

*These minutes were approved at the April 11, 2006, meeting.*

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, FEBRUARY 14, 2006  
TOWN COUNCIL CHAMBERS -- DURHAM TOWN HALL**

**MEMBERS PRESENT:** Jay Gooze; Henry Smith; John deCampi; Linn Bogle; Myleta Eng; Michael Sievert  
**MEMBERS ABSENT** Ted McNitt  
**OTHERS PRESENT:** Code Enforcement Officer Tom Johnson; Victoria Parmele, Minute Taker

**I. Approval of Agenda**

Chair Gooze said regular member Ted McNitt was absent that evening, and said he would be appointing one of the alternates to be a voting member for each of the applications.

Chair Gooze said there were some additions to the agenda, noting there should be a section III., Board Correspondence, which should include a request for rehearing on the Brown case. He said he would like the Agenda amended to reflect this.

It was also agreed that a request for a site walk would be addressed under Agenda section III. B.

***John deCampi MOVED to approve the Agenda as amended. Linn Bogle SECONDED the motion, and it PASSED unanimously 4-0.***

(NO ALTERNATE HAD BEEN APPOINTED FOR THIS MOTION)

**II. Public Hearings**

- A. **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 replace and expand a deck 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.

Chair Gooze explained that the application form had been changed, noting it had been used by the next two applicants. But he said Ms. Lagram's application was on the older form, which did not distinguish between an area and a use variance. He asked Ms. Lagram if she was aware of the distinction between the two types of variances.

Ms. Lagram said she was not, and Chair Gooze read a description of the differences between the two types of variances, noting that the key difference was under the hardship criteria. He said he

believed Ms. Lagram's application was for an area variance, which meant that rather than three hardship criteria, there were actually two. He read through these criteria, and said he believed the application did cover these. He also said Ms. Lagram could ask that her application be continued to a future meeting, or could go ahead with it that evening.

Ms. Lagram said she would like to go ahead with the hearing. She explained that she would like to remove an exterior walkway porch, and then rebuild it as part of the entire porch redesign, using all weather materials which were the same as those used for the porch itself. She said the wood was rotting on the present walkway, and also said it was too narrow, so needed to be extended out two feet, which would make it five ft. in width. She provided photographs of her plans.

Mr. Gooze asked if the 15 ft. measurement on the diagram was to the end of the existing walkway, or to the house, and was told it was to the house.

There was discussion about the details of the entire porch design.

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

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

Mr. Smith said he had not been at the previous meeting when Ms. Lagram's other application had been heard by the Board. But he said he had done a site walk, and had read through the materials for the application and the Minutes of the meeting. He noted that less was being asked for in this application than in the previous one, which had been approved. He said he felt the application met all five variance criteria.

Mr. Bogle said he agreed with Mr. Smith. He said the present walkway was too narrow, and was badly in need of rebuilding. He said increasing it by two feet would help with safety issues. He said he believed the application met all the variance criteria, and said he was in favor of granting it.

The other Board members agreed, with Chair Gooze noting the application was well within the spirit and intent of the Ordinance.

***John deCampi MOVED to grant the 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 replace and expand a deck on a non-conforming building located at 36 Cedar Point Road. Henry Smith SECONDED the motion, and it PASSED unanimously 5-0.***

- B. PUBLIC HEARING** on a petition submitted by Vincent E. Todd Jr. & Cheryle St. Onge, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Article XIII, Section 175-65(A) of the Zoning Ordinance to build an addition and a new, detached garage within the side yard and wetland setbacks. The property involved is

shown on Tax Map 14, Lot 18-0, is located at 225 Packers Falls Road, and is in the Rural Zoning District.

Chair Gooze opened the public hearing.

Ms. St. Onge said she was before the Board because she and Mr. Todd wished to make renovations to their property, but it was nonconforming in a number of ways. She explained that it was an older home, and had pre-existing setback issues, with the front yard setback of 24 ft. from Wiswall Road not meeting the 30 ft. setback requirement, and the 43 ft. side yard setback for the garage not meeting the 50 ft. setback requirement from Packers Falls Road. She noted this was a corner lot.

She provided details on the proposed renovations to the house, explaining that they would not occur on either the side or front yard, but would take place in the interior portion of the lot. She said a second floor would be added to the house as part of renovation of the first floor, which was currently a living room and kitchen. She said there would also be a small single story addition off the gable end of the house, facing Packers Falls Road. She said a deck was proposed for the house.

She said the plan was also to remove the existing small garage and attached breezeway, and to construct another garage that would be more useful. She also explained that the plan was to tear down two additional small buildings on the property that were unsightly, a woodshop and a woodshed. She said both buildings were nonconforming, noting the woodshop was only two feet from the property line, and the woodshed actually straddled the property line. She said there would be essentially no net increase in the footprint as a result of the new construction as well as tearing down of some of the existing buildings.

She said what was proposed was in keeping with the house, the neighborhood, the scenic road, and the Master Plan goal of maintaining rural quality. She said they were doing their best to achieve this with an aging house.

Mr. deCampi asked if the new garage could be set back more.

