

These minutes were approved at the February 14, 2006 meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, JANUARY 10, 2006
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL
7:00 PM**

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

MEMBERS ABSENT Henry Smith

OTHERS PRESENT: Code Enforcement Officer Tom Johnson, Victoria Parmele,
Minutes taker

I. Approval of Agenda

There was brief discussion on Item III A., and what the correct date on this Item should be. The Board agreed this was a second request for rehearing, on the denial of the November 8th, 2005 decision.

Chair Gooze appointed Mr. Sievert as a voting member for the approval of the Agenda.

John de Campi MOVED to approve the Agenda as written. Linn Bogle SECONDED the motion, and it PASSED unanimously 5-0.

II. Public Hearings

- A. PUBLIC HEARING** on a petition submitted by Sherri M. Brown Living Trust, Portsmouth, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 to build a single-family home on a lot without adequate frontage. The property involved is shown on Tax Map 16, Lot 25-1, is located at 210 Longmarsh Road, and is in the Rural Zoning District.

Chair Gooze opened the public hearing.

Jeffery Brown said he and his wife wished to build single family residence on their 13 acre property, and said the reason for the variance request was that the property was landlocked, so had no frontage. He said the house had been designed as a colonial/farmhouse, and would conform with other houses in the area. He said the driveway that had been designed would use as little land as possible. He said he and his wife had obtained easements from the Nature Conservancy and neighbors to access the property.

There was detailed discussion about the properties in the area, - their ownership and layout, and the location of the Nature Conservancy easement.

Mr. Bogle asked if the easement included the roadway, and Mr. Brown said it did, and demonstrated this on the plot plan, showing the drive that came off of Longmarsh Road, and serviced properties in the area.

Mr. Bogle received clarification that the driveway was already shared by at least two homes, and the Brown's driveway would be the third.

Mr. Brown agreed with this, and said this would be the last property that would be serviced by the drive. He said the driveway to his property would fall between poles 2 and 3, and said it was being located on the highest point of the property, where there would be no water problems compared to other locations on the property. He said they would only need to take out a small portion of the existing stonewall on the property, and wouldn't have to cut many trees, which would maximize privacy.

He provided additional details on the easement that had been granted, noting that he and his wife had agreed that as long as the abutter to the west owned her home, they would do nothing within 70 feet of her stonewall. He said he believed the setback was 30 ft.

Chair Gooze asked Mr. Brown for details on the frontage that the other properties in the area had, and on the subdivision of these properties originally occurred.

Chair Gooze said Ms. Eng would be a voting member for this application.

Mr. de Campi asked for additional details on the driveway.

Mr. Bogle noted that the Palmers had to get a similar variance in the past in order to build on their lot, which was also landlocked. There was discussion as to when this had occurred, and whether approval had to be granted for this.

Mr. Palmer spoke before the Board. He said his house had been built in 1989, and said he was pretty sure he had obtained Planning Board approval for this.

Mr. Johnson said that according to State regulations and the current Ordinance, a house on a Class VI road had to be approved by the Planning Board. He said the Browns would have to go through this process, if the variance were granted. He said he was not sure the Palmers or the Krauts did this when their houses were built.

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

Mr. Palmer said he was neutral concerning the application. He said his house was the last residence on the right of way, and he provided details on this. He said a concern about the Brown's application was that construction of their new house could adversely impact property values of surrounding properties if the road got badly rutted, etc. as a result of construction equipment. He also said the new residence would result in additional cars and trucks in the area, resulting in additional wear and tear on the road. He noted that at present, he was the only resident who plowed or maintained the right of way.

Mr. Palmer said he had discussed his concerns with the neighbors across the street, and with the Browns, and said they had agreed that they should all share the job of maintaining and plowing the road. He said he would like a condition of approval for the variance to be that there would be a written agreement on this, and he noted that the Browns were willing to do this.

Chair Gooze asked if there were any members of the public who wished to speak against the application.

Donna Heald, 220 Longmarsh Road said she was an abutter, and said her comments might be considered to be in the neutral category. She said she had some questions about the application,

based on her understanding of the Town's building requirements. She said that when she had moved to this area in 1980, the frontage requirement was 200 ft.

