

*These minutes were approved at the July 25, 2006 meeting.*

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, JUNE 13, 2006  
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Jay Gooze; John deCampi; Ted McNitt; Linn Bogle; Myleta Eng;  
Michael Sievert; Ruth Davis

**MEMBERS ABSENT**

**OTHERS PRESENT:** Zoning Administrator Tom Johnson; Minutes taker Victoria Parmele

**I. Approval of Agenda**

Chair Gooze said Attorney Somers had requested that the Christensen hearing be continued to the July 11<sup>th</sup> meeting. He recommended that this be done.

***John deCampi MOVED to approve the Agenda, with the deletion of Item II B. Linn Bogle  
SECONDED the motion, and it PASSED unanimously 5-0.***

**II. Public Hearings**

- A. PUBLIC REHEARING** on a February 14, 2006, denial by the Zoning Board of Adjustment for 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 opened the public hearing.

Mr. Macri said his application was for a temporary storage trailer, but noted that the Agenda item said “storage trailer”. He said what was more important was that Mr. Bogle had stated at the previous ZBA meeting that a lot of things had been said at the February 14<sup>th</sup> meeting that weren’t true. Mr. Macri said he and his wife had incurred severe consequences as a result of multiple untrue things that had been said.

Mr. Macri said he had heard that a rehearing was a new hearing, and said if that were so, he would like to know what the status was of the February 14<sup>th</sup> hearing. He asked if it could be considered as not having taken place, and that there was no decision.

Mr. Gooze agreed that a rehearing was a completely new hearing to determine whether or not to approve a variance.

Mr. Macri said the fairest thing to do at this point was for the ZBA to withdraw the February 14<sup>th</sup> decision, and for him to withdraw his application.

Mr. Gooze said the February 14<sup>th</sup> ZBA decision could not be withdrawn, and said he would like Mr. Macri to present why the Board should give him a variance.

Mr. Macri said he did not care to participate in that process, and said he would do nothing. He said he would leave the application alive, and would not respond to it directly. He asked again that the ZBA withdraw the February 14<sup>th</sup> decision that had been made, noting again that a lot of things that were said at that hearing were just not true.

Chair Gooze asked if any members of the public wished to speak in favor of the application. There was no response, and he asked if anyone wished to speak against it and there was no response.

There was discussion by the Board about some letters going back and forth between residents concerning this matter, which had been received by the Board. Chair Gooze said they could be placed in the record, and the Board could then make its decision.

Mr. deCampi said it was upsetting that Mr. Macri had the chance to make his case, but had declined to do this. He said this left the Board with almost no choice other than to deny the variance application, since he hadn't given the Board any evidence that the application met any of the criteria.

Chair Gooze closed the public hearing.

***Ted McNitt 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 there was no new evidence. John deCampi SECONDED the motion.***

Mr. Bogle said the Board had just been handed the letters and he had no idea what was in them, so couldn't base anything on them. He said he was disappointed that Mr. Macri had chosen not to make his case. He said that although on the surface, he felt the original decision that the storage trailer was wrongly placed on the vacant lot was correct, there were things said at the February 14<sup>th</sup> hearing that influenced his decision initially, which should not have been allowed, and which should not be passed up.

He said that was the basis for his request that the Board rehear this. He said he thought Mr. Macri should make his case, and said if he chose not to do this, this left the Board little room for action other than to deny the application.

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

- B. PUBLIC HEARING** on a petition submitted by Sharon Somers, Donahue, Tucker & Ciandella, Portsmouth, New Hampshire, on behalf of Jeffrey P. Christensen, Durham, New Hampshire for an APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Article XIV, Section 175-74(A) of the Zoning Ordinance to build decks and a three-season porch to an existing, non-conforming structure 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.

Continued to the July meeting.

**C. PUBLIC HEARING** on a petition submitted by Thomas Foote, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-55(B)(2) of the Zoning Ordinance to permit the building of a detached garage with an accessory apartment within the required minimum setback. The property involved is shown on Tax Map 9, Lot 14-2, is located at 6 Beech Hill Road, and is in the Rural Zoning District.

Chair Gooze opened the public hearing.

Mr. Foote said he would like to get a variance in order to build a new detached garage. He explained that he had started the project in July 2003, and said the original plan was to locate the house, garage and septic system in one general location on the property. He noted that this original plan placed the garage 20 ft. away from the setback, as required by the Zoning Ordinance in 2003.

He said the garage couldn't be placed 50 ft. away from the setback as required by the newly revised Zoning Ordinance, stating that this would mean the garage would have to be placed on the other side of the house, which would create a huge problem because of the way the septic system was set up. He also explained that the driveway would have to be restructured in order to accommodate this, which wouldn't work because there was a hill where it would need to go. He said the only place to put the garage was where the original plans said it should go.

Mr. Foote said he realized that not knowing about the changes in the Zoning Ordinance was not an excuse, but explained that he was doing the work on the house himself. He said if this work had progressed more quickly, he would have applied for his building permit sooner, and therefore wouldn't have had to go before the ZBA now.

Mr. deCampi noted that the required setback was 35 ft., based on the Zoning Ordinance, and said that looking at the site plan, he didn't see why the garage and accessory apartment couldn't be located elsewhere in order to meet the requirement.

There was discussion about the site plan. Mr. Foote said the plan was in fact to scale, and said moving the garage 15 ft. to the right would mean it would be located in front of the house. He also said it would push the driveway 15 ft. to the right, which meant it would have to go across the septic system.