Ms. St. Onge said they would prefer not to do this. She said it was a very small lot with a beautiful yard, and said if the garage was moved in, it would eliminate the courtyard effect. She said if the garage were moved in, it wouldn't give her a lot of space, and also would impact some trees. She said she would like to keep the garage construction in one area, and to keep the yard open.

Chair Gooze asked about the wetlands issue concerning the property, noting it had been included in Mr. Johnson's denial letter.

Ms. St. Onge said there was a vernal pool on the abutting property, but said it had never been her sense that it extended onto the property in question. **She noted she had recently had the property re-surveyed, and had delineated the wetland.** She said none of the construction would harm it in any way, and said they would be glad to take any adequate measures to prevent

erosion problems. But she said she couldn't imagine why that would happen. Ms. St. Onge said she supported the existence of the pond, and would like to see it remain as it was.

Chair Gooze asked if Board members had seen the property, and there was discussion about this. He asked Ms. St. Onge to describe where the trees were on the property.

Ms. St. Onge said it was largely a wooded lot, and she provided details on trees existing in various locations, also noting that the existing yard among the trees was the heart and soul of the property. She said if the new garage were moved further into the yard, a significant number of trees would have to be removed in order to make the second bay to the garage drivable.

Mr. Smith asked how far the proposed deck, which was a new structure, was from the wetland, and she said it was about 65 ft. from the wetland. Mr. Smith noted this was within the 75 ft. wetland setback.

Ms. St. Onge said the gable end of the house was also within the wetland setback, and Mr. Smith noted this was an existing structure.

Mr. deCampi said it looked like the deck would actually be about 50 ft. from the wetland.

Ms. Eng pointed out that there was information on a proposed septic system in the application, and the applicant explained that this was part of the original application for the building permit, but did not relate to the variance application. Ms. Eng also noted that the map showed two existing gravel driveways, one on Packers Falls Road, and the other on Wiswall Road, and said another driveway was planned for the new garage.

Ms. St. Onge said one driveway was below the woodshed, another was near the proposed garage, and another was near the house. She said they were proposing to remove the driveway for the woodshed, and the one near the house, and to keep the driveway next to the proposed garage area.

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

Ms. St. Onge noted that abutters **John and Laura Sheehan** had written a letter in support of the application, dated February 4, 2006.

Chair Gooze said this was in Board members' packets.

**Julian Smith, 246 Packers Falls Road**, said he was present as a neighbor of the Todd family since 1967. He said he was also coming forward as a former applicant for a variance, who had wanted to be able to extend the kitchen of his house, which was 3 ft. from the boundary line. He said the ZBA's final decision on this was that the extension should be allowed, as long as this did not intrude more than the corner of the house into the setback. He noted the house he was talking about was the red house across from the present house he lived in on Packers Falls Road.

Mr. Smith said he liked what the applicants were proposing to do, and was very supportive of it. He said the house was located in a neighborhood where most of the houses had been built for people who worked at the Wiswall Mill. He said what was being requested was consistent with what had happened with other properties in the immediate neighborhood, and said he was glad to see property values increasing.

He said the new garage would be well placed, noting that the existing woodshed that would be taken down blocked the headlights of cars on Packers Falls Road, and also served to intercept speeding cars. He said the garage would do even more to block the view of the road, and would cut the house off from some of the noise and traffic on the road. He said the footprint of the garage would only impact a few trees. Mr. Smith also said he saw no danger to the vernal pond from the proposed construction, noting that the owners had a view of the pond, and that it wouldn't be to their advantage to damage it.

Mr. Smith said there was essentially a conflict between the setback requirements regarding Packers Falls Road, and the wetland setback requirements concerning the pond. He said there was not much room on the lot where a garage could be placed, and also said it was very sensible to disconnect the garage from the house. He said he was enthusiastic about the proposal, and hoped the Board would grant the variances.

**Marquita Morrison, 20 Wiswall Road**, said she lived two lots down, and said removal of the garage and woodshed would be a great addition to the aesthetics of the property. She also said the new garage would help manage the aesthetics of the property by being detached. She said she thought that what was proposed was a wonderful way to increase the value of the property, and was in keeping with many of the changes that were happening on that road.

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

**Chair Gooze appointed Ms. Eng as a voting member for this application.**

Mr. deCampi said what the applicants had proposed were permitted uses on this lot, so he believed this was an area variance. He said because the proposed deck wouldn't extend closer to the pond than the existing house, and presumably would be a porous deck, he didn't see that it would impact the pond. He said he had no problem with it.

Concerning the extension of the house, he said it appeared that it did not make the setbacks any worse except for the Packers Falls side. But he said this didn't particularly cause him a problem because what was proposed looked like it had been done as conservatively as possible.

Mr. deCampi next spoke about the proposed garage, stating that he thought its general location was not a problem. He said he thought some relief was necessary for the garage in that location concerning the setback from Packers Falls Road, and provided details on this. But he said the request for a variance to allow a 5.7 ft. setback seemed excessive, and said he thought a 15-20 ft setback would be better. He said he was interested to hear what other Board members had to say about this.