She said Longmarsh Road from the point where it joined Durham Point Road was a Class V road, and changed to a Class VI road. She said when she built her house around 1980, the requirement was that frontage had to be on a road, and said at that point, it was defined that a Class VI road was not even a road. She said she had met the frontage requirements, but her land did go into a Class VI area.

She said her concern was that the Town was careful even 20 years ago to maintain the rural quality of the neighborhood, and the fragile environment there. She said the frontage requirement had now been increased to 300 ft., and said it seemed odd that this frontage requirement could be overturned.

Ms. Heald said that when Mr. Palmer had built his house, the land he built on had been in his family for many generations. She also noted when she built her house, there were many restrictions because she abutted the Class VI area. She said that if this variance was granted, she hoped some consideration would be given to what had been required of her when she had built her house.

Ms. Heald said she had spoken with the Nature Conservancy, and said she remembered that the easement was 200 ft., not 70 ft. She also said there was a question concerning the ownership of a triangle of land that was considered to be a portion of the easement, and spoke about research she was doing on this.

Ms. Heald said her greatest concern was the fragility of the environment in this area, and said this was something that the Conservation Commission was looking at. She said she understood the concept of road degradation, from having seen the impacts of houses built in this area in recent years. She noted this was a dirt road all the way out to Durham Point Road.

She said she didn't believe the idea of hardship could be argued for this application, noting that the Browns were new owners, who knew of the need to do due diligence before purchasing the property, which was landlocked. She said she was concerned about the ramifications an approval of this application would have on other conservation land in Town.

She asked that the Board be extremely careful in its decision-making, stating that the entire length of Longmarsh Road would suffer as a result of the building. She provided details on this, and said that at a minimum, if the house were allowed, the Board should require posting of a bond to address the potential impact of heavy equipment on a road like this.

Mr. de Campi asked Ms. Heald where her land was located, and she demonstrated this on a map. He then asked Ms. Heald if she believed she owned the land the existing driveway was on.

Ms. Heald said she did, but said the question was whether she had enough money to go to court concerning this.

Mr. Johnson said the Nature Conservancy easement document indicated that the easement was 120 ft.

It was clarified that the piece of land in question, which the easement was across, was lot 25-2-1. Mr. Bogle asked why the Nature Conservancy thought it owned this piece of land. There was discussion about this, and it was agreed to hold this issue for discussion later.

Mr. Brown said it was correct that the Nature Conservancy easement was 120 ft., not 70 ft., as he had previously stated. He also provided details on the process by which he had heard the Nature Conservancy took ownership of the piece of land in question.

Ms. Heald said the Nature Conservancy took quiet title to the triangle of land, and said she, as an abutter, was not notified this had happened. She said it was being researched now, and needed to be challenged.

Chair Gooze closed the public hearing. After some discussion, Board members agreed this was an area variance. Chair Gooze read the area variance hardship criteria.

Ms. Eng said when she originally had looked at this application, she didn't feel she would be in favor of granting this variance, noting a previous application where a property had no frontage, and which the Board had denied. But she said in this instance, there was an existing road, which other houses had access to, so this changed the picture quite a bit, and shed a different light on what she felt should be allowable.

She said the special condition of the land was that it didn't have frontage, and said she didn't think this access to Longmarsh Road could be achieved in any other way. She said she didn't think granting the variance would diminish the value of surrounding properties, and also noted the Nature Conservancy was allowing the easement. She said she would therefore be in favor of granting the variance.

Mr. Bogle said he agreed in large part with what Ms. Eng had said. He said there was already a driveway to the landlocked parcel belonging to the Palmers, across the Krauts' land and what was now thought to be Nature Conservancy land, and there were already two houses on the road. He said there was no other way for the Browns to access Longmarsh Road, and said he felt this was a hardship. He said it shouldn't be expected that this parcel of land would sit there unused in perpetuity. He said he would be in favor of granting the variance.

Mr. de Campi said he agreed with what other Board members said, and said the Brown's land was unusable at present. He said to not allow this variance when there was already a driveway serving two houses seemed unreasonable. He said the Nature Conservancy had obtained quiet title to the land in question, and said he did not view claims of alternative ownership as relevant to the present application.

