim Campbell, which provided details on why the Board should rehear the 10 Madbury Road application.

Chair Gooze said that in order to rehear an application, the Board needed to determine it had made a mistake or that there was new evidence. He said he agreed the wording of the conditions of approval was confusing, and said there should at least be a rehearing to address that issue.

Mr. McNitt suggested they could simply reword the decision.

Mr. Gooze read the letter from Scott Chesney, which indicated that the Board's decision would potentially harm the University's efforts to make the fraternities in Town accountable. The letter provided details on this, and on what the implications of this could be.

Mr. Gooze said he felt this was new information, and said he hadn't realized there was no control at all for non-fraternity members. He said he felt there should be a rehearing for this reason as well.

Mr. McNitt said he agreed there should be a rehearing, if the University provided information on all the fraternities' practices regarding non-member borders.

Mr. Sievert said he didn't think the ZBA was trying to re-zone the Town, as stated in the letter from Mr. Campbell. He said the Board was led to believe the owners of the house could make everyone in the house responsible, but was now finding this was not the case.

Ted McNitt MOVED to approve the Request for Rehearing. The motion was SECONDED by Michael Sievert, and PASSED unanimously 3-0.

Chair Gooze said this hearing would be heard at the next regular ZBA meeting, in October.

III. Public Hearings

- A. CONTINUED PUBLIC HEARING** on a petition submitted by John & Carol Burns, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Article XXI, Section 175-116(C) to construct parking areas within the 30-foot front yard setback. The property involved is shown on Tax Map 6, Lot 7-36, is located at 39 Mill Pond Road, and is in the Residence A Zoning District.

John Burns appeared before the Board, and provided sketches of his plans. He said he and his wife wanted to reconfigure the parking area to make the house handicap accessible, noting his wife's aunt was in a wheelchair, and had a handicap accessible van. He said he would also like to be able to back out of the garage and turn around. Mr. Burns said as a result of the proposed changes, the parking area would encroach one foot onto Town property. He said he would re-landscape the area when work was completed.

Mr. Burns said the parking area he was being asked to remove was done in the 1960's, but said the Town didn't have any records on it. He said it would cost \$1,000 to take it out and landscape the area, and said this was a concern when there were no records.

Mr. Bogle asked how many cars were parked in the parking area.

Mr. Burns said 2 cars were parked there full time, and 5 were there from time to time.

Mr. Bogle said that created congestion, and contributed to the difficulty of backing out of the driveway.

In answer to a question from Mr. Gooze concerning the second curb cut on the property, Mr. Burns said he was being asked to remove the surfacing, to grass over it, and to leave the curb.

Mr. Gooze said the space between the garage and the end had been said to be 19 ft, but now was said to be 13 ft.

Mr. Burns said he had measured the distance needed to back out, and the distance had turned out to be 13 ft.

Mr. Bogle noted that the applicant was asking for an additional 3 ft., from 13 ft. to 16 ft., and there was discussion about this with Mr. Burns. In answer to a question from Mr. Bogle, Mr. Burns said the area of overlap with Town property, at its widest, was approximately one foot.

Mr. Gooze said that if the parking area were moved up one foot, making it 31 ft., it would not need a variance.

Code Administrator Tom Johnson said the applicant would still be there because the Ordinance didn't allow any parking within 10 ft. of the lot line.

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

Mr. McNitt asked if the Board could decide to allow someone to use Town property. There was discussion about this by Board members.

Mr. Johnson noted that the Public Works Department hadn't had a problem with this.

Mr. Sievert said he had seen the property, and it looked like the property had one of the narrower driveways on the street. He said it was a better situation not having to back out, and said this fit the intent of the Ordinance. He said whether a car was parked there or not, at least 30 ft. would be needed to back a car around, so 31-32 ft. was adequate for what the applicant needed. He said granting this variance request would not be contrary to the public interest, and said he didn't feel the applicants would be getting more than what other people had.

Mr. Gooze asked whether other properties in the area had driveways that were outside the width of the garage.

Mr. Bogle said he had lived in that neighborhood for 35 years, and said he wasn't certain that this much space was necessary, and said the situation appeared to be complicated by the fact that there were other cars parked in the driveway. He said he didn't see that there was a hardship concerning this, and said he didn't think the Town's property should be paved over for the benefit of a resident. He also said he felt the extra parking area should go.

Mr. McNitt said he would prefer that the parking area was shaded back a foot so it didn't fall on Town property, and said if the applicants chose not to do this, it would be at their risk. He said the traffic for this property was somewhat more than in other streets in the neighborhood, but noted that most of the houses in the faculty area had to back out of their driveways. He said that on balance, having eliminated the second entry to the property, the hardship issue was questionable. He said the variance request met the spirit and intent of the Ordinance and would grant substantial justice. He said on balance, he would accept the proposed configuration, although noting he would prefer to see one foot taken off of it.

Ms. Eng said she would like to see the small parking area taken out, and also said she agreed with Mr. McNitt that the larger parking area should extend 31 ft., taking it just to the Town property line, so it would not be on Town property. She said she agreed that granting the variance would not decrease the value of surrounding properties.

Mr. McNitt said he believed the application met the hardship criteria, and said granting the variance would enable the proposed use, given the layout of the property.

Chair Gooze read through the variance criteria for an area variance. He said the problem he had with the application in respect to the spirit and intent of the Ordinance was that there were many houses in Town with a similar situation. He said since there was one variance criterion he didn't agree with, he couldn't vote in favor of granting the variances.

Mr. Bogle said he would like the motion to clearly define what the Board was voting on. He said if they were voting on the present configuration, this involved overlap onto Town property, and said he didn't think anyone wanted to see that.

Ted McNitt MOVED that the application for variance from Article XII, Section 175-54 and Article XXI, Section 175-116(C) to construct parking areas within the 30-foot front yard setback submitted by John & Carol Burns, Durham, New Hampshire be approved, subject to two conditions: that it (the parking area) be removed from town land, and that the other entrance to the road be removed. Myleta Eng SECONDED the motion, and it PASSED 3-2, with Chair Gooze and Linn Bogle voting against it.