Chair Gooze said he would reopen the public hearing because he had a question for the applicant. He asked where the entrance into the garage would be located, and was shown this on the site plan. There was discussion about this, and he then closed the public hearing again.

Ms. Eng said she did not think granting the variance would decrease the value of surrounding properties, and didn't think it would be contrary to the public interest. She said the special conditions were that it was an existing house, and said she didn't really have a problem with allowing the new garage to be in the side yard Packers Falls setback, since the existing garage was there, and would be taken down.

Ms. Eng said she would like to see the garage moved further away from the road, but noted she didn't remember what the trees were there. She said she wouldn't want any large trees to be cut down, but said she thought 5.7 ft. was a bit too close to the road.

She said substantial justice would be done in granting the variance, and said the renovations had been very mindful of the Rural Zoning District.

Board member Henry Smith said he and Mr. Bogle had looked at the idea of moving the garage, but said this would mean that more trees would have to be removed, some of them larger trees. He said he would not like to see that happen, and said a minimal number of trees would be removed with the currently proposed configuration. He agreed the garage would be very close to the road, but noted that it would be further back from the road than the woodshop that was to be removed.

Mr. Smith said the garage was not being moved toward the wetland, which to him was a crucial element. He also said placing the garage further back would mean encroaching on the yard, and said he therefore had less of a problem with the currently proposed location than others did.

Mr. Bogle noted that the address of the property was Packers Falls Road, and asked if this made the front face of the property Packers Falls Road. He said this would affect all the setbacks.

Mr. Johnson said his first reaction was that this was in fact the case, but he said the house definitely faced Wiswall Road, and said the original driveway was on Wiswall Road. He said that was why he called Wiswall Road the front of the house.

Mr. Bogle said the effective in and out of the property, and the house itself, was on Packers Falls, and said it had been used that way for a long time. He noted there was a 30 ft. front yard setback for the Packers Falls Road side, while there was a 50 ft. front yard setback for the Wiswall Road side.

Mr. Bogle said he agreed with other Board members who had questioned the placement of the garage. He said that under any circumstances, for this to function as a two bay garage, some maples would have to be taken out. He said he realized the applicants might only want to use one of the bays, and use the other for storage, but said when the property was sold, it would be a two bay garage. He said it looked like the garage could be put further in, at an angle to the road, and said he would prefer to see reconsideration of the garage location.

He said the other question was the wetland on the property, and said he would have been more comfortable if there had been an assessment of the wetlands in question, and their proximity to the house. He noted that in the past, the Board had been very strict about observing wetland setbacks, and had denied variances in a variety of cases on wetlands. He said when he had seen the house, the corner facing the pond seemed quite close to it. He provided details on this.

Mr. Bogle said because of the garage issue and the wetland issue, he felt granting the variance would be against the spirit and intent of the Ordinance. He said depending on the wetland issue, and the water flow in that area, there might be a question about the variance being against the public interest. He said he didn't see hardship, and said he thought there was sufficient room to move the garage. He said he understood there were aesthetic reasons for wanting to place the garage in the currently proposed location, but said this was not a reason for granting a variance. He said granting the variance would not decrease the value of surrounding properties.

Mr. Sievert asked for details on the wetland area on the property, noting that a vernal pool did not necessarily contain very poorly drained soils. There was discussion about this.

Mr. Johnson stated that there had been no delineation of the wetlands by a wetland scientist

Mr. Sievert said he knew this area, but hadn't done a site walk. He said if this was a vernal pool, it was important to keep the trees on the property, and also said it would be good to get the garage further away from the vernal pool. There was discussion about this.

Mr. Sievert said he didn't see a problem with the proposed location of the deck, and said there would be no pavement, and no runoff problems. He said the applicants were taking away enough square footage by taking out the outbuildings that putting a similar amount of square footage back with the garage wasn't a problem. He said if the garage could be moved a bit back without impacting more trees, and could utilize the same driveway, he would be ok with this.

He said the application certainly met the hardship criteria. He said granting the variance wouldn't diminish property values, and also said substantial justice would be done. He said he didn't see any problem with the wetlands, and said he had no major problem with the application, although noting he hadn't seen exactly where the new driveway would go.

Mr. Johnson provided details on the fact that Wiswall Road was definitely the front of the property.

Ms. Eng noted that the vernal pool dried up in the summer.

Mr. Johnson said he and the Town Engineer had been out at the property and had observed a culvert about 5-6 ft. below the surface of the road, which drained a natural stream in the area. He said this had probably created the pond years ago.

Ms. Eng said the culvert was probably clogged up with debris, and needed to be cleaned out.

Chair Gooze said he had no problem with any of the variance criteria concerning the proposed enlargement of the house, and agreed with what other Board members had said on this. But he said there was a question as to whether he was comfortable with the variance criteria concerning the garage.

He said he felt the garage was very close to the road, when the applicants had a choice. He noted that they wanted to put a larger structure in than the garage that was being taken down, and said he would like to see this new garage moved back a bit. He said he had not seen the property, but said he didn't feel the variance request met the spirit and intent of the Ordinance concerning the garage.

Chair Gooze suggested that if other Board members agreed the garage was the only issue in question concerning the application, the Board could do a site walk to look at this issue further.