Mr. deCampi suggested that the driveway could be left where it was, and the turnaround space could be reduced. He provided details on this.

Mr. Gooze asked if the house in the plan had been built, and Mr. Foote said yes.

In answer to a question from Ms. Davis, Mr. Johnson explained that according to Section 175-55 D:2, the setback in this district for a structure that was accessory to a residence was 35 ft.

Mr. McNitt asked what was located to the east of the septic system, and Mr. Foote said it was hilly, with wetlands right next to this, and then woods behind them.

Ms. Eng said that Mr. Foote had indicated that his neighbor was in favor of the variance, and asked if there was any documentation to this effect.

Mr. Foote said there was not.

Mr. Gooze asked if any members of the public wished to speak for or against the application. Hearing no response, he closed the hearing. He stated that this was an area variance, involving an encroachment on a setback. He said the Ordinance was what it was, noting the Board had been strict about this, as much as it was realized a permit was put in before the Ordinance had changed.

Mr. McNitt said he thought this was a reasonable request, noting that there was undeveloped land on the other side of the property, and that the site was somewhat remote. He also said he had a great deal of sympathy for a situation where the setback requirement changed during a project, noting his own experience with this. He said he saw no reason why the application didn't meet all of the variance criteria.

Ms. Eng said she would like to see some relief granted, but said she wondered if the garage could be moved back a little further from the setback. She also said it seemed that the driveway could be configured so it wasn't on the septic system. She said she had sympathy for the fact that this project had been started in 2003, and would have been in compliance with the Ordinance at that time. She said she felt the application met the other variance criteria besides hardship, and said that was the one she was on the fence about.

Mr. Bogle said this application was reasonable because of the uniqueness of the property. He said one side was bounded by a buildup of the highway, and on other side, behind the proposed garage/apartment, there was a considerable tree line, and there was a substantial distance from that tree line to the house on the abutting property. He said he didn't think that placing the garage/apartment where it was proposed would in any way crowd the neighbor, or clutter the neighborhood.

Mr. Bogle also said Mr. Foote had an on-going building process, had submitted his plan prior to the change in the Ordinance, and had gotten hung up as a function of these changes. He stated again that the request was reasonable, and said he would be willing to grant the variance.

Mr. deCampi said he still had some difficulty with the application. He said while he was sympathetic to Mr. Foote's situation, there was an implicit requirement that an applicant should come to the ZBA asking for the least variance that was necessary in order to accomplish an objective. He said he didn't think the applicant had done this in this instance. He said he didn't think granting some relief would be a problem, but said he felt the applicant was asking for more variance than was needed.

Ms. Davis said she agreed that the applicant might be able to move the garage over a bit. She asked if the driveway was already paved, and was told it was not. She asked if there was perhaps another reasonable, practical way to move it.

Mr. Sievert arrived at the meeting.

Chair Gooze said that in the Slama application, the applicant wanted to move a structure for aesthetic reasons, and said in this case, Mr. Foote didn't want to move the structure for aesthetic reasons, although he could do so.

Chair Gooze read through the area variance criteria. He then said that granting the application would be in the public interest, noting the Board hadn't heard from abutters that this application would

change the nature of the neighborhood. He said he had driven by the property, and had seen that there was quite a bit of open space.

He said that consistent with what the Board had done before, he did feel the application met the variance criteria. He noted that his opinion was not based on the fact that the work was started before the Ordinance change.

***Ted McNitt MOVED to approve an APPLICATION FOR VARIANCE from Article XII, Section 175-55(B)(2) of the Zoning Ordinance to permit the building of a detached garage with an accessory apartment within the required minimum setback, at the property located at 6 Beech Hill Road, within the Rural Zoning District.***

Mr. McNitt said there would be no decrease in surrounding property values, and said the application was not contrary to the public interest, noting the concept of open space was not significantly injured. He said this was an area variance, and was needed so the applicant could continue to complete his plans for the property.

Mr. McNitt also said he felt that to a certain extent, if the applicant owned the property and planned this before the Zoning changes, it was to a certain extent protected under the change of zoning rules.

He also said substantial justice would be served in granting the variance, and said he didn't feel doing so would be contrary to the spirit and intent of the Ordinance.

***Mr. Bogle SECONDED the motion.***

There was discussion on Mr. McNitt's last statement regarding the timing of the project in relation to the changing in the Zoning Ordinance. The Board disagreed with him, and Mr. McNitt then said he would yield to the opinion of the Board concerning this.

There was discussion as to whether it might be worthwhile to stake out different possible locations for the garage and driveway, and to do a site walk. The majority of Board members agreed that this was not needed.

***The motion PASSED 3-2, with John deCampi and Myleta Eng voting against it.***

- D. PUBLIC HEARING** on a petition submitted by Kevin & Kristine Tonkin, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Article XIV, Section 175-74(A) of the Zoning Ordinance to rebuild a single family home, artesian well and shed within the sideyard and shoreland setbacks. The property involved is shown on Tax Map 18, Lot 7-2, is located at 298 Newmarket Road, and is in the Rural Zoning District.

Chair Gooze opened the public hearing.

Mr. Tonkin said he had lived in the house for 12 years, and said he and his wife had recently been displaced from the home because of flooding of the area on Mother's Day. He explained that he was seeking the variances in order to move the house back from the river, and to raise it up on stilts, to avoid future flooding. He said they were seeking a variance to move the house back from the river, which would mean maintaining about 1/3 of the existing footprint.