He also said it was not the Board's role to enforce road maintenance agreements, and said landowners should negotiate these. He said he did think the Board should grant the variance, and said he was not sure about any conditions that should be on it. He said the Board should think about this.

Mr. McNitt said the Town had been very strict about stopping development of properties that didn't have access to roads. He said this property had zero frontage, had access over a right of way to a Class V, Class VI highway, and said this was about as weak a basis for opening up a landlocked area as possible. He said it didn't meet the spirit of the Ordinance, and didn't meet the spirit of the Town's past practice.

Chair Gooze said he was on the fence on this application. He said he remembered the Master Plan being explicit about not wanting to put development on Class VI roads, but said someone had let this road in, with the house, which was built by a family that had owned land in the area for a long time. He said perhaps this explained why the house was allowed, but said he would like to look at the minutes of the Planning Board to see what they were thinking.

He said perhaps the Board might want to get information on this before making a decision on the Brown's application. He said the Board members in favor of granting the variance seemed to be saying that there was a precedent, which meant there was a special condition. He said he could see that, but said he would like to see why the Town had let that happen in order to be able to make his decision.

Chair Gooze said he didn't think granting the variance would affect property values. He said it might be against the public interest, if one were considering the area's rural nature, and said this would depend on why the other houses were allowed. He said whether the area variance hardship criteria were met, and whether the application was contrary to the spirit and intent of the ordinance also depended on why the other houses were allowed. He suggested that the Board look at the Planning Board's decisions on these before making its decision on this application.

Mr. Sievert said it was hard to see how it was right that only people who had lived in this area for 50 years should be able to live in this sensitive area. He provided details on this, and said this didn't make sense.

Chair Gooze said he agreed with Mr. Sievert, but said he simply wanted to know why the first house was allowed there.

Mr. de Campi said the fact was that there was a valid driveway that adjoined the Brown's property, and they had no option other than to use it. He said why it was allowed 10-20 years ago was irrelevant, and the fact was, it was there. He said if it weren't there, he would be in agreement with Mr. McNitt concerning this application. But he said to deny the Brown's application, when the Town had allowed houses to build on this area twice before, and when at least one of those properties had no road frontage, seemed unreasonable. Mr. de Campi said, however, that it was Chair Gooze's prerogative to defer this to the next meeting.

Chair Gooze said he had been looking for someone to clarify the situation, and said Mr. de Campi had done this.

Mr. Bogle asked if the Palmers and the owners of the other house that were allowed to build in this area had negotiated easement agreements with the Nature Conservancy.

Chair Gooze reopened the public hearing in order to ask this question to Mr. Palmer.

Mr. Palmer said around 1989 when he built his house, he got a right of way over the Kraut property to his own house. He said before the Krauts owned the property, the Sawtelles owned it, and were allowed to subdivide 12 acres they eventually sold to the Krauts, and 39 acres they sold to the Nature Conservancy. He said prior to subdividing it, the Sawtelles quieted title of the triangle of land to the Nature Conservancy, to the Krauts' dismay.

There was discussion about this.

Susan Todd, part owner of the Palmer parcel, said in 1984, a right of way was purchased from the Class VI Longmarsh Road, all the way to the Palmer parcel, from the Woodwards. She said this was long before the Nature Conservancy was involved.

Mr. Brown said the appropriate mapping of the property, including wetlands, etc., had in fact been done. He also said he obtained information on the history of the road, and said what the previous owner of his property said was that the road had been there since the early 1900's.

Chair Gooze closed the public hearing.

John de Campi MOVED to grant an APPLICATION FOR VARIANCE from Article XII, Section 175-54 to build a single-family home on a lot without adequate frontage. Linn Bogle SECONDED motion.

Chair Gooze said he was leaning toward granting the variance, and said he felt the application met the variance criteria because of the road already built into this area. He noted the Board had been quite strict concerning the frontage issue with the Puffer application, but said this was a unique situation, which might not be seen elsewhere.

Mr. McNitt said this was a right-of-way, not a road. Board members agreed, but said it was there, nonetheless.

The motion PASSED 4-1, with Ted McNitt voting against it.