There was discussion about this, and it was agreed that doing a site walk was a good idea.

Mr. Smith asked how far back other Board members would like the new garage to go. He said a site walk would be helpful in considering this.

Mr. Bogle said he understood what Mr. Julian Smith had said about the headlights on Packers Falls Road being blocked by the proposed location of the garage. But he said the same effect could be obtained by plantings.

Chair Gooze asked Board members to do a straw vote on whether they felt comfortable with everything in the application except for the garage. Board members agreed that the only issue was the garage location.

Mr. Smith noted that with the woodshed and woodshop being turned down, the property was at greater risk of being hit by speeding cars, so the garage placed close to the road might play a role in protecting the property. There was discussion about this.

***John deCampi MOVED to continue this matter to the next meeting, and to do a site walk.  
Henry Smith SECONDED the motion, and it PASSED unanimously 5-0.***

Ms. St. Onge asked if it would be ok to go forward with the house portion of the application, and to separate out the garage section.

There was detailed discussion about this.

Mr. Johnson said the applicant could withdraw the garage from the application, and the Board could approve the variances for the deck and the additions to the house, as well as the removal of the three structures. He said if there were no appeals of the Board's decision on this, the applicants could start construction of the house renovations in 30 days.

Ms. St. Onge stated for the record that she and Mr. Todd were willing to tear down the existing garage, the woodshop and the woodshed, which would best suit the project, and which would



allow them to go forward with the work proposed on the house. She said it was understood that this did not allow for the new garage, and said they would make another application concerning this.

Chair Gooze said this was acceptable.

***John deCampi MOVED to grant the Variances applied for, except for the proposed detached garage, conditional upon removal of the three structures intended to be removed, as shown on pink in the plans that were submitted. Henry Smith SECONDED the motion, and it PASSED 5-0.***

It was agreed that a site walk concerning the proposed garage would be held on February 16<sup>th</sup>, at 4:30 pm.

Recess from 8:10 to 8:17 pm

- C. PUBLIC HEARING** on a petition submitted by Vincent J. & Gay N. Macri, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article II, Section 175-7 and Article IX, Section 175-29(A) of the Zoning Ordinance to place a storage trailer on a vacant lot. The property involved is shown on Tax Map 15, Lot 22-2, is located at 9 Timberbrook Lane, and is in the Residence B Zoning District.

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

He then opened the public hearing.

Mr. Macri spoke before the Board, and noted that he had submitted additional documents to demonstrate what his understanding and intentions were. He said he had put his trailer in the wrong place once, was informed of this by Mr. Johnson, and had moved it to a second location within two days. He noted that he had spoken to Mr. Smith and Mr. Bogle at the site visit earlier that day, and had misspoken by saying that he didn't recall whether or not the placement of the trailer had been discussed with Mr. Johnson. He said Mr. Johnson reminded him that it had been discussed, and he certainly agreed that it had been.

Mr. Macri said during the conversation, Mr. Johnson had informed him that he already had three sheds on his property, so he couldn't put another shed there. He said Mr. Johnson had pointed to a white structure and said that was the third shed, but it was actually Mr. Reilly's shed. Mr. Macri said he had two sheds on his front 3 acres. He said he had computed that to mean that because he couldn't put three accessory structures on the front 3 acres, he should put the storage trailer on the back 3 acres. He said he had come to realize that this was incorrect as well.

He said he empathized with the neighbors if there was distress over the situation, and said it had never been his intention to distress anyone. He said he felt he and his wife had done nothing but improve the property in the past several years, and said he had been attentive to neighbors' concerns. He noted he had met with Mrs. Constant and had explained that the trailer was temporary. He said she had asked why he hadn't said this in his application. He said he had put this in the application, but didn't think the notice on the application indicated that it was temporary.

Mr. Macri said the Nature Conservancy, an abutter to his property, had indicated through Mr. Hyde that it didn't have an objection to the proposed trailer. He said he had spoken with Mrs. Oakes, the Constants, and the Muellers. He said the Muellers and the Reillys were the only abutters who could actually see the trailer, and said they as well as Mrs. Armitage had said they had no objection to it. He noted this did not absolve him of having made the mistake, and said this had not been without cost. He provided details on this, noting the trailer was full when it was moved, and there was damage to some of the items inside. He said he was already paying for his mistake.

Chair Gooze asked what was in the trailer.

Mr. Macri explained that he had been in the process of refurbishing his house, so needed temporary storage while this was being done. He said the garage had recently been refurbished, and he was now dealing with the sunroom.

There was discussion about the fact that Mr. Macri owned two adjoining lots, one that had a house and the other, where the trailer was located, which was unoccupied.

Mr. Sievert noted that the Map and Lot #'s were different on the map as compared to the application.

Mr. deCampi said the applicant had two structures on the property his house was on, and asked if this gave him the option of putting the trailer on that lot, without violating the Ordinance.

Mr. Johnson said yes, explaining that the shed was accessory to a principle structure. He said Mr. Macri's property had enough square footage to allow three accessory structures.