He said that in moving the house back, the house would encroach on a wetland area, noting some encroachment on the wetland already existed. He also explained that in moving the house back, they would be conceding 36 ft of riparian border from the high water mark, creating a 51 ft. setback, which would be beneficial to the river's edge.

There was discussion as to whether the hundred-year flood mark was on the site plan, and how far back the house would be moved back in relation to this. Mr. deCampi said it would be good to be able to see the flood line on the plan, as well as the sideyard setbacks.

Mr. Tonkin explained that the application had been put together quickly because of the emergency situation. He provided some detail on the site.

Mr. Johnson said that right after the flooding occurred, the applicants had submitted a building permit application. He said the original plot plan only dealt with the river setback and property setback. He said he denied this application based on those criteria. He said when a more up to date plan was provided as part of the variance application, it showed delineated wetlands, but he said the wetland setback variance hadn't been advertised.

He said the applicants would have to apply for another variance for this, and said it might be wise to schedule a site walk, and to continue the case until July, so that all the variances could be merged together into one application.

Chair Gooze said he realized the applicants were anxious to get going, but said it was difficult to make a good decision without the proper information. He said he would hate to see the application denied because of this that evening. He suggested that a site walk be scheduled, and that the entire variance request be heard at the July ZBA meeting.

Mr. McNitt said he had been to the site, and said the Board needed all the information in order to address this.

The site walk was scheduled for Monday, June 19<sup>th</sup> at 5:00 pm.

***John deCampi MOVED to continue to the July 11<sup>th</sup> 2006 ZBA meeting the PUBLIC HEARING on an APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Article XIV, Section 175-74(A) of the Zoning Ordinance to rebuild a single family home, artesian well and shed within the sideyard and shoreland setbacks at 298 Newmarket Road, in the Rural Zoning District. Linn Bogle SECONDED the motion, and it PASSED unanimously 5-0.***

Recess from 7:55-8:00

- E. PUBLIC HEARING** on a petition submitted by Michael & Louise Kandle, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article II, Section 175-7 and Article VII, Section 175-53 of the Zoning Ordinance to permit a second First Class Home Occupation to exist in an accessory structure, which, when combined with an existing First Class Home Occupation in the single-family home, would exceed the maximum square footage allowed. The property involved is shown on Tax Map 6, Lot 2-2, is located at 11 Orchard Road, and is in the Residence B Zoning District.

Chair Gooze opened the public hearing.

Mr. Kandle said he was somewhat confused as to whether he was applying for one variance or two. He explained that both he and his wife were self employed, and had bought their home six years ago with the expectation of working at home. He noted he had previously submitted an application for a home office that didn't involve any structural changes. He explained that there was an accessory structure on the property with overhead space that was already finished, and said his wife, who was a violin teacher, used this space to give violin lessons.

He said that it wasn't until he submitted an application for a shed plan that he found that the property was not in compliance with the Ordinance. He explained that the current ordinance did not address having two first class home occupations on a property. He said it would allow either one of them, as long as the space didn't exceed 500 sf.

Mr. Kandle said that theoretically, a possible way to meet this area requirement was for his wife to occupy about 100 sf. in the home for the violin lessons, but said this wouldn't be realistic because of the sound the violin would make in the house. He said the only realistic place for her to operate her business was in the garage, and said he was therefore asking for either a use variance or an area variance.

He explained that if both businesses were allowed to operate on the property, this was an area variance being requested. He said they would be taking up a total of 800 sf, when 500 sf was the maximum allowed.

He said if this were a use variance, and it was denied, this would be a severe hardship, because they would have to rent a studio outside of their home, and the cost for this would be prohibitive. He also said this would mean they couldn't keep their son at home with them.

Chair Gooze agreed that this was a use variance because the Ordinance didn't permit two first class home occupations. He said if this variance was granted, there would also be an area variance to consider, and said the Board would keep this in mind.

Mr. Kandle said he had contacted the 5 immediate abutters by letter, asking them to respond if they had any concerns about the application. He said 4 abutters had said they had no problem at all with the variance request, and noted that the 5<sup>th</sup> abutter had recently passed away. He also said that a 6<sup>th</sup> abutter was UNH, across the Oyster River, stating that he had not heard from them. He said they were aware of the work he and his wife did, and that this work would not adversely impact the character of the neighborhood.

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

Ms. Davis went through each of the variance criteria, and explained that she believed the application met all of them. She said it wouldn't decrease the value of surrounding properties, and said it was not against the public interest because all of the abutters seemed to support it. She said she looked at it as a use variance, and thought denying the variance would result in unnecessary hardship in terms of the use variance criteria.

She said substantial justice would be done in approving the variance, noting there was no obvious gain to the public in denying the variance, but it would be an injustice to the landowner if it were denied. She said she did not think granting the variance would be contrary to the spirit and intent of the Ordinance, noting the idea was to maintain medium density in that area, and that the home occupations wouldn't seem to affect the neighborhood adversely.

Mr. deCampi said the only downside he saw was the precedent that would be set in allowing two first class home occupations, but he said the need trumped that. He said there would be no way to know there were two home occupations, and said he was therefore inclined to be in favor of granting the variance.

Chair Gooze asked if home occupation permit applications specified what kind of home occupation was being asked for, and whether if an occupation changed, another permit would be needed.

Mr. Johnson said the normal change of use application to add a home occupation did not require a review of the type of home occupation. He suggested a condition could be put on a motion to approve the variance, which put a limitation on what was being granted.

