

These minutes were approved at the August 8, 2006, meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, JULY 11, 2006
TOWN COUNCIL CHAMBERS – DURHAM TOWN HALL
7:00 P.M.**

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

MEMBERS ABSENT

OTHERS PRESENT: Members of the Public, Zoning Administrator Tom Johnson; Minutes taker Victoria Parmele

I. Approval of Agenda

Chair Gooze said applicant Paul Berton had asked for a continuance concerning Agenda Item K, and suggested that the application be continued to the next meeting.

Linn Bogle MOVED to amend the Agenda to continue the Berton application to the next meeting. John deCampi SECONDED the motion, and it PASSED 5-0.

Chair Gooze suggested combining the three Tonkin variance applications (Agenda Items B, C and D). He noted they were all area variances being requested, and said it was appropriate to do this.

He said there was an Agenda item for continued discussion on a previous application by the Sidmore's, as well as a new application from them because it had been realized that a variance was needed for a proposed volume increase. He noted that the hearing had been closed on the other variance issues, and suggested that there be a combined hearing on these two items, but to allow testimony at the hearing only for the volume issue.

It was noted that the Board had received a letter from the Roberts, who were abutters to the Sidmore property. After some discussion, the Board agreed to open the public hearing to discussion on both of the Sidmore's variance applications.

The applicants for both the Tonkin and Sidmore applications agreed to the approach of combining applications.

Ted McNitt MOVED to amend the Agenda, to combine the Tonkin variance applications, and to combine the Sidmore variance applications. John deCampi SECONDED the motion, and it PASSED 5-0.

II. Public Hearings

- A. 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.

Mr. Christensen explained that his attorney was running late because of a storm. It was agreed that this Agenda item would be considered after the Tonkin applications. The application was heard at 8:12 pm –after the Tonkin applications
POSSIBLY MOVE THIS TO AFTER TONKIN??

Chair Gooze opened the public hearing.

Attorney Sharon Somers said the applicant had been before the ZBA two previous times, and on both occasions, the variance applications were denied. She noted there had been two appeals to Superior Court. She said she would first like to address the issue of whether this application was materially different than the previous applications. She said she would then like to go through the variance criteria that had not been disputed previously, and then would like to focus discussion on two criteria – the public interest and the spirit and intent of the Ordinance. She said she hoped the Board would agree that the applicant had made huge strides to accommodate the Board's concerns, and that no further appeals would be necessary.

Attorney Somers said the Board first needed to make a finding that this application was materially different than the previous applications, and said it was in fact different, because the applicant had proposed a reduction in the amount of covered deck that had previously been proposed. She said the current proposal would result in an additional 47 sf. of added roof coverage.

She also said a drainage analysis had been done, which showed the impact of the proposed development, and also said a drainage system had been design which included a permanent drainage trench.

Attorney Somers said she believed the applicant's current proposal was analogous to another case, Fisher v. Dover, where a ZBA had concerns about the size of the house, and had determined the second application was materially different. She asked that the Board take this into consideration, and reach a consensus that there were material differences between this application and the previous applications.

John deCampi MOVED that the ZBA find that this application is materially different than the previous applications, and that the Board should hear the Christensen application. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

Attorney Somers first whet through the variance criteria that had not been disputed previously.

She said there would be no decrease in the value of surrounding properties, stating that the decks that were proposed were similar to those of surrounding properties. She said the applicant would in fact be upgrading the property, and would be increasing property values.

She said the variance test for hardship looked to whether the proposed use was reasonable for the allowed single-family use. She said the proposed deck was consistent with single-family use, and would also provide a second access to the home, which was critical. She also explained that the applicant couldn't do the proposal without a variance due to the configuration of the lot, which had an irregular shape. She noted that the house was located entirely within the shoreland zone.

Attorney Somers said the substantial justice variance criteria involved a balancing test. She said the applicant would benefit from the deck, which was similar to others in the area. She also said that because of efforts to address drainage issues, there would be no adverse impacts to the public, so the balance leaned toward granting the variance.

She showed several photos of other properties in the area, which had decks, gazebos, boathouses, etc, and noted some of the structures were larger than what the applicant had proposed. She provided details on many of these properties, and said the applicant had the right to be treated the same as others. She said that in terms of the substantial justice component, it was important to compare what was proposed to what these photos indicated. Attorney Somers said Mr. Christensen had vastly improved the property, and had gone beyond the call in terms of trying to respond to the Board's requests. She said the public would not be injured by what he was proposing.

Attorney Somers noted the Board's concerns previously had been roof coverage, and said what was proposed, an additional 47 sf of roof coverage, was very minimal. She also said the drainage system would address any perceived or actual health and safety issues, and said what the applicant was proposing would actually go beyond complying with the spirit and intent of the Ordinance.