- B. **PUBLIC HEARING** on a petition submitted by Andrew & Kecia Hartmann, Greenland, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54, Article XIII, Section 175-65, Article XIV, Section 175-72(A), Section 175-73(D&E), and Section 175-74 to permit the construction of a single family dwelling with attached garage, a well and a septic system within the front yard, side yard, wetland and shoreland setbacks. The property involved is shown on Tax Map 11, Lot 31-14, is located at 1 Riverview Court, and is in the Residence C Zoning District. (The applicant has requested that this application be postponed.)

Continued

- C. **PUBLIC HEARING** on a petition submitted by Andrew & Kecia Hartmann, Greenland, New Hampshire, for an **APPLICATION FOR SPECIAL EXCEPTION** in accordance with Article XIII, Section 175-62(A) and Article XIV, Section 175-75(E) to permit the construction of a single family dwelling with attached garage and a well. The property involved is shown on Tax Map 11, Lot 31-14, is located at 1 Riverview Court, and is in the Residence C Zoning District. (The applicant has requested that this application be postponed.)

Continued

- D. **PUBLIC HEARING** on a petition submitted by Gary Flaherty, Hollis, New Hampshire on behalf of Jeffrey Christensen, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IX, Section 175- 27(B) and Section 175-73(D&E) of the Zoning Ordinance to replace an existing foundation of a camp within the Shoreland Protection Zone. The property involved is shown on Tax

Map 20, Lot 1-0, is located at 595 Bay Road, and is in the Residence C Zoning District.

Chair Gooze read a memo dated September 8th concerning the application from Margaret Christensen which spoke in favor of it.

Donald _____, the project manager, said the application was before the Board because Mr. Christenson's lot was nonconforming since it was slightly under the minimum square footage required. But he noted the work that was proposed was clearly permitted under the Zoning Ordinance, and involved a replacement in kind, using updated technology. He noted that the State Wetlands Bureau had confirmed this. **Mr. _____** provided some pictures of other structures in the area that had been allowed to be built within the wetland buffer zone, and also noted letters of reference from the Town of Lee in support of the applicant.

Mr. _____ described the proposed work to be done on the property, stressing there would be an improvement of many features, including a new foundation, new septic, new well, connection of the two driveway entrances, removal of the boat house, and permission to construct an accessory structure. He provided details on the foundation that was proposed, - poured concrete with proper reinforcement, and noted what was proposed would have less of an impact than what was previously proposed and approved for the site in a former variance.

He next provided details on the septic system issue, noting there were three approved sites for a system on the property, and that the existing system was functioning properly. He said a new system was proposed, designed, and had been approved by the State. He said the existing septic system would be removed and filled in. He said the well would be installed outside the radius of the proposed septic system.

He said the two driveway entrances would be connected, for safety and snow removal reasons, and would be predominantly outside of the 100 ft. buffer. He said the boathouse would be removed, and would be replaced with a pier and dock system. He said with the loss of the boathouse, an accessory shed would be needed for storage, and would be applied for at a later date. He provided details on its proposed location. He said the existing kerosene tank would be removed, and said propane fuel would be used.

He said the house would be jacked up at its present location, and all soil disturbance would take place on the north and east sides. He said the house would be re-installed on a new foundation, approximately 1 ft. higher to allow correction of some existing grading problems, and to allow compliance with the building code. He said utilities would be reinstalled underground, and said the utility poll on the property would be removed. He said the agreement reached Feb 3, 2004 in Strafford Co. between Richard Gallant and the ZBA would be honored.

Mr. _____ said Mr. Christensen realized that any degradation of the quality of the

water from the project would affect him as well, and said he looked forward to making the current less than appealing structure into an attribute for the Town.

Mr. McNitt asked if there would be a sump pump used as part of the project, and **Mr. _____** provided details on this.

Chair Gooze asked for clarification as to what variances were addressed in this application.

Mr. Johnson said the septic location was approved previously by the Board, and the septic design was approved by the State.

Chair Gooze provided clarification that the application was just for the foundation work, noting the Board could add a condition concerning the removal of the boathouse.

Mr. Bogle noted that the previous variance granted for the same property had a condition that the boathouse be removed, and said his understanding was that this went with the property.

Mr. Johnson said that was a condition of a previous variance request, involving a brand new structure.

Chair Gooze said the Board could put the same restriction on this application.

Mr. Bogle noted there was mention of a utility shed in the previous application for this property, but said this was not part of the current application. It was clarified that a variance was not needed for the shed because it would be outside the setbacks.

Attorney John Levenstein said he was available to answer questions the Board might have.

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

Richard Gallant, an abutter, said when he had appeared to speak on this application at the last meeting, he had many concerns about the project. But he said all these concerns had been addressed, noting he had two meetings with the applicant. He said Mr. Christensen had every right to develop the property the way he planned to, and said he was in favor of granting the variance.

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

Mr. Sievert said he was not at the site walk, but drove by the property. He noted the Ordinance said there could be a foundation, and said with the existing building there, he didn't see a problem, as long as the foundation was properly constructed. He also

asked whether with the existing variance in place, the foundation could be put in, and then another structure could be built on that foundation in the future.

Mr. Johnson said the other variance was based on demolishing the camp and boat house, so if the camp was going to be developed, the applicant couldn't put up the new house and garage.

Mr. Bogle asked if at a later date, the applicant could tear his house down and pick up with the previous variance. He also asked if the Board could say that the previous variance would be vacated.

Mr. Johnson said he would think the applicant's attorney would volunteer that, and this could be made a condition of the approval.

Mr. Christensen provided details on the fact that his understanding was that the previous variance stayed with the land.

Mr. Bogle said if Mr. Christensen sold his property, the new owner might want to do what was previously granted.

Mr. Christensen said the fact that the previous variance was in place was part of the reason he bought the property.

Chair Gooze said he didn't see a problem with this, and said it didn't really have anything to do this with this variance request.

Mr. Sievert said the variance ran with the land, but couldn't be completed because the cottage was not being moved.

Mr. Johnson provided details on what would be involved in this.

Chair Gooze said a lot of work would need to be done to go back to the conditions for the previous variance, but agreed this could be done.