Mr. Bogle said the Ordinance allowed for one first class home occupation, but did not address the idea of two. He said if the Ordinance didn't specifically allow a use, it was not allowable, and said the reservation on his part was that to allow two first class home occupations without stipulations could be detrimental. He noted that the variance went with the property, and said allowing two home occupations could be quite a selling point. He said that if an approval could be structured so that it stipulated that not just any home occupations could come in, in the future, he would feel the application met the variance criteria.

Ms. Eng said she agreed with Mr. Bogle. She said this was a residential neighborhood, and said she would be in favor of granting the variance with the stipulation that it would be for a violin studio. She said she didn't think granting this would be contrary to the spirit and intent of the Ordinance because a first class home occupation was allowed in this district.

Mr. Johnson asked Mr. Kandle if his wife taught any other instruments, and he said no.

Mr. McNitt said the purpose of permitting just one home occupation was to protect the residential nature of the area. He said that in this case, the request to allow two home occupations was reasonable, and met the variance requirements. But he said he agreed that there should be a stipulation to prevent any two home occupations on the property, even if the work was done by a husband and wife.

Mike Sievert said he thought the application met the variance criteria, stating that the two home occupations seemed like a reasonable use of the property, and would not be detrimental. He also said the ZBA should be careful about what restrictions it put on the approval, stating that there were a lot of home occupations that could work at this location.

There was further discussion about what restrictions should be put on the approval.

Mr. Sievert noted that the first home occupation was already permitted, and also said the property was set back off the street and had parking.



Chair Gooze said the violin studio was the second use, and said this specific use was what the neighbors had said was acceptable in this location. He suggested that the restriction reflect this.

***Myleta Eng MOVED to grant the APPLICATION FOR VARIANCES for the property located at 11 Orchard Road, in the Residence B Zoning District, from Article II, Section 175-7 and Article VII, Section 175-53 of the Zoning Ordinance to permit a second First Class Home Occupation to exist in an accessory structure, which, when combined with an existing First Class Home Occupation in the single-family home, would exceed the maximum square footage allowed, - with the condition that the second first class home occupation would be for violin instruction, that there would be no trade signs on the property and no employees, and that the combined square footage would be no more than 800 sf. John deCampi SECONDED the motion.***

Mr. McNitt said he could envision an increased demand for more than one home occupation in a property, and said it was important to be careful about this. There was discussion about this, and about the approach reflected in the motion.

Chair Gooze asked if this approach was acceptable to Mr. Kandle, and he said it was.

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

- F. PUBLIC HEARING** on a petition submitted by Courthouse Ventures, LLC, Hampton Falls, New Hampshire, for an APPLICATION FOR VARIANCE from Article XXIII, Section 175-133(F&G) of the Zoning Ordinance to permit signage exceeding the 96 square-foot cumulative allowed area by four (4) square inches, to allow two (2) identifying signs on each side of the six fuel dispensers, an identifying projecting sign and an additional gable-end donut/coffee shop wall sign. The property involved is shown on Tax Map 5, Lot 4-2, is located at 4 Dover Road, and is in the Courthouse Zoning District.

Chair Gooze opened the public hearing.

Mr. Johnson noted that this was a sign application, and was a different situation than a building permit application. He said he typically did not create a specific letter in response to sign applications.

He said the issue here was the number of signs that had been requested. He provided details on the signs being asked for. He said the wall sign and the projecting sign were allowed, in addition to the ground sign the applicant got a previous variance for.

There was discussion about the fact that the square footage of all of these signs together would exceed the allowable area by 4 square inches, and it was agreed that this was essentially irrelevant to the discussion.

Attorney Peter Starry, representing Courthouse Ventures, said the applicant had previously been allowed 3 signs, and said there were three gable end signs, as well as the donut shop hanging sign in the front and the pylon sign out front, for a total of five. He said the additional signs on the pumps brought the total number of signs to 29. He explained that the applicant had realized after the review

process with the Planning Board, when the sign permit was applied for, that the dispenser “signs” were considered signs under the Ordinance.

He noted that the hanging sign was something the Planning Board had liked, and he provided details on this. He also said the applicant felt that the signs on the pumps were not what the Ordinance was aimed at preventing, stating that they would only be noticed if one pulled in to get gas. He said it was felt that the signs would not be a nuisance, would not detract from the appearance of the property or the character of the area, and so would not diminish property values. He also said it was felt that the signs were consistent with other gas stations, all of which wanted some kind of identification for the gasoline.

He also said the sign on the gable end near the donut shop would not be very visible if one were parallel to the road.

Mr. Bogle said the Irving station was comparable to the Gibbs station, which did not have as many signs as the applicant was asking for. He provided details on this.

The sign contractor for Irving said the signs Irving wanted were fairly small, noting that the Gibbs sign on the wall facing the street was larger than what Irving was proposing.

Mr. Bogle questioned whether this size difference was sufficient to justify having twice as many signs at the Irving station, and said he wondered if all of the signs were necessary.

Scott Mitchell explained that he and Irving had worked hard with the Town on the architecture of the gas station building, and had also created a hanging sign that the Planning Board loved, near the Courthouse. He said at the time, he didn’t realize the restriction in terms of the number of signs, explaining that in all the other towns he had worked in, an applicant was allowed a certain amount of square footage for signs, which could be used however the applicant wanted.

He said he thought the hanging sign was important, and said he didn’t think it was overkill. He also pointed out that the Irving site was twice the size of the Gibbs site. He noted that the Planning Board had asked that Irving not include the canopy stripe, which also could be considered a sign, and said the company had agreed to this.

There was discussion about the signage on other Irving stations in the area.