- B. PUBLIC HEARING** on a petition submitted by Stanley & Janice Aviza, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XXI, Section 175-116(C) of the Zoning Ordinance to allow for a second curb cut on a residential property. The property involved is shown on Tax Map 6, Lot 3-23, is located at 2 Garden Lane, and is in the Residence A Zoning District.

Chair Gooze appointed Mr. Sievert as a voting member for this application.

The co-applicant Stanley Aviza, said he presently had no way to get into his yard, and therefore would like to put a curb cut on the other side of his property, on Garden Lane. He said he did a lot of work on the house and used his garage as a workshop, so needed to drive his truck into the yard quite often. He said he thought it would be a lot better if the property had a curb cut there, noting that at present, his equipment kept going over the curb. He said the land where the curb cut would go had grass on it but had ledge underneath, so a driveway couldn't be put in there anyway. He said instead of parking near a pretty busy corner, he would like to park there.

Mr. de Campi asked if the existing driveway on Faculty Road could accomplish the same thing.

Mr. Aviza said if he used this driveway, this would mean he would have to drive through his back yard, where the land was soft.

Mr. de Campi said he accepted this on face value, but didn't quite understand it.

Chair Gooze asked if the curb cut would just be for one vehicle, and Mr. Aviza said yes.

Chair Gooze noted a memo from the Town Engineer about drainage issues, and concerns that the curb cut could potentially convey stormwater onto the roadway on Garden Lane.

Mr. Aviza explained that he had talked to the Town Engineer, who had thought the intention was to pave the driveway. He provided details on the fact that he would not be changing the drainage as a result of the curb cut.

Chair Gooze asked how close to the property line the curb cut would be.

Mr. Aviza said it was about 5 ft. from the property line. After some discussion, Mr. Aviza explained that he would pull his car in and park it in the side yard, so that the car would be next to the house. He said this would be 45 ft. from the abutting property, and 45 ft. from the street

There was discussion that some Board members had thought Mr. Aviza wanted to be able to park his truck on his property immediately parallel to Garden Lane.

Mr. Bogle asked how many cars currently parked on the property.

Mr. Aviza said the tenant had a car, and he and his wife had two cars. He said he didn't need the curb cut because of the tenant. He said they could only park three cars on the Faculty Road side.

Mr. Bogle restated that the applicant had no intention of paving, and simply wanted access to his yard. He asked if Mr. Aviza wanted to install a sill, or wanted to put gravel down.

Mr. Aviza again noted that there was ledge there.

Mr. Boggle said his reservation concerning the application was the drainage issue. He noted that the area sloped down to Faculty Road, and said that in the winter, an area on the street heavily shaded by hemlock trees remained frozen long after the rest of the street melted. He said if there was more drainage into that area, it would be dangerous.

Mr. Aviza said the land sloped downhill, but said the drainage stayed in the yard rather than flowing out to the road.

Mr. Boggle said he was simply going on the report of the Town Engineer.

Janice Aviza said the vegetation in the area of the curb was not changing, and said the drainage would not be altered in any way.

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

Board members agreed this was an area variance that was being requested because of the lack of frontage.

Mr. Sievert said he had visited the property, and didn't think the drainage would be a problem. He said it looked like the drainage would stay along the edge of Garden Lane, and then cut across the intersection at Faculty Road. He noted there was a catch basin there. He said he didn't think what was proposed would change things. He also said he had no problems with the sight distance. He said he didn't think granting the variance would decrease the value of surrounding properties, and didn't think it would be contrary to the public interest, since this was a corner lot. He said the unnecessary hardship was that it looked like there was presently no access around to

the right hand side of the house to get to the area near the shed. He there would be substantial justice if the request for variance was granted, and said it would not be contrary to the spirit and intent of the Ordinance. He said the application therefore met all of the variance criteria.

Mr. McNitt said he agreed, but noted that this was a neighborhood where there were a lot of cars parked. He said he couldn't object to what was presently being asked for, but could visualize that in the future there would be a paved driveway here, with 3 cars parked in it, because of the natural development of the area.

Chair Gooze asked if there were any zoning issues concerning the parking on the property.

Mr. Johnson said there were not, as long as the setback requirements were met.