Mr. deCampi said that therefore, if the applicant moved the trailer to the lot with the house, the whole issue would be moot.

Chair Gooze asked if the fact that they were contiguous lots made a difference.

Mr. Johnson said no, and said there was no principle structure on the vacant lot, so there couldn't be an accessory structure on it. He said the main issue was that Mr. Macri was not asking for a variance that ran for the life of the property, noting that temporary under the Ordinance was 90 days.

Mr. Macri said the property was substantially wooded, so moving the trailer was difficult.

Mr. deCampi said he was simply trying to establish the ground rules, and wasn't trying to predetermine anything.

**Gary Lonsinger, 27 Timber Brook Lane**, said he had a formal objection letter to provide to the Board. He said he lived at end of the class VI road, noting that Timberbrook Lane ended 475 ft from Longmarsh Road, and that continuing on the Class VI road led to his house.

Mr. Lonsinger said this was not the first time Mr. Macri had had a storage container, and said this was the second time he had arbitrarily placed a storage container on his property without a permit, and within the setback. He said the first trailer had been there for a year, and this one was originally placed in the road bed of Timberbrook Lane, impeding access for emergency vehicles.

He said the Public Works Department had ordered that it be removed. He said it was taken further down the Class VI road, and said an area of stone wall was removed in order to gain access off of the Class VI road, noting this was against State Statute. He said he had outlined this in his objection letter.

He said there had been several violations by Mr. Macri over the years, including using the property as a dumping ground, and cutting through the stone wall in a minimum of three areas. He said the current placement of the trailer was very obtrusive to him as well as to other neighbors. He said he realized the ZBA didn't have jurisdiction over some of the violations, and said he was asking that further action be taken on them in his letter to Mr. Johnson.

Mr. Smith noted that Mr. Lonsinger had said the first violation was in late 1990s.

Mr. Lonsinger said the trailer was there for about a year, and was not reported.

There was discussion of the location of the properties owned by Mr. Lonsinger. Mr. Bogle asked Mr. Lonsinger if his house was directly across from the Macri's, and Mr. Lonsinger said it was not.

**Vanda Constant, 10 Timberbrook Lane**, said she felt the whole situation was not acceptable. She said the trailer was unsightly, and said she felt it affected property values. She said she was against granting the variance, and also said she was concerned that granting it might set a precedent.

**Mark Salvati, 8 Timberbrook Lane**, said he was not against the application per se, but said the trailer was unsightly. He asked what enforcement there would be if the application was denied, or if it was approved, and the trailer was not removed by the established deadline.

He noted the applicant had skirted the issues a couple of times, and said the current trailer was basically dropped off. He said if there had been a fire that therefore required that a trailer be used, that would be a hardship, but he said that wasn't the case. He said he was not in general against having the trailer there for a short period of time, but said that because the applicant had skirted the issues a couple of times, he would be concerned about its removal.

Mr. Macri agreed that the trailer was unsightly, but said he had not been able to find anything that looked better which would allow him to store his things and keep people from getting into it. He stated again that the trailer would be temporary. He said July 31<sup>st</sup> was the final date, but said he thought the trailer would be out of there before that date. He said the July 31<sup>st</sup> deadline was there in case there were any delays.

Mr. Macri said he was surprised about the formal objection letter from Mr. Lonsinger, and did not have a copy of it. He said he would like to get a copy, and also would like to be able to refer it to legal counsel if it was a formal objection letter. He said he didn't know what the issue concerning violation of RSA's was about. He said he found it to be un-neighborly, and mean spirited for Mr. Lonsinger to submit a document that attacked him when he didn't have the chance to look at it.

Mr. Macri explained that the 48 ft. first trailer he had had on his property was 11-12 years ago, when he had made substantial renovations to his property. He provided details on the renovations

that were done at that time, and said they had improved its property values by \$100,000 or more. He said that in all respects, he had contributed to the value of the neighborhood. He disputed the claim that the current trailer was placed in the roadbed, and said if the roadbed was the paved portion of the road, this was a misrepresentation. He also said there had been no claim by Mr. Lonsinger that it was in his way. He said there was no problem with this.

Mr. Macri spoke briefly about the stone wall issue. He also provided details on the fact that Mr. Lonsinger could only see the trailer very briefly when traveling on the road.

Mr. Macri said if had it to do again, he would have avoided this situation. But he said the trailer was there, and said he hoped he didn't have to move it again, which would be extremely damaging. He said he was prepared to do anything reasonable that the Board concluded. He said he didn't think justice would be served by having to move the trailer, but said he would abide by the Board's decision unless counseled otherwise.

Mr. Bogle said the trailer would be legal on the lot where Mr. Macri's house was, and asked him if he moved it to this lot, where he would put it. He noted that the neighbors would be able to see it on either lot.

Mr. Macri said more neighbors by far would see it on the front lot with the house, and also said that since Timberbrook Lane was a public road, more members of the public would see it. He said he didn't think that other than Mr. Lonsinger, many people currently saw it.

There was discussion on the number of residents on the paved portion of Timberbrook Lane.

Mr. Bogle asked if it would actually be an improvement to move the trailer to the house lot.