Mr. McNitt said with conditions, such as the destruction of the boathouse, he felt the application met the variance criteria, and was a better proposition for the Town.

In answer to a question from Ms. Eng, Chair Gooze said the driveway was not part of the application, and said the details concerning it would have to be worked out with Mr. Johnson. Chair Gooze said he believed the application met the five-variance criteria, and provided details on this. He said the spirit of the Ordinance was well upheld by the way the proposed work was planned, including the fact that there appeared to be adequate controls in terms of preventing erosion.

Mr. McNitt said he would like to see the property moved back 30-40 ft., but said he thought asking for this was unreasonable in this case.

Chair Gooze said he would like to see a condition in the motion concerning removal of the boathouse.

Mike Sievert MOVED to approve an APPLICATION FOR VARIANCES from Article IX, Section 175- 27(B) and Section 175-73(D&E) of the Zoning Ordinance to replace an existing foundation of a camp within the Shoreland Protection Zone, with the condition that the boat house will be removed, as proposed in plans dated July 20th, 2005, revised September 7th, 2005, also referencing Sheet 1 of 1, Proposed Building Location, dated May, 2003. Ted McNitt SECONDED the motion.

Chair Gooze restated that the application met all five variance criteria.

The motion PASSED unanimously 5-0.

- K. **PUBLIC HEARING** on a petition submitted by Bruce & Irene Bragdon, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article IX, Section 175-30(C), Article XII, Section 175-54 and Section 175-55(D) of the Zoning Ordinance to build a porch within the side yard setback. The property involved is shown on Tax Map 20, Lot 17-4, is located at 7 Colony Cove Road, and is in the Residence C Zoning District.

The Board agreed to combine Items K and L, after checking with the applicant on this.

- L. **PUBLIC HEARING** on a petition submitted by Bruce & Irene Bragdon, Durham, New Hampshire, on behalf of Cynthia Letourneau, Durham New Hampshire for an **APPLICATION FOR VARIANCE** from Article IX, Section 175-30(C) of the Zoning Ordinance to increase the dimensional nonconformity of a lot through a boundary line adjustment. The property involved is shown on Tax Map 20, Lot 17-3, is located at 5 Colony Cove Road, and is in the Residence C Zoning District.

Mr. Bragdon spoke before the Board. He noted he had been before the Board concerning his property before, and had always thought he was 60 ft. away from the lot line. He said in 2003, the Letourneaus decided to build a house on their property, and said during that time, it became apparent that the setbacks were not what everyone thought they were, and that his well was located on their property. He said the 60 ft. setback turned out to be a 6.9 ft. setback. He said the Letourneaus generously agreed to change the lot line so the well could be on his property, and so the setback could be increased. He noted the Letourneaus needed to maintain a 50 ft. setback, so there wasn't too much leeway on this. He provided details on the options concerning this.

He said he and his wife wanted to put a porch on their house, and said that by making the lot line change, this would be further from the lot line than the 6.9 ft. they started

with. He said the porch would allow protection from mosquitoes, and would act as a buffer between his property and the Letourneau property.

Chair Gooze asked for details on the deck that was constructed, including what the setback was at that time.

Mr. Bragdon said the permit said it was 60 ft., but said when things were surveyed again in 2004, it was 6.9 ft. There was discussion about what the permitted setbacks were at that time.

Chair Gooze asked if the space between the two structures at the back would be enough of a porch, and Mr. Bragdon provided details on this.

Mr. McNitt said he was curious that the line was only moved 10 ft., noting the Letourneaus had about 100 ft. on that side. There was discussion about this.

Mr. Bragdon said the Letourneau's 50 ft. setback line was within a foot or two of where the new lot line had been drawn. There was discussion on this.

Mrs. Bragdon said they had come up with a proposal that was acceptable for both parties. She provided details on this, and noted the new lot line essentially ran with the topography of the land.

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

Paul Letourneau said he and his wife supported the proposal. He provided details on why the lot line was not moved further than was being requested.

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.

Ms. Eng said she felt this application met all the variance criteria, and she went through each of these. She said concerning the hardship criteria, this was an area variance being requested, and said there was no other way for the applicant to get relief, aside from this proposal.

Chair Gooze asked if Ms. Eng was speaking about both variance requests, and Ms. Eng said she was.

Mr. McNitt said the request for variance met all five criteria. He said allowing this would decrease the nonconformity, and said the fact that the neighbor agreed with the applicant's proposal eliminated any possible objection.

Mr. Bogle said this was a perfectly acceptable proposal, and said he had no problem with it regarding the boundary line adjustment and the building of the porch.

Mr. Sievert said he agreed the application met all the variance criteria.

Chair Gooze said he had no problem with the proposed lot line adjustment. He said because the neighbors agreed with it, it certainly met the spirit of the Ordinance, especially given the specific lay of the land.

Linn Bogle MOVED to approve the combined applications for original Agenda Items III K and III L, permitting the proposed adjustment of the boundary line at 7 Colony Cove Road and 5 Colony Road, and the construction of a large deck at 7 Colony Cove Road within the side yard setback. The motion was SECONDED by Michael Sievert, and PASSED unanimously 5-0.

- E. **PUBLIC HEARING** on a petition submitted by Jan A. Rice & Catherine N. Fitzgerald-Rice, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Section 175-55(B)(2) of the Zoning Ordinance to build a shed within the side yard setback. The property involved is shown on Tax Map 6, Lot 11-5, is located at 7 Durham Point Road, and is in the Residence C Zoning District.

Jan Rice explained that he planned to create raised beds for organic vegetables, and to plant a small orchard. He said he wanted to place a non-permanent shed on his property which would be used for storage of gardening implements, and said he would like to locate this shed within the side yard setback. He said this shed could be put between rows of fruit trees in order to make the view visually pleasing for people driving down the road.

There was detailed discussion among Board members of the definition of a structure, and how this proposed shed fit with the current and proposed Zoning Ordinance.

Mr. Johnson provided details on this. He said the Planning Board had decided to include performance criteria as part of the Zoning rewrite concerning accessory sheds, and provided details on this. He said this application didn't fit those criteria, or the Board's previous decision concerning an 80 s.f. accessory shed. He said if the Board approved the present application, perhaps it could word the decision so there would be a new level of 100 s.f., which would be similar to what was proposed in the new Ordinance.