**Frank Daniels, Brand manager for Irving,** said a key element of a fueling station was the entire look of the fueling area. He said a key thing the Planning Board hadn’t liked was the red lighted tube with the Irving logo on it, and said the company had agreed to not include this. But he said the company still wanted people to know they were at an Irving station, and said the pump was the only thing the Planning Board would allow a logo on. He said this signage was small, and could only be seen when one was in front of it.

Mr. deCampi questioned whether two Irving signs were needed on each side of each of the pumps. He said the lower one made more sense than the higher one.

Mr. Daniels said that was Irving’s look, and said the company would prefer not to vary from it.

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

Chair Gooze noted that if the extra signs were allowed, the Gibbs station could get more signs too. He then raised the issue of what limiting the number of signs meant, and what it actually accomplished.

Ms. Eng said she thought the purpose of the Ordinance was to keep signage clutter to a minimum, and she noted that Houghton Hardware had been required to limit the number of signs on its building. She said she thought the number of signs being requested for the Irving station was very excessive, and said the pole sign had everything one needed to see when entering a gas station.

She said she thought the hardship criterion was the only one the applicant didn't meet, and said there was simply too much clutter from so many signs. She said she thought the number of signs should be cut down, stating that she didn't think the Irving sign on the front of the building, and the coffee/donut shop sign were needed. She also said she didn't think the hanging sign was necessary.

Mr. McNitt said some giant steps forward had been made in terms of the neighborhood as a result of this project, and said this gas station was constrained compared to most gas stations. He said he didn't feel the signs would give any impression of clutter.

There was detailed discussion with Mr. Mitchell about why the sign square footage issue had not been noted earlier in the process.

Mr. Sievert said he liked the hanging sign, and said he also thought the coffee/donut sign was reasonable, because it showed where the entrance for this establishment was. But he said he didn't see why "Blue Canoe" had to be said 20 times. He noted that his office faced an Irving store in Newmarket that had this same kind of advertising.

Mr. McNitt said if there were more signs, that were smaller, there would be less impact than if there were half as many signs that were twice as big.

There was detailed discussion on the pump signs and why it was necessary to have two signs on each side of them, and especially why it was necessary to have a sign on the "shroud" of the pump.

There was discussion about the need for the coffee/donut shop sign. Mr. Mitchell explained that the gas station and the coffee/donut shop were now one integral building, because of a loading zone issue, but he said it was still important that each of the establishments could be entered through separate doors. He said this was why having the sign for the coffee/donut shop was so important.

Mr. Bogle asked if the coffee/donut shop sign could be replaced by an internal sign facing outward, and Mr. Johnson said this would still be a sign.

Chair Gooze asked members of the ZBA to go through the variance criteria.

Mr. Bogle said the question was why other businesses couldn't ask for this in the future if the ZBA made an exception now with this application. He said this spoke to the issue of the spirit and intent of the Ordinance.

Mr. deCampi asked if any signs other than the pylons would be illuminated, and was told no. He said that as gas stations went, this one was pretty conservative. He said although the signs didn't meet the Ordinance, they didn't look big. He said he didn't really see why two signs were needed on each side of the pump, while also noting that gas pump pylons were never very pretty, with or without signs. He said he was probably willing to grant the variance, because it didn't bother him, as gas stations went. He noted that the Gibbs station was not that attractive.

There was additional discussion among Board members about the number of signs, and about the appearance of the gas pump pylons.

Chair Gooze said he would vote against this application as it was currently presented, and asked the applicant if he had another proposal the Board could consider.

Attorney Starry suggested that the sign on both sides of the shrouds for each of the pumps could be taken off, and asked if that would be a sufficient change.

Mr. Johnson said this would mean 12 of the signs would be eliminated.

Mr. deCampi said this would cut down the number of signs dramatically, and said he thought this would help a lot.

Chair Gooze noted that the issue of exceeding the square footage requirement would go away if this were done. He asked how the remaining signs would conform with the Ordinance, and there was detailed discussion about this.

Mr. McNitt said removal of the shroud signs would definitely reduce the signage clutter as seen from the street.

***John deCampi MOVED to grant the APPLICATION FOR VARIANCE from Article XXIII, Section 175-133(F&G) of the Zoning Ordinance for the property located at 4 Dover Road, in the Courthouse Zoning District, to permit signage exceeding the 96 square-foot cumulative allowed area by four (4) square inches, to allow two (2) identifying signs on each side of the six fuel dispensers, an identifying projecting sign and an additional gable-end donut/coffee shop wall sign, except that the 12 signs called shroud logos will not be employed, thereby making the request for 4 extra square inches unnecessary, - as per drawing 850 submitted with the application. Ted McNitt SECONDED the motion. The motion PASSED 3-2, with Linn Bogle and Myleta Eng voting against it.***

9:05-9:15 Recess

**G. PUBLIC HEARING** on a petition submitted by Judith Ward, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article II, Section 175-7, Article XII, Sections 175-54 and 175-55(D) of the Zoning Ordinance to permit a change in a lot classification from conforming to nonconforming due to a reduction in frontage from a proposed lot line adjustment. The property involved is shown on Tax Map 14, Lot 16-0, is located at 235 Packers Falls Road, and is in the Rural Zoning District.

Chair Gooze said Mr. Bogle would recuse himself for this application, and Mr. Sievert would be appointed as a voting member in his place.

Judith Ward said she was asking for a variance for a nonconforming lot. She said although she had a lot of land on her property, her house was built on a narrow part of Packers Falls Road land, and she explained that she didn't have enough room to build a garage near it. She said the Todd/St. Onge family would like to swap a portion of their Packers Falls land for a portion of her Wiswall Road land, in order to give her more space near her house on Packers Falls Road to build the garage.