She noted that for a previous deck and porch application for a property in the shoreland zone, one of the Board's concerns was the spirit and intent of the Ordinance concerning preserving rural character and scenic beauty in the RC zone. She said if one looked at what was proposed as compared to what was shown in the photos of properties that had been provided, as seen from the water, what was proposed would not detract from the view of the property from the shore. She said there was therefore nothing about what was proposed that violated the purposes of the Ordinance.

Attorney Somers said that concerning the public interest variance criteria, what was proposed did not threaten the public health, safety and welfare. She said the drainage analysis had determined that this issue was not a concern, but said the applicant had still proposed installing a stone trench drainage system, so there would be no possible threat to health, safety and welfare.

She said that based on what was in the photos that had been provided, it could not be concluded that what the applicant was proposing would conflict with the essential character of the neighborhood. She also noted that neighbor Richard Gallant had said that by having the deck there, this would encourage people using the house to stay off the environmentally sensitive

shoreland, so not only was the proposed deck not detrimental to the public interest, it would actually be enhancing the public interest.

Attorney Somers said that unless there was some other evidence presented, there was no evidence that what was proposed was a threat to health and safety. She said in the absence of such contrary evidence, the Board should find that there was no detriment to the public interest from the proposal.

Attorney Somers noted that Mr. Rist's calculation that there would be a 42 sf increase in the deck was incorrect, and said the correct number was 47 sf. In answer to a question from Mr. Bogle, Attorney Somers said the 47 sf. piece of deck the applicant was proposing to cover was the front right corner of the deck area.

Dan Tatum, Beals Associates, explained that the applicant had asked him to do a detailed drainage analysis of the existing property and proposed addition of the deck and covered porch. He said he had done three hydrocad drainage analyses, one with the corner piece covered, one with the corner and left front piece covered, and one which showed the whole front of the house covered. He provided details on this, and said it had been determined that there would be no increase from the first option as a result of a 100 year storm event. He said with a trench system and gutter system, the site would experience a decrease in total runoff, with any of these options.

Mr. deCampi asked if a trench system was part of the application at this point, and was told it was. It was also determined that the trench system would be used for drainage at the rear of the house as well. There was discussion about the trench design.

There was discussion about the pictures of other structures. Attorney Somers said in terms of the public interest and whether the decks were desirable, the issue was whether the deck fit with the character of the neighborhood, not the ideal of what one would like to see.

Mr. deCampi asked whether, if the variance were granted, the applicant would withdraw the court cases.

While Attorney Somers was speaking with the applicant about this, Chair Gooze read a letter from neighbor Richard Gallant, which spoke in favor of the variance request.

Attorney Somers said Mr. Christensen had no intention of pursuing court appeals, but said nothing could be said for certain at the moment. She said he needed time to consider the situation, and to take one step at a time, and she stated that the ZBA's job was to consider the evidence before it.

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

Mr. Sievert said he had not had a big problem with the applicant's previous application, and said the Board had now seen that the drainage issue was insignificant. He said he believed the application met all five of the variance criteria, especially with the reduction in the cover for the porch. He noted the language in the application concerning encroachment on Great Bay, which appeared to be incorrect.

Chair Gooze asked for clarification on this from the applicant.

Attorney Somers said the wording said the deck could not encroach further than 12 ft. toward the high water line, and said the proposed addition did not.

Mr. Sievert said a problem he had with the application was that it was unfortunate that the applicant had to exploit other Durham citizens' houses in order to get something approved. He provided some detail on his feelings concerning this.

Mr. McNitt said steps had been taken with this application to ameliorate the number one concern, surface runoff. He said it was very unlikely that granting the variance would decrease the value of surrounding properties, and said the public interest would be served by the changes. He said the applicant had done his best concerning the hardship element, and also said the substantial justice criterion was met. He stated that what was now proposed was as far along in meeting the spirit and intent of the Ordinance as could be expected, given that the ZBA had already agreed that the building could be rebuilt.

Ms. Eng noted that the Master Plan spoke about the problem of incremental changes to the shoreland area as being a substantial threat. She said that while building so close to the shoreland, might be ok in this case, the cumulative effect might be detrimental. She questioned whether an increase of 30% in the size of the porch was really necessary. She said she was ok with the drainage issue, but said her main concern was whether the spirit and intent of the Ordinance was met. She said she would like to hear what other Board members had to say.

Chair Gooze noted that he had been in favor of granting the variance when the applicant's previous application was heard. But he questioned the comment that the Board had to make the same decision for each property in the shoreland, and said the decision could change depending on the property involved.