Mr. Sievert asked if the Board had to approve this shed if it was not fixed to the ground.

Chair Gooze said the Board had looked at this before, and said the problem was that if the ZBA didn't decide on this, it didn't have any upward limit on what an accessory shed was.

Mr. Johnson said he would love to get some help from the ZBA and the Planning Board in clarifying this issue.

Chair Gooze said the Board could decide on this application, and then the Proposed Zoning Ordinance would take care of the situation.

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

Chair Gooze said that the proposed shed would be located in a place where it couldn't hurt anything. He said he believed the application met all five variance criteria, and said the particular size allowed by the ZBA, if it approved the variance request, would set a precedent until the new Zoning Ordinance was approved. He suggested that 96 s.f. should be the size that was allowed.

Mr. McNitt said the setbacks were 50 ft. In response to Mr. Johnson's comment that an accessory structure could impact that by 30%, Mr. McNitt said he recognized this. He asked about the surrounding properties, and Mr. Rice described them. There was discussion about this.

Mr. Sievert asked about the wetlands in the area, and was told the shed would be outside of this area.

Mr. Bogle noted the Board had to use the most restrictive version of the Zoning Ordinance in ruling on an application.

Mr. Johnson said that was 80 s.f., which was approved by the Board two years ago.

Mr. Bogle said if the proposed shed was on cinder blocks, he didn't see a problem with it at this location. He noted it wouldn't have utilities, etc.

Mr. Johnson read through the proposed performance criteria for accessory sheds in the Proposed Zoning Ordinance. He said if the motion reflected this, it would provide guidance on this issue.

Ted McNitt MOVED to approve an APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Section 175-55(B)(2) of the Zoning Ordinance submitted by Jan A. Rice & Catherine N. Fitzgerald-Rice, Durham, New Hampshire to approve a shed less than 100 square feet in the area within the side and rear setbacks at 7 Durham Pt Road in the Residence C Zoning District. Linn Bogle SECONDED the motion.

Chair Gooze said the request met all five variance criteria.

Mr. Sievert said he didn't think a variance was needed for the proposed shed, but said he agreed with the motion.

Chair Gooze said this would provide clarification for the Code Enforcement Officer until the Zoning Ordinance was finalized.

The motion PASSED unanimously 5-0.

- F. **PUBLIC REHEARING** on a July 12, 2005, Zoning Board denial on a petition submitted by Ralph & Elisabeth Kleinmann, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIV, Section 175-72(A), 175-75(C3) and 175-73(D&E), and Article XII, Section 175-54 of the Zoning Ordinance to permit the demolition of a camp and the building of a single family home within the shoreland setback. The property involved is shown on Tax Map 20, Lot 16-2, is located at 269 Durham Point Road, and is in the Residence C Zoning District.

Mr. Kleinmann spoke before the Board, and made noted of the recent site visit concerning his property. He said the tape and stakes used for the site visit had helped to identify the tradeoffs involved in moving the house back from its current location. He said moving the house back 100 ft. back would place it in an area that was currently 100% wooded, and would remove the buffer between the house and the abutting property. He said he and his neighbor did not feel this would be in the public interest, and would greatly reduce the privacy on the properties. He said moving the house to an area that was 100% wooded would not be in the spirit and intent of the Ordinance, because it would have the greatest negative impact on the environment since many trees would have to be removed.

He said the marking of the available corridor identified certain hardships of the land, including slope, and he provided details on how this would result in additional negative impacts. Mr. Kleinmann said he would be willing to move his house 80 ft. back, rather than 100 ft. He noted he would still have to deal with the privacy issues because of tree removal, the slope of the land, and the ledge, but not to the same degree as would be the case at 100 ft. He said his preference was to stay closer to the water, but said he was willing to move back if this would help him get the variances.

Ms. Eng asked if Mr. Kleinmann still planned to put in a basement for the house.

Mr. Kleinmann said he did, noting a neighbor had put a basement in.

In answer to a question from Mr. Sievert, he said his request was identical to the one he had previously proposed, with the exception of his willingness to move the house back 80 ft.

Mr. Sievert said he didn't know if this was a good idea, if it would mean wiping out a lot of trees. He asked if it was known how many trees would have to be cut.

Mr. Kleinmann said about 4-5 trees would have to be cut.

Mr. Sievert said he didn't think it was in the public interest to cut the trees down, noting that he didn't think neighbor Malcolm Chase would be happy about this, based on other comments he had made. Mr. Sievert suggested it would be better to first see a site plan showing the house 80 ft. back, and how many trees would be impacted.

Chair Gooze asked Mr. Kleinmann to show on an aerial photo approximately where the 80 ft. line fell on the property.

In answer to a question from the Board as to what moving the site for the new house back 80 ft. back from the high tide line would involve in terms of the well, Mr. Kleinmann said a new well would be required. He said he would like to stay at the currently proposed location, but said he understood some of the points the Board was making, so was willing to move the house back somewhat. He said it would be further back from the shoreline than the Herriott house, but would be closer than the Chase house.

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

Mr. McNitt said the issues involved with this application had been gone over thoroughly at the previous meeting. He said he would be perfectly willing to move the house back to 80 ft., and deal with the considerations that had been brought up that evening. He said he realized the lots in this area were made for camps, and had some problems. He said that fortunately, they had some good length to them, so most of the objectives could be met by moving the house back. He said he felt the request for variance met the five criteria, and said he would support it.

Chair Gooze noted that in the ZBA decision in July 2005 the request for variances was denied because three variance criteria were not met - the application did not benefit the public interest, there was not a hardship, and it did not meet the spirit and intent of the Ordinance. He said what he believed Mr. McNitt was saying was that based on moving the house back 80 ft., these three criteria were now met.

Mr. McNitt said this was an area variance and there was hardship. He said moving the house back 80 ft. from the shore was much better in terms of being in the public interest, and meeting the spirit and intent of the Ordinance. He said the other variance criteria were also now met.