Mr. Macri said it would not. He then asked what the Board's position was on the former objection letter.

Mr. Gooze said the Board would discuss this after the hearing was closed. He also said Mr. Macri would get a copy of the letter.

Chair Gooze asked if there were any more members of the public who wished to speak for or against the application. Hearing no response, he closed the public hearing. He received clarification from Mr. Johnson that even though this was a temporary trailer on the property, the variance was still needed because it was on a vacant lot with no permanent structure.

There was discussion about the new definition of accessory structure in the posted Zoning Ordinance changes.

Mr. deCampi said unfortunately this was a use variance, not an area variance, which made the issue of hardship a much higher hurdle.

Chair Gooze noted that this had been stated in the application.

Mr. deCampi said the hardship in this case had been self-created. But he said if the ZBA required that it be moved, the trailer would be moved to the other lot, and said he wasn't sure this really accomplished much more than allowing the trailer to stay on the other lot until the end of July.

He said he was willing to allow it to stay where it was, but said he wanted to see what others had to say. He asked what happened if the trailer was not moved by July 31<sup>st</sup>.

Mr. Johnson said it would be subject to a \$275 fine the first day, and a \$550 fine for every day thereafter. He said if this went to court, the fees would be assessed cumulatively.

Mr. Gooze said the application didn't meet any of the variance criteria, except perhaps the one concerning property values. He said he wasn't using the written statement from Mr. Lonsinger in making his decision, because Mr. Macri had the right to look at this and speak to this. But he said he could use his verbal statements. He said he didn't think granting the variance would be in the public interest, and said it set a bad precedent when there was another place the trailer could go.

He said he didn't think the application met the use variance hardship criterion that the zoning restriction as applied to the property interfered with the applicant's reasonable use of the property, considering the unique setting of the property in its environment. He said there was ample opportunity to put the trailer on his other property.

He said he didn't think the application met the criterion of no fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property. He also said granting the variance would injure the public and private rights of others.

Chair Gooze said he didn't think the argument could be used that it would be substantial justice to grant the variance because of the cost to move the trailer. He also said that even though the trailer was temporary, the request for variance didn't meet the spirit and intent of the Ordinance in terms of putting the trailer on a property where there was no house.

Ms. Eng said she had nothing more to add, and would not be in favor of granting the variance.

Mr. Smith said he wished Mr. Macri had received the statement from Mr. Lonsinger. But he said he agreed that the application didn't meet any of the variance criteria. He said he was strongly opposed to allowing the trailer to stay in place until July 31<sup>st</sup> 2006. He said if there were a compromise, he would say the trailer should be moved to the property where the house was no later than March 31<sup>st</sup>.

Mr. Bogle said his original impression was that the trailer was placed on his own property, and that it would be there temporarily until the end of July. But he said he was distressed with Mr. Lonsinger's statement that this was the second time the applicant had placed a trailer illegally, and said he didn't see how the applicant could plead ignorance of the Ordinance. He said this worked against his application for variance, and said he felt he would be best advised to move the trailer to his adjoining property, where it would serve as an accessory structure.

Mr. Bogle said he agreed that the application did not meet the variance criteria, except perhaps the one concerning property values, noting that if the trailer were permanent, that would be different. He said that in light of the points made by Mr. Lonsinger, granting the variance would be contrary to the public interest and the spirit and intent of the Ordinance. He also said he didn't see any hardship.

Chair Gooze asked Mr. Bogle if he was going by what Mr. Lonsinger had said, or was going by what others had said in the public hearing. He also asked if he would be saying the same thing if there were no letter from Mr. Lonsinger.

Mr. Bogle said the letter was a strong influence, noting the Board had no idea there had been a previous episode.

Mr. Macri protested from the audience.

Mr. Smith said he felt strongly that the Board should not be considering the cost involved in moving the trailer again, and said this was not within the Board's purview.

Chair Gooze said he would be against this application with or without Mr. Lonsinger's letter, and said he wanted to be sure it was clear whether the letter was influencing Board members.

Mr. Smith said he had no idea there was a previous violation.

Mr. Sievert said if the applicant in fact needed a variance, noting he didn't agree it needed one, he didn't think it met the public interest or the hardship criteria. He noted he had not read the letter from Mr. Lonsinger.

Mr. Smith noted that Mr. Lonsinger had said the things that were in the letter.

***Henry Smith MOVED to deny the APPLICATION FOR VARIANCES from Article II, Section 175-7 and Article IX, Section 175-29(A) of the Zoning Ordinance to place a storage trailer on a vacant lot, located at 9 Timberbrook Lane, in the Residence B Zoning District, based on the fact that it doesn't meet the public interest, hardship or spirit and intent of the ordinance criteria. Linn Bogle SECONDED the motion.***

Chair Gooze said he wanted to be sure that the vote was not reflective of the letter. He said he felt what the Board had heard verbally from Mr. Lonsinger and other members of the public was enough. He said he had considered all of the facts in the case, and felt the variance application was contrary to the public interest, was contrary to the spirit and intent of the Ordinance, and did not meet the hardship criteria.