Mr. de Campi said he was less than enthusiastic about this variance application because he felt it was against the spirit and intent of the Ordinance. He said he felt that widening the existing driveway would allow the applicant to drive around the house and therefore accomplish the same thing, while keeping the single curb cut, which was what the Ordinance required. He said he saw this as a viable option, but realized this was not what the applicants wanted to do.

Mr. Bogle said he was not sure there was enough room to expand the driveway, and also noted there were several other properties in this area with two curb cuts, and they weren't necessarily corner lots. He said his only concern was that there be no increase in drainage onto that section of Garden Lane because it was a dangerous intersection.

Mr. Sievert noted that the applicants would have to get a driveway permit.

Chair Gooze asked Mr. Bogle if he felt that process would be adequate to address the issues he was concerned about.

Mr. Bogle said it would, and also suggested a condition could be put on the variance application that said there could be no paving.

Mr. Johnson said he thought the Board should leave this kind of thing to the Town Engineer, and he provided details on this.

Mr. Bogle said he was fine with this, if the Town Engineer granted the driveway permit.

Ms. Eng said she agreed with Mr. Bogle, and said she would not like to see the curb cut area paved, noting that putting stone there to prevent runoff might be a good idea.

Chair Gooze received clarification from Mr. Johnson that if the Board approved this variance request, the proposed curb cut would still have to be cleared by the Town Engineer, so the Board didn't have to add any conditions to its motion on the application. He said with that in mind, he felt the application met the variance criteria, especially those concerning hardship, and also the spirit and intent of the Ordinance criterion given that this was a corner lot.

Mike Sievert MOVED to approve an APPLICATION FOR VARIANCE from Article XXI, Section 175-116(C) of the Zoning Ordinance to allow for a second curb cut on a residential property located at 2 Garden Lane.

There was discussion that the dimensions of the curb cut would be limited by the driveway permit application.

Linn Bogle SECONDED the motion, and it PASSED 4-1, with John de Campi voting against it.

- C. PUBLIC HEARING** on a petition submitted by J. Evette Lagram, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIV, Section 175-72, Article XII, Section 175-54 and Article IX, Section 175-30 C of the Zoning Ordinance to add a second floor deck to an existing porch roof on a non-conforming building. The property involved is shown on Tax Map 12, Lot 1-4, is located at 36 Cedar Point Road, and is in the Residence C Zoning District.

Chair Gooze opened the public hearing.

Ms. Lagram spoke before the Board, and explained that she wanted to build a second floor deck with a railing onto her existing porch roof. She provided details on this, and said the plan was to install French doors where the existing windows were, leading inside from the deck.

Ms. Lagram said there was an additional thing she would like to ask the Board for, explaining that she would like to extend the rebuild of the porch to the side porch as well and expand it by two feet. Her contractor provided details on this.

It was determined this would probably involve the setbacks.

Mr. Gooze said the Board could hear the present application, but said adding this additional item would be a bit of a problem. He said the Board could hear the present application, but said if Ms. Lagram wanted to include the expansion of the deck to her application, she should reapply.

Ms. Lagram said she would like to go ahead with the present variance request, and could come back to the Board concerning the expansion of the deck.

Mr. McNitt asked if this would be an expansion of space, changing it from a porch to a room.

There was discussion about this. Ms. Lagram said it was already a screened in porch.

Mr. de Campi said what Ms. Lagram was asking for was to be able to reconstruct the porch, and to put a deck above it with French doors, to allow a walkout access onto the deck. He asked if it was correct that the deck would not increase the footprint of the house.

Ms. Lagram said that was correct.

There were no members of the public who wished to speak for or against the application. Chair Gooze closed the public hearing. He appointed Ms. Eng as a voting member on this application.

After some discussion, Chair Gooze re-opened the public hearing. He asked Ms. Lagram if the area underneath the porch would be enclosed.

Ms. Lagram said she was not planning to enclose this area, and said the poles there simply supported the porch.

Chair Gooze closed the public hearing

Ms. Eng said she did not feel granting the variance would result in a decrease in the value of surrounding properties. She said the applicant would not be expanding the footprint, and would not be encroaching closer to the shoreland, so granting the variance would not be contrary to the public interest. She said her only concern was that the deck not be any higher than the peak of the roofline. She noted that most of the properties on Cedar Point Road were tight, so were all nonconforming. She said she felt the variance request met all of the variance criteria.