Ms. Eng said requiring that the house be moved back 100 ft. was too much, and noted it would mean taking out all of the trees. She said that even if the house were to remain at its current location, some trees would still have to be taken out. She said at 80 ft. back, if some trees had to be removed, there would still be some buffer between this property and the abutting properties.

Mr. Bogle said he still preferred to see the house sit back further, noting that the trees that would need to be taken out were spindly, and dangerous because they could

easily be blown down. He said he didn't feel granting the applicant's request met the spirit and intent of the Ordinance, given the 125 ft. setback, and said there was plenty of depth to the property to meet that setback requirement. He also said granting this variance would set a pattern for adjacent lots, and said he would prefer to maintain the spirit of the Ordinance by meeting the setback.

Mr. Sievert said he had voted in July to let the house go back in where it was. He said if it were placed 80 ft. back on the site, it would be relatively close to how far back the Chase house was. He said he didn't know how many trees would have to come down, and also said he didn't know how much ledge was there. He said he assumed the garage would face northeast, toward Lot 3. He asked if the side setbacks from the Chase property, and the property on the other side, would remain the same, and Mr. Kleinmann said they would.

Mr. Sievert said the request for variances met the public interest, noting there was no one complaining about the proposal, and said he didn't think other camps in the area could move that far back. He said it looked like pushing the house further back would be a hardship, looking at the site. He noted the driveway would have to move in that case, which would cause more disturbance of the site. He said the other variance criteria were met. He said there was a lack of a site plan that actually showed what would be involved in moving the house back 80 ft., but said if other Board members were willing to go with the plan they had, he was in favor of granting the variance.

Mr. McNitt said the Board might want to include something in the motion about the footprint staying essentially the same.

Mr. Gooze said the ZBA had been pretty consistent in working with these camp properties, and said this certainly was a unique area. He said Mr. Bogle had made some good points, but said the Board had been consistent about allowing properties to be moved back if the Town got something in exchange for this. He provided details on the Paine application in reference to this. He said he believed the request for variance met the variance criteria, by pushing the house back as far as was feasible, and said 80 ft. seemed appropriate. He said he would like to see the same footprint for the house, noting there were no plans.

Ted McNitt MOVED that the ZBA approve an Application for Variances from Article XIV, Section 175-72(A), 175-75(C3) and 175-73(D&E), and Article XII, Section 175-54 of the Zoning Ordinance submitted by Ralph & Elisabeth Kleinmann, Durham, New Hampshire to permit the demolition of a camp and the building of a single family home within the shoreland setback, in accordance with the submission plan dated June 27th 2004, and the associated dimension sheet, with the exception that the setback will be 80 ft. from the reference high tide line. Myleta Eng SECONDED the motion, and it PASSED 4-1, with Linn Bogle voting against it.

- G. **PUBLIC HEARING** on a petition submitted by Eva H. Reed, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Article XIV, Section 175-73(E) and Section 175-74 of the Zoning Ordinance and Article XIV, Section 175-75(1)(A) of the proposed Zoning Ordinance to build a new single family home with garage underneath, a well and a septic system within the rear yard and shoreland setbacks. The property involved is shown on Tax Map 12, Lot 1-16, is located at 25 Cedar Point Road, and is in the Residence C Zoning District.

Chair Gooze asked for clarification concerning the fact that in order to grant the special exception, there either needed to be proper setbacks, or a variance was needed for the setbacks.

Mr. Johnson said that was his understanding as well.

Sandy Breton of NH Soil Consultants spoke to the Board on behalf of Ms. Reed. She said Ms. Reed originally submitted a request for variance for the shoreland setback, and then had to apply for additional variances. She noted that the proposed Zoning Ordinance changed the shoreland setback.

She went through the variances being applied for concerning various dimensional requirements and the septic system, after providing history on the property. She also provided details on the proposed house for the property. She noted the septic system had been approved, and was proposed to be located as far from the water as possible, and from the abutting lot to the west. She provided details on this.

She said a variance was also being requested from the 250-shoreland setback as proposed, and a 150 woodland buffer that needed to be maintained. She provided details on what was proposed concerning this, and noted that most of the shrub line would be maintained. She said some trees would need to be removed from the lot.

Ms. Breton said this had been a lot of record since prior to 1962. She said the hardship was that this was a lot of record, and Mrs. Reed had paid taxes on it, so should have the right to develop it with the same rights as abutting neighbors. She said this would not be against the public interest because it would be built in conformance with surrounding homes. She said substantial justice would be done in allowing Ms. Reed to develop a lot she had been told was buildable. She said granting the variances would not be contrary to the spirit and intent of the ordinance given the development of the neighborhood.

In answer to a question from Mr. Bogle, Ms. Breton said Mrs. Reed was not going to build this house herself, but wanted to put the property up for sale, and in order to do this, needed septic approval. She said as part of getting this, Mr. Johnson had determined that she needed to get several other variances. Ms. Breton said the system had been designed to be what would be allowed on this lot, and said Mrs. Reed was now before the ZBA to get the variances that were needed so the plan could be

approved. She said that Mrs. Reed lived across from the property in question so would have to look at whatever was built there, so she had planned accordingly.

Mr. Bogle said he didn't understand the finer points of why an owner had to go through all of this in order to sell a lot.

Mrs. Reed said Mr. Johnson felt that in view of the Zoning Ordinance, it was better to have prior approval, so the Town had some idea what would be built there.

There was discussion as to whether this would bind the buyer of the lot.

Mr. Johnson said it would, and would establish the footprint for the house and the septic system. In answer to a question from Mr. Bogle about the fact that there was an architectural plan for a specific house, he said this was what the Board had asked for in the past, and provided details on this.

Mr. Sievert asked what the seasonal high water table was, and Ms. Breton said the test pit indicated it was 27 inches at test pit one, and 21 inches at test pit two. Mr. Sievert said a concern he had was that the house, as presented, had a full cellar. He noted this was a lot that went up in grade from the road. He said his general comment was that there were likely to be water problems with the house. There was discussion about this.

There was discussion on what the Board needed to make a decision on, and it was agreed the decision should be on the dimensional requirements, but not on the house itself.

Ms. Eng asked if the stumps and their root systems within 50 ft. of the reference line would be left in tact, and Ms. Breton demonstrated what was proposed on the site plan.