***The motion PASSED unanimously 5-0.***

### **III. Board Correspondence and/or Discussion**

#### **A. REQUEST FOR REHEARING ON THE BROWN CASE**

**Chair Gooze appointed Ms. Eng as a voting member concerning the request for rehearing.**

He explained that there was a letter from Donna Heald asking for a rehearing concerning the Sherri M. Brown Living Trust application, which had involved a request for variance to build a single-family home on a lot without adequate frontage, and which was approved by the Board at the January 2006 meeting.

Mr. Smith said he was not present at the January meeting, but had read the letter from Ms. Heald, and had read the Minutes. He said he was concerned about a procedural issue, noting there was no reference in the Minutes to Mr. Sievert saying he would recuse himself, although this was referenced in the letter.

It was clarified that Mr. Sievert had offered to recuse himself, but the Board had decided he did not need to do so.

Chair Gooze said he had looked into how long the driveway had been there, but said he had not been able to find any Minutes or other information on how the driveway got put in. He said Ms. Heald had made the point that the road was done before the Master Plan had changed in terms of what the Town wanted to happen on Class VI roads. He said the Board had talked about this at the hearing, but had said the situation was a little different because a driveway had already been put in, off of the Class VI road. He said this was therefore not new information.

Mr. deCampi said there was no question that this had impacted his decision. He said he was not opposed to having a rehearing, but said he didn't see a case had been made for the rehearing in the points raised by Ms. Heald in her letter. But he said if there was any doubt about this, he thought the Board should rehear the application.

Chair Gooze said he didn't see anything new had been represented, and didn't see that the Board had made a procedural error. He said he therefore would be against rehearing the application.

Mr. Smith said Ms. Heald had said in her letter that there seemed to have been confusion during the hearing about the easement access, and that any access to the land was not a Class VI road, or a road at all, and was from a private driveway right of way. He asked if this was accurate.

Chair Gooze said there was discussion at the time of the hearing that there was already the private road that came down there. He said that was a big part of the decision that was made, because the properties were already there.

Ms. Eng said she didn't see that anything new had been presented, and didn't think the Board had made an error. She said she felt the Board had been very thorough about why it was approving the variance.

Mr. Bogle said he understood that Ms. Heald was disappointed with the decision, but said he didn't think the Board had erred in making its decision on the application, and said he hadn't seen any new evidence.

Mr. Smith said he would abstain from voting because he wasn't present at the hearing on this application at the previous meeting.

Chair Gooze appointed Mr. Sievert as a voting member, because Mr. Smith had recused himself.

***John deCampi MOVED to decline the request for rehearing based on the fact that the ZBA did not find any errors or new information brought to its attention by Ms. Heald's letter. Linn Bogle SECONDED the motion, and it PASSED 5-0.***

**B. REQUEST FOR SITE WALK from Jeffrey Christensen**

Mr. deCampi read the letter from Mr. Christensen.

There was discussion about whether it was appropriate to have a site walk for an application before the meeting when the application would be before the Board.

Mr. Johnson explained that Mr. Christensen was in the middle of construction, the foundation was in, and was doing a great job on the camp. But he said in inspecting the work, he had noted that Mr. Christiansen needed to do some work on the deck to make it safe and bring it up to code. He said the proposal was to comply with the state law, which allowed up to a 12 ft. deck extension toward the waterfront.

He noted that the Board in granting the previous variance for the property was concerned about possible environmental impacts because the property was close to the shore. He said because of environmental concerns, it was critical to do the work on the deck in the winter so the ground wouldn't be disturbed during mud season. He said if the Board could do the site walk concerning the deck now, the applicant could then proceed with the work within 30 days of the hearing before the Board.

There was discussion as to whether a site walk was needed for this, and about whether it was appropriate to do a site walk before the application was heard.

Mr. Johnson said it was important to do the site walk in order to see the work being done, which couldn't be seen from the road. He said the applicant was trying to comply with the terms of the variance that had previously been granted, by doing the disturbance during the winter time.

Mr. Sievert said he thought the Board should take Mr. Johnson's advice, and should help Mr. Christensen out.

Chair Gooze said in this circumstance, for an ongoing project, it made more sense to do the site walk before the application was heard by the Board. There was discussion about how to proceed. Chair Gooze said if the plans and the application could be mailed to Board members soon, they could try to have a site walk soon.

It was agreed that the site walk would be scheduled for Tuesday, Feb 21<sup>st</sup> at 4:30 pm, and if the Board didn't get the materials for the application, it wouldn't do the site walk.

**C. Letter from David and Susan Richmond, 16 Cowle Drive, concerning the three unrelated person provision of the Zoning Ordinance.**



Chair Gooze explained that the Richmonds had suggested the idea that the Town should require a buyer of property in a residential neighborhood to sign a paper indicating that he/she had been made aware of the 3-person rule prior to the sale, and would obey it. He said the letter had suggested that this would prevent people who were ignorant of the rule from buying a home.

There was discussion about how this could actually be accomplished.

Mr. Johnson said the Council would have to pass an Ordinance regarding this. There was discussion that this letter should be forwarded to the Council.