Board members agreed this was an area variance that had been applied for.

Mr. Bogle said he felt the variance request met all of the variance criteria, and said he thought the proposed work would be an improvement to the house. He said the present walkway didn't look safe, and said what was proposed was in essence to replace the low hip roof on top of the screened porch with a deck and a railing around it, and to install French doors, all of which would be a nice addition to the property. He noted that adjacent properties had similar situations of viewing the bay from the back of the house. He said he felt the application met the variance criteria, was reasonable, and would result in an improvement to the property and the neighborhood.

The other Board members agreed with this.

John de Campi MOVED to grant an APPLICATION FOR VARIANCES from Article XIV, Section 175-72, Article XII, Section 175-54 and Article IX, Section 175-30 C of the Zoning Ordinance to add a second floor deck to an existing porch roof on a non-conforming building. The motion was SECONDED by Linn Bogle, and PASSED unanimously 5-0.

III. Board Correspondence and/or Discussion

- A. REQUEST FOR REHEARING** on a November 8, 2005, denial by the Zoning Board of Adjustment on a petition submitted by Emily & Fred Slama, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to build a two-car garage within the sideyard setback. The property involved is shown on Tax Map 20, Lot 9-2, is located at 367 Durham Point Road, and is in the Residence C Zoning District.

After some discussion, the Board agreed that Mr. McNitt and Ms. Eng would not vote on this matter, because of their absence from previous meetings on this application.

Mr. de Campi said he would like to see the Board do a site walk of the property. He said he thought there was justification for what the Slamas were trying to do, and said he didn't think their ideas had been effectively sold. He said if they were allowed to show the Board, as a group, the property, he thought Board members might conclude it deserved a rehearing. He said what he was asking for therefore involved putting off deciding on the rehearing.

Chair Gooze asked how this would affect the decision in front of the Board. He said Attorney Tanguay's point was that from a hardship perspective, the area variance criteria were not on the application, and he was now requesting this. He said he had thought about this a lot, and didn't think the Board had made a mistake. He said the hardship decisions from the Courts were in a state of flux, and said the fact that the Board didn't have something right up to date in its application form didn't mean it was handling the applications wrong.

He said he had looked over the minutes on this application, and the Board very specifically said this was an area variance. He said Attorney Tanguay was saying that because the area variance criteria were not on the application, this injured the applicant. He said he didn't agree with this, and had given the applicant adequate notice of why the Board was considering the area hardship criteria at the first hearing.

Chair Gooze also said the Minutes indicated that in its original decision, the Board said it was against the spirit of the Ordinance. He said Attorney Tanguay didn't address this in his request, and was only going on the hardship issue. He read from the Minutes, and noted the motion included language about not meeting the spirit and intent of the Ordinance.

Mr. McNitt said the Minutes were very clear on this.

It was agreed there would be four voting members on this.

Mr. Sievert said he didn't think Attorney Tanguay was 100% wrong. He noted that he had voted the previous time to grant the rehearing, because although there was nothing necessarily new, the information was more descriptive and a lot more spelled out. He said the Slamas didn't explain these things at the first hearing, so perhaps Attorney Tanguay's point was well taken, that if they had known better, they would have explained things better. He also said there was merit to the idea of doing a site walk.

Mr. de Campi said if the Board agreed to rehear the application, it should let the Slamas show what they wanted to do with the property, noting there was some logic to this.

Mr. Sievert said he was not saying that he would vote in favor of the variance, but said the Slamas had the right to a rehearing.

Chair Gooze asked Mr. Sievert if Attorney Tanguay's points about hardship were the reason he wanted to grant the rehearing. He said to him, this opened up a can of worms in granting the rehearing, if the Board didn't think it did anything wrong in its previous decision.

He said if the Court came back with a ruling, then the Board would have to have a rehearing, but said he didn't feel he wanted to vote to rehear this. He said he felt the Board had met its obligation in the original application rehearing when they talked about hardship.

Mr. Sievert said perhaps the Board should have asked for a site walk the first time.