She said that as a result of the land trade, her total frontage would decrease, going from a conforming lot with more than 300 ft. of frontage to a non-conforming lot with 244 ft. of frontage. She said the swap would not influence the quality of the neighborhood.

Mr. deCampi asked if there was any way the applicant could keep another 60 ft. of frontage so the lot did not become nonconforming. There was discussion about this with the applicant.

Mr. Sievert noted that he would be doing a project with Mr. Todd, which did not involve this land. The Board and the applicant determined that it was not a problem that he be a voting member for this application.

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

**Cheryl St. Onge, 225 Packers Falls Road**, said she supported this application, and also read a letter from Robert and Nancy Harter in support of the application.

Ms. Eng asked when the garage was to be built, and Ms. Ward said by the winter, if possible.

In answer to a question from Ms. Eng, Mr. Johnson said if the variance were granted, the applicant would submit the building permit application, and frontage would not be an issue, as long as the proposal met the setback requirements. He said the next step would be for Ms. Ward to go to the Planning Board for a boundary line adjustment.

**Nat Balch, 20 Wiswall Road**, said he thought this was an appropriate measure to take, and said he took no exception to it.

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

Mr. Seivert said he didn't see a problem with this application, noting the lot was not especially small.

Mr. McNitt said this was a reasonable request, and met the variance criteria.

Ms. Eng said she agreed, and said granting the variance would still maintain the rural nature of the property.

Chair Gooze said he agreed with the other Board members. He said no harm was being done in granting this variance. He said the neighborhood would not be impacted, and said granting the variance was therefore in the public interest. He said the application met the variance criteria. Mr. deCampi agreed that no harm would be done in granting the variance, and Ms. Davis agreed as well.

***John deCampi MOVED to grant an APPLICATION FOR VARIANCES from Article II, Section 175-7, Article XII, Sections 175-54 and 175-55(D) of the Zoning Ordinance to permit a change in a lot classification from conforming to nonconforming due to a reduction in frontage from a proposed lot line adjustment for the property located at 235 Packers Falls Road, in the Rural Zoning District. Myleta Eng SECONDED the motion, and it PASSED unanimously 5-0.***

**H. PUBLIC HEARING** on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Article XIV, Section 175-74(A) of the Zoning Ordinance to rebuild a single family home with accessory apartment, addition, porch and a pool within the sideyard and shoreland setbacks. The property involved is shown on Tax Map 12, Lot 2-12, is located at 8 Cedar Point Road, and is in the Residence C Zoning District.

Chair Gooze opened the public hearing.

Attorney Bill Tanguay represented the applicant, and provided some history on the property. He said the property had been in Mrs. Sidmore's family since 1938, and was originally a camp. He said the existing house there was built in 1966, and was essentially a mobile home. He said there was a foundation that was 20 ft. by 50 ft. He provided details on porches that were added on later, noting there were no foundations under them. He explained that the building was problematic, especially since it was only 20 ft. deep, and was also in need of substantial repair and renovation.

He said it wasn't a property that was easily conducive to repairs, and said what made the most sense was to take the location of the existing structure and go back 10 ft. toward the property line, put a new structure on top of this footprint, and put a foundation under all of it. He said the dimensions as a result of this would be 62 ft. by 30 ft.

He said it was proposed that a farmer porch be put on the front and southern sides of the house. He explained that almost the entire lot was already located within the 125 ft. shoreland setback, noting that the only portion not within the setback was the northern most triangular portion of the property, where the 18 ft. by 38 ft. in-ground pool was proposed.

He said that expansion of the existing house would violate the 125 ft. shoreland setback, and had a violation of the sideyard and rear yard setbacks. He said the pool didn't violate the shoreland setback, but did violate the setback from the abutter's property.

Attorney Tanguay said the property was unique in many ways, stating that the building was much smaller than the other homes in the area. He provided details on this, and said what was proposed for this property would make it more similar to the other properties.

Chair Gooze asked if these existing neighboring houses were also located within the shoreland setback, and Attorney Tanguay said no.

Attorney Tanguay said there were other ways in which the property was unique. He noted the proximity to the bay, and said the existing house on the property was tucked as far back from the bay as possible. He said the applicant didn't want to have to move the house to another location on the lot, stating this would result in a series of problems, - having to tear up the foundation, move the well and the septic system. He noted there would also be problems with the driveway. He also stated again that the existing house was in poor condition, and was only 20 ft. deep.

Attorney Tanguay said the applicant wanted to keep the house as far from the bay as possible, but he said that keeping it there, and expanding it at all would require a variance. He noted a letter from the applicant's engineer that said the current location of the house was the only place on the site it could really be put.

He also explained that the location for the proposed pool would keep it beyond the shoreland setback, and also said that tucking it into the corner would avoid impacting views. He said trees and shrubs would be planted so the pool wouldn't impact the neighbors.

Attorney Tanguay said the application had been looked at by the State and the Conservation Commission, and said no problems had been found with it.

He said granting the variance would not decrease the value of surrounding properties, noting that the existing building really needed help. He also said what was proposed would not put a burden on municipal services, and would cause no harm to the public, so on balance was in the public interest.

He said this was an area variance being requested, and said the special conditions of the property were that this was a house that was not compatible with the neighborhood. He also noted the existing well, septic system and driveway, and the fact that the house was pushed back as far from the water as possible.