Chair Gooze asked if any members of the public wished to speak in favor of the application.

Irvin Nickerson, an abutter at the northwest corner of the property, noted that the Town had given variances to other people building septic systems along that frontage, which affected his property, although noting he didn't own the property when this had happened. He said he and his wife did not object to what Mrs. Reed wanted to do. He said the house would sit about as far back as the house next door, and said that house didn't have water problems.

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

Chair Gooze said in this instance, it couldn't really be said that the other properties in the area were different. He said if this property was the smallest, and all the others

were twice as large and had been built on, he wasn't sure it would be in the public interest to allow this. But he said because of the other properties nearby that were so similar, the property should be considered a buildable lot. He said the application met the five criteria for all the variances being requested.

Mr. Bogle said he agreed with Chair Gooze. He said it was a buildable property, was taxed as a buildable lot for years, and noted the Board had allowed variances nearby that were not much different than his. He said the application met the variance criteria, and said he would vote to approve it.

Mr. Sievert said the request met the variance criteria, and said that environmentally, the septic system was in the best location, given other considerations on the site. He said as a cautionary measure, that if the seasonal high water table was at 26 inches, and a hole was dug 7 1/2 for the garage, there would be a problem.

Mr. McNitt asked if there were any FEMA related concerns regarding this property.

Mr. Johnson said there would be a flood insurance question, and said finished floor height of the basement would have to be 2 feet above the base flood elevation. He said the future applicant would have to deal with this, and said the garage would probably be built at grade, so would not be a basement garage.

Ms. Eng said she agreed with what other Board members had said concerning the application. She then made a motion to approve the application, which included reference to the house and garage.

Mr. Gooze noted he was uncomfortable with the fact that the Board was giving a variance for a house with a garage, yet didn't actually know what house would be built on the property.

Mr., Johnson suggested the motion could establish the building footprint by approving specific setback dimensions, and could approve the septic system as per NH Soils Consultant's approval from the State.

There was additional detailed discussion on how to word the motion.

Myleta Eng MOVED to approve an APPLICATION FOR VARIANCES for Eva H. Reed, 25 Cedar Point Road, in the Residence C Zoning District, for the critical dimensions and leach field ties drawings submitted with the application, dated August 31, 2005. Michael Sievert SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said a special exception was also required to allow a building on Ms. Reed's property.

H. **PUBLIC HEARING** on a petition submitted by Eva H. Reed, Durham, New

Hampshire, for an **APPLICATION FOR SPECIAL EXCEPTION** in accordance with Article IX, Section 175-29(B) and Article XIV, Section 175-75(E) of the Zoning Ordinance to build a new single family home with garage underneath, a well and a septic system within the rear yard and shoreland setbacks. The property involved is shown on Tax Map 12, Lot 1-16, is located at 25 Cedar Point Road, and is in the Residence C Zoning District.

Chair Gooze noted it was 9:45 pm, and said a portion of the meeting would have to be continued. Board members agreed that the Board would hear the Wallace and Gangwer applications since these applications had been waiting to be heard all evening, and that the Hartmann applications and the Minutes would be scheduled for the next meeting.

Ms. Breton of NH Soils Consultants went through the 8 criteria for granting a special exception for the property, as a nonconforming vacant lot, and explained why the application met these criteria.

Chair Gooze asked if the Board had any questions concerning this, and there were none. He then asked if any members of the public wished to speak for or against the application. Hearing no response, he closed the public hearing.

Mr. Sievert said he agreed with Ms. Breton's responses concerning all of the criteria that needed to be met for a special exception, including those required under Section 175-75 E, based on the design presented.

Mr. McNitt said he felt the application met all the requirements for a special exception, noting there were requirements concerning this in three Zoning Ordinance provisions.

Ms. Eng said she agreed with what other Board members had said.

Chair Gooze said once the setback variance had been approved, all the criteria were met.

Ted McNitt MOVED to grant an APPLICATION FOR SPECIAL EXCEPTION for Eva Reed to build a new single family home, well and septic system on the property at 25 Cedar Point Road, in the Residence C Zoning District, in accordance with the variances approved in the previous Agenda Item. Linn Bogle SECONDED the motion, and it PASSED unanimously 5-0.

- I. **PUBLIC HEARING** on a petition submitted by John & Judy Churchill, Durham, New Hampshire on behalf of Paulina J. Adams, Trustee of the Herbert W. Jackson Trust, Lakewood, Washington, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54, Article IX, Section 175-30(A), Article XIV, Section 175-72(A), Article XIII, Section 175-65 and Article XX, Section 175-109(C) of the Zoning Ordinance to build six dormers, to build a screened porch, to remove a deck,

to make interior alterations, to turn the room over the garage into attic space, to add a hallway and to build a front porch on a nonconforming structure within the side yard, shoreland and wetland setbacks. The property involved is shown on Tax Map 11, Lot 9-4, is located at 30 Piscataqua Road and is in the Office & Research Zoning District.

Withdrawn

- J. **PUBLIC HEARING** on a petition submitted by Paulina J. Adams, Trustee of the Herbert W. Jackson Trust, Lakewood, Washington, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a July 19, 2005, letter from Zoning Administrator, Thomas Johnson in regards to the use of the building at 30 Piscataqua Road. The property is shown on Tax Map 11, Lot 9-4 and is in the Office & Research Zoning District.

Withdrawn

- K. **PUBLIC HEARING** on a petition submitted by Sharon Wallace, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article XII, Section 175-53 and Article XX, Section 175-109 of the Zoning Ordinance to allow an existing, accessory barn to be used as a two-unit dwelling. The property involved is shown on Tax Map 11, Lot 2-0, is located at 116 Dover Road, and is in the Office & Research Zoning District.

Attorney Jack McGee said he represented the applicant, Sharon Wallace, the owner of the property, and noted Mrs. Wallace was present at the meeting. He said as part of a divorce settlement, the house in question was to be sold to provide support for Mrs. Wallace, who had some health issues. He said the property was put on the market, a buyer was found, and in the course of doing due diligence it was determined that although the Wallaces believed the property was a single family home with two dwellings in a barn/garage type unit, it was not.