There was further discussion about the process that had been followed by the Board.

Mr. Bogle said he didn't feel the Board had erred, and said he didn't see any new evidence. He said the concept the applicant's Attorney was putting forth was that the applicant should be advised before applying, as to whether the application was for an area or a use variance. He said if one accepted his argument, perhaps the Board should have two different applications, one for each kind of variance.

Chair Gooze said this put the Board in a very difficult position, because it didn't know before the applications came in front of it which kind of variance it was. There was discussion about this.

Chair Gooze said he felt if this was going to be overturned, it should happen at a higher level than the ZBA, because otherwise this would come back to haunt them.

Mr. de Campi said because he favored this application, his view was colored. But he said there was more smoke than clarity in the letter from the attorney, and said he didn't have a lot of sympathy for his position, but did have a lot of sympathy for the Slamas' position. He said he would probably vote in favor of rehearing the application because he felt that if the Board looked at the application really clearly, it might change its mind. He said he knew this piece of land.

Mr. Sievert said he thought the Board made a mistake last time. He said he was still going to vote to rehear the application, which had nothing to do with the letter from Attorney Tanguay.

Chair Gooze said he felt what the Board should be making a decision on was Attorney Tanguay's letter.

The vote was 2-2, with Chair Gooze and Linn Bogle voting in the negative.

Chair Gooze said this vote meant it did not pass. He noted there were not five voting members for the vote, but said the Board might never be able to get five voting members for this application.

There was discussion that no motion or second had been needed for this vote.

IV. Approval of Minutes

A. November 8, 2005

Page 1, first sentence, should read “..would not be present for the meeting...”. Same page, 3rd paragraph should read “..the two Wallace applications were...” Also, next line should read “..hired to represent him ..”

Page 2 , 4th paragraph, should read “had received a letter from Mr. Schuman...” Also, 7th paragraph should said “...application was not ready for...” Last paragraph on page should read “..was completed surrounded by...”

Page 4, 2nd paragraph should read “..35 ft. paragraph. 4th paragraph should read “Mr. Slama said the garage could not be put closer to the garden because there was a septic system in that area.”

Page 6, should said “Chair Gooze opened the public hearing” at the beginning of the application. Also, remove language on this at the bottom of page 8.

Page 8, 3rd and 4th paragraph, should read “NH Beta Association”, not “SAE”

Page 11, 5th paragraph, should read “..was seriously ill, and could not be at the hearing.” Same page, 8th paragraph, should read “Attorney McGee said the problem with the two units.....” Last paragraph of page 11 should read “He noted the changed rules concerning the hardship criterion, and...”

Page 13, 7th paragraph, should read “..had been a duplex over the years, and...” Same page, 8th paragraph, should read “..be willing to allow an accessory apartment in an accessory structure...”

Linn Bogle MOVED to approve the November 8, 2005 Minutes as amended. John de Campi SECONDED the motion, and it PASSED unanimously 4-0.

IV. Other Business

- a. There was discussion about the process that should be used to clarify whether an area variance or a use variance was being requested by an applicant.

Chair Gooze said he felt the Board should make the applicant aware of this in some way during the meeting. He said he didn't feel the Town had made a mistake on this, noting that all NH towns were in the same situation.

Mr. Bogle said Mr. Johnson could tell the applicant about this.

Mr. Sievert said another page could be added to the application form about this. It was noted it would be important to explain the difference between an area variance and a use variance somewhere on the form. He said he would bring in a form that Laconia used to address this.

It was agreed the Board would have some proposals on this for the next meeting

There was discussion about whether the application form could ask if the applicant minded if Board members did site visits prior to the meeting. Mr. de Campi said he thought some language had been developed on this. It was agreed that they would come up with something for the next meeting.

Board members discussed the upcoming Office of Energy and Planning conference.

- b. Next Regular Meeting of the Board: ****February 14, 2006**

V. Adjournment

Linn Bogle MOVED to adjourn the meeting. The motion was SECONDED by John de Campi, and PASSED 5-0.

Chair Gooze noted the Town was going to court concerning the Wallace application.

The meeting ADJOURNED at 9:25 PM.

John de Campi, Secretary