He said the Board members who voted against the previous application were concerned about the drop-off near the house that was so close to the shore, and said he thought that this had been taken care of, and that the applicant had done what the Board had asked him to do.

Mr. deCampi said he was reasonably in favor of approving the variance request as presented that evening. He provided details on conditions that he felt should be attached to such an approval, concerning the spacing between the boards on the deck; material to be placed under the decks to break water flow passing through the deck; and the trench and downspout system to be constructed.

Mr. Bogle said what he saw was happening in the shoreland zone was a ratcheting up effect, where more and more old camps were being torn down, and property owners wanted to build larger homes.

He said the concerns he had with the previous application had to do with the corner of the top left portion of the porch being so close to the shore, and noted that he had suggested that this be cut down a bit so it didn't hang over the embankment. He said that corner had now been cut out, which eliminated some of the encroachment on the embankment. He also said the idea of a full

length covered porch had been a problem for some because of the increase in impervious cover that would be involved. But he said this had been cut back. He also noted that the small addition would allow better entrance to the building.

Mr. Bogle said his major concerns had now been addressed, and said he would accept the proposed plan, as shown in the July 11, 2006 drawing.

Ms. Davis said the engineered drainage plan looked good. She noted that the impervious coverage issue was a cumulative one, and that Durham's stringent requirements were intended to limit it. She said she would support the application.

Ms. Eng said she would vote in favor of approving the variance application, with the conditions proposed by Mr. deCampi.

Code Administrator Tom Johnson noted that one of the conditions proposed concerned the space between the boards on the deck. He said the applicant would be building with green building products, and said the spacing between Boards that Mr. deCampi had proposed would be hard to match with these materials.

There was discussion about this, and about how the runoff under the deck should be handled. It was agreed that no skirting was needed around the deck.

John deCampi MOVED to grant the 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, at 595 Bay Road, in the Residence C Zoning District, with the following conditions:

- 1) that the construction be in accordance with the plans submitted;***
- 2) that the decks have sufficient open space between the boards, to be determined by Mr. Johnson, to allow them to pass water and not become impervious;***
- 3) that there be fabric and stone under the decks to break the water flow that goes through the deck;***
- 4) that the trench and downspout system be implemented.***

Myleta Eng SECONDED the motion, and it PASSED unanimously 5-0.

- B. CONTINUED 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.
- C. PUBLIC HEARING** on a petition submitted by Kevin & Kristine Tonkin, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A)(2) of the Zoning Ordinance to rebuild a single family home, artesian well and shed within the wetland 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.

- D. PUBLIC HEARING** on a petition submitted by Kevin & Kristine Tonkin, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article IX, Section 175-30(D)(3)(d) of the Zoning Ordinance to rebuild a single family home within the shoreland and wetland setbacks with an increase in building volume of more than 30 percent. 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 said Agenda Items B, C and D would be combined, as discussed previously. He then opened the public hearing.

Mr. Tonkin passed out a letter from NH Soil Consultants, and he and his wife summarized the findings of the site assessment the company had done on June 28, 2006.

He said what was proposed was to move the house back 32 ft. back from the shoreline, which would mean 60 ft. of riparian border would return to its natural state. He said the new structure proposed would have a smaller footprint than the existing structure, and would be located further from the river, although it would still be within the 125 ft. shoreland zone. He said this would not result in increasing the violation of the shoreland setback.

He said the new structure proposed would remain the same distance from the wetland setback at the closest point, but said the rest of the structure would be moved further away from it. He also said the existing non-conformity would carry through from the old to the new structure.

The Tonkins then read through how what they were proposing would satisfy the five-variance criteria, as they had done the previous month.

In answer to a question from Mr. Sievert, Mr. Tonkin said the house would be located a couple of ft. above the 100 yr flood elevation, and said it would meet FEMA guidelines.

Mr. McNitt asked how the building would be supported, and Mr. Tonkin explained that he wanted to put in a concrete structure that would allow floodwaters to flow through it. He said no utilities would be placed in the crawl space.

Chair Gooze read the minutes from the site walk of the property.

Ms. Eng asked where the well and the shed would be located.

Mr. Tonkin said the shed would remain in the existing location, and said the well would be located close to, but further south of the existing well.

Chair Gooze asked if the well had been flooded the last time that flooding occurred, and was told no. He also asked if the garage had been flooded, and was told no. He asked if the applicants had given any consideration, before building their house, to put the house where the garage was put. He noted that this would be outside of the flood zone.

The Tonkins explained that the original structure, near the river, was grandfathered, and said they hadn't seen there was an option to move.