Attorney McGee provided details on the history of the property, noting there was a lack of certificate of occupancies for the property at various times in the past. He said it was discovered there was a garage/barn building permit submitted in 1977, but said no certificate of occupancy was ever issued for this. He said Mr. Johnson suggested it would be better to re-apply for a building permit and get a certificate of occupancy, and said during this process, it was discovered the 1977 application was for a barn.

He said this application was taken out by Mrs. Wallace's ex-father in law, a long time resident of Durham who was friends with Harry Fitts, the former building inspector, and said it appeared the Zoning Ordinance at that time would not have allowed a duplex in the barn. He said Mrs. Wallace had provided him with details on how the two units came to be put in. He said Jack Wallace and Harry Fitts had a meeting in the late 1980s when Mr. Fitts said there was plenty of room, so why not put in two units.

Mr. McGee said Durham had grown up concerning zoning but said this was a

situation where Mr. and Mrs. Wallace acquired this property 2-3 years ago believing, especially Mrs. Wallace), that this was a single family home with two dwelling units and a barn. He said the applicant was seeking variances because she believed it met all five criteria, and believed it would meet other equitable criteria that should be considered by the Board. He noted the Legislature adopted equitable waivers dealing with setbacks and area problems, although noting the statute didn't deal with use issues such as this. But he said the Legislature recognized that innocent parties got into situations like this.

He also said the Town had taxed Mrs. Wallace on three dwelling units. He said it was realized the tax assessor was not that zoning official, but said equitable considerations should arise. He noted in Massachusetts, if a Town didn't find out about an existing situation for approximately 7 years, the zoning issue went away and the situation became grandfathered. He said he understood NH did not recognize this yet. But he said nonetheless, all these considerations came into play.

Attorney McGee next went through the variance criteria as they applied to this application.

He said the first issue was whether there would be a decrease in the value of surrounding properties. He said this was an extremely large lot with plenty of room, and said the view of the homestead was obscured from the road. He said the two units had been there for at least 11 years, and no one had complained. He said since there had been no complaints, he doubted anyone would say the values of surrounding properties had been adversely affected. He noted the surrounding properties were a property in Madbury to the west, and the Evangelical Church and the Police Station.

He said granting the variance would not be contrary to the public interest, noting specifically that there was no increase in traffic because of the present use of the property. He said the traffic in the area was heavy already, and also said that if the property was used for office/research, for which it was presently zoned, this would result in more traffic than what currently existed. He said granting the variance was in the public interest because the property provided tax revenues, and provided housing.

Concerning the hardship criteria, Attorney McGee noted the more flexible concept now that the property had to be considered in its unique environment, and said the fact that it was a barn that had been converted to two dwellings was a unique consideration in itself, and was one Mrs. Wallace did not create. He said this was the hardship. He also said that looking at the Boccia case, boards of adjustment could consider financial hardship. He provided details on this, and said that language spread over not only area variances, but also referred back to Simplex which was a use variance case. He said the present application was a case of severe financial hardship, and said Mrs. Wallace would suffer a financial catastrophe, if she did not have a duplex next to her house.

Attorney McGee said in terms of the substantial justice criterion, Mrs. Wallace was

an innocent party in this situation, and said the Board needed to look at, apart from whoever did something wrong concerning the property, whether substantial justice would exist in giving Mrs. Wallace the variance. He said given her financial situation, and the fact that the property had been a two unit dwelling for over 11 years, substantial justice would be done in allowing this use, which had been going on without apparent problems for this time.

He said that granting the variance would not be contrary to the spirit and intent of the Ordinance, and said in fact, the purpose of zoning was to protect surrounding property owners and the public at large. He said the lot was large, was out of the way, was unobtrusive, and there was no valid reason under a residential criteria, that would say that this use was contrary to the spirit and intent of the Zoning Ordinance. He said there was nothing needed to protect the public or the integrity of the Zoning Ordinance with this particular lot by not allowing a duplex. He noted the property was in the office and research district and asked what was needed for protection there.

Attorney McGee concluded by saying that all the conditions for a variance existed, that the use should be allowed to continue, and that Mrs. Wallace should be allowed to sell her property to a buyer who could have two dwelling units in this accessory building. He said it was the right, and the legal thing to do.

Mr. Bogle asked how the property was taxed.

Attorney McGee said Mrs. Wallace said it was taxed as a single dwelling and two apartments. He said he asked her what the taxing authority had done, and said she had observed Town assessors go inside on two occasions.

Mr. Bogle said the tax card listed this as a single family residence with an accessory apartment, which meant it was a single family house with an integral accessory apartment, when what actually existed was an accessory dwelling in a separate building, which was functioning illegally as a duplex.

Attorney McGee said he was relying on what Mrs. Wallace had told him, and hadn't done an independent investigation on this. He said Mrs. Wallace would testify that on two occasions, appraisers saw the property, and it existed that way for 11 years or more. He said nobody caught this, and Mrs. Wallace hadn't created it and didn't know about it.

Mr. Bogle noted there was a notation that said there was an apartment over the barn, and said he assumed that meant an apartment in the upper story of the barn.

Chair Gooze said it also said there were two apartments in the barn.

Ms. Eng asked how many people lived on the property presently.

Mrs. Wallace said there was a three-bedroom apartment, with two students

downstairs and two students upstairs.

Attorney McGee said having an owner occupied dwelling next to the barn was a good thing.

Mrs. Wallace said she had never had any problems with the renters.

Mr. Bogle asked if there was an accessory apartment within the single-family house, and Mrs. Wallace said there was not.

Madeline Lockhardt, a real estate agent, said she didn't feel granting the variance would adversely affect the value of properties in the area.

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

Ms. Eng said duplexes were not a permitted use in this zone. She said it was her understanding that grandfathering could only be allowed for a legal use, and this was not a legal use, even though it wasn't Mrs. Wallace's fault. She noted the variances ran with the property, so if it were sold, this would be saying a duplex was allowable on that property. She said granting the variances would be contrary to the spirit and intent of the Ordinance, and would be contrary to the public interest. She said she felt the Board would be setting a precedent if it approved this, since duplexes were not allowed, and said she didn't see how other duplexes could be prevented.