Chair Gooze asked that Mr. deCampi send a letter to Administrator Selig on this.

Mr. Bogle said it should be kept in mind that even if buyers were told about this regulation, they might not pay attention to it.

Chair Gooze noted that there were some court cases coming up, one concerning the Slama application, on May 31<sup>st</sup>, and the other on the Wallace case, which had not been scheduled yet.

There was a brief discussion on the new wording on the application form concerning use variances and area variances.

Mr. deCampi noted the NH Office of Energy and Planning's upcoming spring conference was on April 1<sup>st</sup>, and said Board members planning to attend should get their forms in. There was discussion about who would be attending the conference.

#### **IV. Approval of Minutes**

##### December 13, 2005

Correction marks and their corresponding corrections were taken care of

In addition,

Page 1, should say "Victoria Parmele, Minutes taker" under "OTHERS PRESENT"

Page 2, top paragraph, should read "She said if he did discuss the merits of the application..."

Same page, 5<sup>th</sup> full paragraph, should read "...from Attorney Loughman's statement about..."

Same paragraph, should read "...at a property that was the subject..."

Page 6, 5<sup>th</sup> full paragraph, should read "...Sigma Nu nationally was in regard to..."

Page 8, 2<sup>nd</sup> full paragraph, should read "...in favor of a variance find in favor of the..."

Same page, 4<sup>th</sup> and 6<sup>th</sup> paragraphs, the word primarily should be in quotes.

Page 17, 3<sup>rd</sup> full paragraph, should read "...that an apartment building was located to the..."

Page 18, 7<sup>th</sup> paragraph, should read "...and provided details on this."

Page 19, bottom paragraph, should read "...it met the 5 variance criteria."

Page 23, under Approval of Minutes, should read "...January 10, 2006 ZBA meeting."

Same page, under Adjournment, should read "The meeting ADJOURNED at approximately 10:45 pm."

January 10, 2006

Page 1, should say "Victoria Parmele, Minutes taker" under "OTHERS PRESENT"

Same page, 4<sup>th</sup> paragraph from bottom should say "Jeffrey Brown said he and his wife wished to build a single family ..."

Page 2, 8<sup>th</sup> paragraph, should read "...if the variance were granted." Also, 3<sup>rd</sup> paragraph from bottom, should read "...in additional cars and trucks in the area,..."

Page 3, 3<sup>rd</sup> paragraph from bottom, should say "...and she demonstrated this on a map. He then asked Ms. Heald if..."

Page 4, 6<sup>th</sup> paragraph, should read "...and said she didn't think this access to Longmarsh Road could be achieved..."

Same page, 3<sup>rd</sup> paragraph from bottom, should read "...had gotten quiet title to the land..."

Page 5, 3<sup>rd</sup> paragraph, should read "...if one were considering the..."

Page 6, 2<sup>nd</sup> paragraph, should read "He also said he had gotten..."

Bottom paragraph, should say "...Mr. Aviza..."

Page 7, 2<sup>nd</sup> paragraph, should read, "Mr. Aviza explained that he..."

Same Page, check spelling of "Aviza" throughout. Same page, check spelling of Bogle

Same page, 3<sup>rd</sup> paragraph from bottom, should say "Chair Gooze..." Same page, bottom paragraph should read "...to the public interest, since this was a corner lot..."

Page 8, 5<sup>th</sup> paragraph should read "...while keeping the single curb cut..."

Page 9, the motion should read *Linn Bogle SECONDED...*

Same Page, Agenda Item C, should read "Section 175-30 C of the ..."

Page 10, motion on page should read "...Section 175-30 C of the ..."

Same page, bottom paragraph, should read "...the area variance criteria were..."

Page 11, 1<sup>st</sup> paragraph, should read "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."

Same page, 5<sup>th</sup> paragraph from the bottom, should read "...he wanted to vote to rehear this. He said he felt the Board had met its obligation in the original application hearing, when..."

Page 12, 4<sup>th</sup> paragraph, should read "Chair Gooze said he felt the Board should be making a decision on Attorney Tanguay's letter."

Same page, the motion should read "...Linn Bogle..."

Page 13, the discussion under Other Business should be listed under Agenda Item **a**.

6<sup>th</sup> paragraph of that discussion should say "...said he thought some language had been developed on this. It was agreed that they would come up with something for..."

***John deCampi MOVED to approve the December 13, 2005 Minutes as amended. The motion was SECONDED by Linn Bogle, and PASSED unanimously 5-0.***

Mr. Sievert was appointed as a voting member for the January 10, 2006 Minutes, in place of Mr. Smith, who was absent from that meeting.

***John deCampi MOVED to approve the January 10, 2006 Minutes as amended. The motion was SECONDED By Linn Bogle, and PASSED unanimously 5-0.***

**V. Other Business**

Next Regular Meeting of the Board: \*\*March 14, 2006

**VI. Adjournment**

Ms. Eng was appointed as a voting member.

***John deCampi MOVED to adjourn the meeting. Linn Bogle SECONDED the motion, and it PASSED unanimously 5-0.***

10:22 pm adjournment

Victoria Parmele, Minutes taker

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John deCampi, Secretary