He quoted the 2005 Vigeant case, which determined that whether a use was reasonable was not appropriate to consider with an area variance. He said the only factor to look at was whether there was a different place to put the use so an area variance wouldn't be required, given the special conditions of the property.

Attorney Tanguay said substantial justice would be done in granting the variance, stating that what was proposed would improve the neighborhood. He said there was no public interest that would be harmed in granting the variance.

He said granting the variance was not contrary to the spirit and intent of the Ordinance, noting that this was not the same thing as the letter of the Ordinance. He said what needed to be considered was what the purpose of the Ordinance was, and whether this proposal would do anything that threatened that. He said the shoreland overlay was meant to protect water quality, conserve the beauty of the shoreline, and to allow uses of land that were consistent with those objectives. He said nothing in this proposal violated those purposes.

He said the proposal would preserve the scenic beauty and rural character of the area, especially because the house was as tucked back as possible from the water. He said what was proposed would not be going toward the water in any way. He said the building site was pretty high, and said there

was a considerable drop as one got down closer to the water. He said there was nothing that was proposed that would be detrimental to the shoreline.

He said he didn't think there was anyone who was against the application. He noted that abutters Bruce & Ellen Bates were not present, but were in full support of the application. He asked that the letters of support be read into the record.

Chair Gooze asked about the issue of possible runoff into the bay, noting that what was proposed was an expansion, and that the distance from the farmer's porch to the water was about 45 ft. He said with another recent application, the runoff issue, and what would be done with the water, had been discussed, and asked if consideration had been given to this for this application.

Attorney Tanguay said an engineering study had not been done of runoff issues. He said the Conservation Commission had suggested that a dredge and fill permit application be completed, and said the State had determined that no dredge and fill would actually be going on, and that there would be no impact to wetlands.

There was discussion about the court cases Attorney Tanguay had cited.

Mr. Bogle said Durham's shoreland ordinance allowed a property owner to build on the existing footprint, and to expand up to 15%, and to encroach to the reference line with uncovered decks. He said Attorney Tanguay's interpretation of the court decision in essence gutted Durham's Ordinance.

Chair Gooze provided details on discussion of a case similar to the Vigeant case at a recent planning and zoning conference. He said he felt the application met the hardship criteria, but said he thought the issue for this application would be whether it met the spirit and intent of the Ordinance, - the question being whether it would do harm to the bay. He said the applicant needed to convince the Board that it would not.

Attorney Tanguay said when one looked at the purpose of the Rural Coastal zone, there was nothing in this application that violated that. He said what was proposed would keep the land as open as possible, and would improve the appearance of the property from the water.

He noted a court case in Rockingham County that said that unless the ZBA had some evidence that showed there would be negative impact to a creek, a variance needed to be granted. He said it was not the applicant's job to show otherwise.

He said there was no negative impact here that he could see. He said there wasn't an engineer who could say where the runoff would go, but said there was an existing structure that would be made bigger.

Chair Gooze noted that Attorney Tanguay had cited one court opinion, and said these opinions certainly varied.

Mr. McNitt asked about the construction that would be involved, and Attorney Tanguay provided details on this. There was discussion about this.

Mr. Bogle noted that the drip line of the building would be increased by 125%.



Mr. McNitt said the question was how much imperviousness there would be on the site.

Mr. Bogle asked if there would be a full basement under the house.

Attorney Tanguay said the existing basement would be maintained, and said the new foundation would run 62 ft. by 30 ft. There was discussion about how the basement would change, noting there would not be a full basement to reflect the expanded foundation.

Chair Gooze quoted from the Bacon Supreme Court case. He said he was concerned that the property was being expanded greatly, and noted that the other structures in the area were not located within the shoreland setback. There was discussion about this with Attorney Tanguay.

Phil Sidmore provided details on how the shoreland setback ran through his property.

Attorney Tanguay discussed the Bacon case, and noted that this case was heard before it was decided there was a difference between an area variance and a use variance. He said in that case, there were three separate opinions, and he provided details on this.

Chair Gooze said he was using this case because in his mind, this application came down to the spirit and intent of Ordinance and the public interest in regard to the shoreland.

Attorney Tanguay noted the purposes of the shoreland ordinance. He said this application wouldn't impact the shoreland, noting it would minimize pollution by keeping the house and foundation work as far from the water as possible. He said the property was unique because there was no other way this could be done, unless another mobile home simply replaced the old one on the property.

Chair Gooze asked whether Attorney Tanguay was saying it would be up to the Board to come up with numbers on runoff.

Attorney Tanguay said it was up to someone who was opposed to this application, and would be saying the application would be violating the Ordinance. He said the ZBA didn't have the ability to say there might be a problem, when it didn't have evidence that showed this.

Mr. Bogle noted the letter from Lois Roberts, in reference to Attorney Tanguay's point that there was no opposition from abutters. He said this letter was in opposition to the application.

Mr. deCampi said there were seven letters that spoke in favor of the application, and one opposed to it.

Mr. McNitt asked what the acreage of the property was, and was told it was about  $\frac{3}{4}$  acre.

Chair Gooze asked whether, if the Board wanted something to be presented by the applicant concerning runoff, it could get this

Attorney Tanguay said yes, and suggested that rather than rescheduling the application hearing, the Board could grant the variance conditional upon getting an engineering report that there were no runoff issues.

Chair Gooze noted that letters in support of the application had been received from Calman, 3 Cedar Point Road; Valentine, 28 Cedar Point Road; Sullivan, 42 Cedar Point Road; Johnson, 190 Piscataqua Road; Cleary, 26 Cedar Point Road; Bates, 10 Cedar Point Road; and Brooks, 12-14 Cedar Point Road.