Mr. Sievert said he didn't specifically know the property. He said it appeared the majority of the variance criteria were met, but said he had questions about the hardship criteria, and where there were special conditions of the land that rendered the proposed use reasonable.

Chair Gooze said he thought what the applicant was saying was that the piece of property was so large that it made the use reasonable, but he said if the Ordinance had wanted this kind of thing, it would be in it. He said he didn't think there was anything special about the property.

Mr. Sievert said he didn't think the application completely met the hardship criteria. He noted the Ordinance did permit elderly housing duplexes, multi-units, and elderly care facilities in that district, so there were other available uses for the property.

Ms. Eng said she didn't feel the application met the hardship criteria because there would still be reasonable use of the property with one apartment above the barn, instead of the duplex.

Mr. Bogle said he agreed with the points made by Ms. Eng, and said granting the variance would be contrary to the public interest in that neighborhood. He said he thought granting it would be contrary to the spirit and intent of the Ordinance. He also

said the dwelling units had a number of problems, and provided details on this. Mr. Bogle said he was reluctant to legalize a great deal of what had previously done illegally, and said he would be very uncomfortable approving this variance.

Mr. McNitt asked whether, dimensionally speaking, it was possible to have six people living in the barn.

Mr. Johnson said he hadn't been granted access to any of the buildings yet. He said he was on site to witness test pits, noting the proposed septic system was for a duplex and a three-bedroom house. He described the plan, and said there was no sign of any sewer for the duplex. He said there was no building permit for the conversion of the garage to the duplex, so he didn't know if any codes had been followed.

Mr. McNitt asked whether, if the Board granted these variances, it would be creating a health and safety issue.

Mr. Johnson said according to the plan in front of him, there was no septic system for the duplex.

Mr. McNitt said there was the question as to whether it would be possible to consider an equitable waiver, assuming the Board was willing to say this was all done in ignorance. He said he would not want to do such a thing if there was not proper accommodation for health and safety issues.

Mr. Bogle asked when the property was last inspected by a Town assessor.

Mr. Johnson said it was probably done during the Town wide evaluation.

Mr. Bogle spoke about the wording on the tax card, and Mr. Johnson explained that the assessing person was not allowed into the building. Mr. Bogle said it would be appropriate for the Code Enforcement Officer to inspect the property before the Board considered voting on the application.

Chair Gooze said the Board had been very consistent about not using the assessor's information to make zoning rulings, and should continue to be consistent on this. He said the present use was completely illegal, and the Board had been very consistent that when this happened, granting the variance was not appropriate. He said granting this variance would not be in the public interest, in that the public interest meant that the Board use things that were legally done to make a decision.

Concerning the hardship criteria, Chair Gooze said this was clearly a use variance, and said he didn't think there were any special conditions of the land that rendered the proposed use reasonable. He said if the Ordinance wanted to allow large properties to have duplexes, it would have included this. He said he didn't see anything different about this land, especially because the work on it was done illegally from the start. He said there was a fair and substantial relationship between the general purposes of the

Ordinance and the specific restrictions. He said he didn't think granting the variance would injure the private rights of others, but noted the issue of public rights went along with the public interest, and said it would be a dangerous thing to allow these illegal uses.

Chair Gooze said granting the variance would be against the spirit and intent of the Ordinance, which was to limit this kind of duplex activity, whether there was a larger piece of property or not.

He said he didn't think granting the variance would diminish the value of surrounding properties, given what the properties were. Chair Gooze said there were at least four variance criteria the application didn't meet, and he said he was very much opposed to granting the variance.

Mr. Johnson asked if the Board would consider hearing from Ms. Breton about the septic plan, so it could establish if the duplex had a sewer system. In answer to a question from Chair Gooze as to how this related to the Board's decision, Mr. Johnson said it might be a factor, if the Board's decision was appealed

Chair Gooze said this wouldn't affect his decision, noting he felt everything was illegal.

Mr. Bogle said he didn't think it would change his vote either because of the illegality, and because of the spirit and intent of the Ordinance.

Mr. McNitt said he agreed with Chair Gooze on the use variance requirements, and said there might be additional considerations about the health and safety of renters. He said he felt strongly that he would not support this variance, unless he had a lot more information to justify it.

Ms. Eng said she didn't need to hear about the sewer system.

Linn MOVED to deny an APPLICATION FOR VARIANCES from Article XII, Section 175-53 and Article XX, Section 175-109 of the Zoning Ordinance to allow an existing, accessory barn to be used as a two-unit dwelling, because this would be contrary to the public interest, did not meet the hardship criteria, did not meet the spirit and intent of the Zoning Ordinance, and substantial justice would not be done by granting this. Myleta Eng SECONDED the motion, and it PASSED unanimously 5-0.

- L. **PUBLIC HEARING** on a petition submitted by Jesse Gangwer, Town & Campus Inc., Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article IX, Sections 175-28(D) and 175-30(A) of the current Zoning Ordinance and Sections 175-53 and 175-41(D) of the proposed Zoning Ordinance to change the use of a multi-use building to a multi-use/multi-unit building. The property involved is

shown on Tax Map 2, Lot 14-1, is located at 4 Ballard Street and is in the Central Business Zoning District

There was a brief introduction by Mr. Gangwer concerning the application, in which he explained that there were two rooms downstairs in the building that he would like to incorporate as part of the apartment upstairs.

After some discussion on the application, Chair Gooze said he didn't think the Board could make a decision on this application until it had the specific dimensions of the apartments, so could see if what was proposed met the requirements.

Mr. Gangwer agreed to provide this information for the Board.

The Board agreed to continue this application to the October 11th, 2005 ZBA meeting. It then agreed to continue the present meeting to September 27th, 2005, when the Hartmann applications would be heard, and the Minutes would be reviewed and approved.

Ted McNitt MOVED to continue the ZBA meeting to the Sept 27th 2005 meeting. The motion was SECONDED By Linn Bogle, and PASSED unanimously 5-0.

IV. Adjournment

Linn Bogle MOVED to adjourn the meeting. The motion was SECONDED by Michael Sievert, and PASSED unanimously 5-0.

Adjournment at 10:45 pm

Victoria Parmele, Minutes taker