Attorney Tanguay noted there was also a letter in support of the application from Delude at 9 Cedar Point Road.

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

**Frank Heilig, 11 Cedar Point Road**, said part of his property was directly opposite the driveway of the proposed project. He said Mr. Sidmore had reviewed the plans with him and others, and said he believed what was proposed was consistent with the spirit and intent of the Ordinance. He noted other variances that had been granted by the ZBA for properties in the area, and said he was thankful for this because the neighborhood had been upgraded, and had become a lovely area. He said he hoped the Board would grant this variance. He also said that in terms of runoff, the Town could do the bay a favor by correcting runoff that flowed down the dirt road into the bay, day after day.

**Steve Kalvelage, 2 Cedar Point Road**, said that by granting the variances, there would be a substantial improvement in the neighborhood. He said he had a direct view of the property in question, and said it would be a substantial injustice if this property were not improved. He said he was definitely in favor of granting the variance.

**Lois Roberts, 6 Cedar Point Road**, said she directly abutted the property in question. She stated that the existing house on that property was less than beautiful, and said she had no objection to what was proposed. But she said she did have some major concerns about the proposed pool. She said the location for the proposed pool was about 10 ft. from her property line, and said this would be directly under her bedroom window.

She noted that the land the pool would be on sloped up from the driveway, which would put it at a second story level relative to her house. She said she was especially thinking about the future of the property, and said she was concerned about protecting her own property.

Mrs. Roberts also noted that the map indicated there was an existing cottage on the property, and she said it was really a shack. She said if it was called a cottage, and was allowed to stay, there eventually would be someone living in it. She said she wasn't sure what the Board would want to do with it.

Mr. Roberts said the house would be a wonderful addition to the area. He also said he had talked to Mr. Sidmore about the location of a pool, and said it apparently was moved over time, and was now at location he wasn't in favor of, - 10 ft. from his property line. He noted that he had wanted a pool on his property some years back, but was turned down. He said he didn't see any problem with moving the Sidmore's proposed pool down further, but said it was definitely a problem as presently proposed in the corner.

**Robert Calman, 3 Cedar Point Road**, said his bedroom was located right next to the pool on the property where the Sidmores presently lived. He said he could truthfully say he had never been awakened by noise from the pool in 20 years.

Attorney Tanguay said that in regard to a previous denial of a pool for the Roberts property, this was likely before the change in the Ordinance, and said this was therefore not relevant to the present situation.

He also said the reason the pool had been placed in the presently proposed location was to keep the pool out of the shoreland setback. He said this area was well screened by shrubbery and trees, and said the pool could go in without disturbing that. He said it wouldn't block anybody's view. He said putting the pool farther down toward the water along the Roberts' lot line could impact their view, and would also be within the shoreland setback.

Chair Gooze asked why the pool would affect the shoreland, when Attorney Tanguay had been arguing that the house would not.

Attorney Tanguay said he didn't know that it would, but said putting the pool outside the shoreland setback would mean one less variance would be needed, and also said moving it might mean that it would be in the line of sight of someone looking back at the land from the water and shore. He also said the applicants didn't want the pool to be behind the house because there was even less room there, it would be within the shoreland setback, and because someone in the pool would have a view of the house, not the bay. He said in the proposed location, the pool would not be seen from the road or the water, and would not violate setbacks.

Mr. deCampi asked if a fence on the Roberts' side of the pool might be something that would solve the problem. He asked what could be done to make this work.

Attorney Tanguay said that perhaps more shrubbery and trees could be planted. He said the applicants would be happy to live with certain conditions, including no lighting after a certain time of day.

Mrs. Roberts said she thought an 8 ft fence would cut off the view of the water, and said she would hate that. She said perhaps a smaller fence would work.

Attorney Tanguay said the pool could be moved back about 5 ft. further from the Roberts property line, although noting that it would be within the setback. He also said shrubbery or whatever was suggested as a vegetative buffer could be put in. He said the applicant would be glad to do whatever was suggested by the neighbors and the Board.

Chair Gooze closed the public hearing.

There was discussion that in order to make a good decision on this application, perhaps the application could be continued, and a site walk could be done. It was agreed that the site walk would take place on Monday, June 19<sup>th</sup> at 6:00 pm.

Chair Gooze closed the public hearing.

Attorney Tanguay noted that he would not be available for the July ZBA meeting.

***John deCampi MOVED to continue until the July 11, 2006 ZBA meeting the APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Article XIV, Section 175-74(A) of the Zoning Ordinance to rebuild a single family home with accessory apartment, addition, porch and a pool within the sideyard and shoreland setbacks at 8 Cedar Point Road, in the Residence C Zoning District. Linn Bogle SECONDED the motion, and it PASSED unanimously 4-1, with Chair Gooze voting against it.***

**III. Approval of Minutes – May 9, 2006**

Under Members Present on page 1, it should say Chair Jay Gooze, Vice Chair Ted McNitt, and Secretary Myleta Eng. Under Others Present, it should say Zoning Administrator Tom Johnson.

***Linn Bogle MOVED to approve the May 9, 2006 Minutes as amended. Myleta Eng SECONDED the motion, and it PASSED unanimously 5-0.***

**IV. Other Business**

None

**V. Next Regular Meeting of the Board: \*\*July 11, 2006**

**VI. Adjournment**

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

Adjournment at 10:45 pm

Victoria Parmele, Minutes taker

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Myleta Eng, Secretary