Chair Gooze asked how much of an incursion into the wetlands there would be if the house were built in the garage area, and was told there would not be an incursion.

Mr. deCampi asked exactly how high the Tonkins proposed to raise the first floor elevation above current grade, and was told this would be about 4 ft.

Chair Gooze asked how much of an increase in volume there would be in the proposed structure, and was told it was about a 39% increase.

Mr. Bogle observed that the new house would still be located within the current flood zone. He said this was a concern to him, and said he wondered if it was a concern to the builders.

Ms. Davis asked about the possibility of putting the new house up by the existing garage, and there was detailed discussion on this among Board members and Ian Trefery of NH Soil Consultants.

Mr. Trefery said the proposed location was currently an open, maintained lawn, and noted that there was an existing forested buffer that would remain. He said the design of the structure was such that it would be flood tolerable, and said in his opinion, the currently proposed location would make the property more nearly conforming to the regulations, and would result in the least impact on the environment.

Mr. deCampi said his concern was that the new house would be located within the 100-year floodplain. He asked if there was any possible location to put the house outside of the floodplain, assuming the Board was willing to grant the variances.

Mr. Trefery said relocating the house as suggested was not feasible because in order to do so, the existing septic system would have to be moved, the garage would have to be removed, and the natural woodland buffer would have to be cut. He also said the location couldn't be changed without hardship to the Tonkins.

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

Roland Marquis, 304 Newmarket Road, said he enthusiastically supported the granting of the variances. He said the neighbors supported this, and said it was a win-win situation.

Michelle Colgan, 310 Newmarket Road, said this was a small neighborhood, and said she couldn't imagine a better place to live. She said what the Tonkins were proposing would make the property better.

Sally Craft, 300 Newmarket Road, said she had watched as the Tonkins had invested heavily in their property, including putting in a new septic system. She said they were truly stewards of the neighborhood and the river, noting that even during the flooding, Mr. Tonkin was taking debris out of the river. She said that moving the house back would only be a win-win situation for everyone. She recommended that the variance be approved, and said the both the neighborhood and the Town of Durham would suffer if this family had to relocate.

Chair Gooze asked if any members of the public wished to speak against the applications. Hearing no response, he closed the public hearing. He then noted that all three variance applications that were being considered were area variances.

Ms. Davis said she realized that the proposed house would, like the existing house, be partially submerged if there were a repeat of the recent flooding. She said concerning the issue of hardship, that putting the house anywhere else than what was proposed was not feasible, financially. She said this might be the only feasible option, although it was not preferred choice of the Board because the property could flood again. But she said they were looking at a situation where a building would be constructed so that it could withstand water flowing through the bottom of it.

Ms. Davis said she did not think granting the variances would decrease property values, and said she believed that substantial justice would be done in granting them. She said granting the variance would be somewhat contrary to the spirit and intent of the Ordinance, whose purpose was to protect the river from sedimentation and pollution. She said this was an issue when an entire home could be flooded. But she noted there were provisions in the Ordinance about building flood-proof homes.

Mr. Bogle said he didn't see that there would be a decrease in the value of surrounding property values by granting the variances, and said he didn't think granting them would be against the public interest. He said the situation met the hardship definition because of the unique conditions. He said he found the proposed location a bit of a problem, although stating that he gathered the house would be raised, so that the first floor of the house would be at least 4 ft. above the level of the current house. He said this would mean that the house would be above the 100-year flood level, so that at least living space wouldn't be flooded, in a flood like the one that had recently taken place.

He said what was proposed would be an improvement, and said it would be substantial justice if the variance were granted. He said he believed the application met all of the variance criteria.

Mr. deCampi said it bothered him that the house was proposed to be put in this location, where he believed there would be more flooding, but he noted that the Mr. Trefery had said there was really no other practical place to put the house. Mr. deCampi said he had to accept this, because he didn't have the knowledge to challenge it. He said his issue with this was whether it was in the public interest to build in this area, but he said he was prepared to vote in favor of the variance requests.

Chair Gooze went through the area variance hardship criteria, and said he felt the applications met these. He said the only question he had was whether there was anything other than what was proposed that would not be too expensive to do. He said the Board members were saying there was not.

He said that concerning the spirit and intent of the Ordinance criterion, the Board was always trying to get something that was good for the shoreland. He said he thought what was proposed achieved this. He also said granting the variances would not result in a decrease in values of surrounding properties. He also said he believed that substantial justice would be done by

moving the house back. He said this wouldn't injure the rights of the public, so was in the public interest, weighing everything together.

Chair Gooze noted that the applicants had the option because of grandfathering to reconstruct the house where it currently was if the Board did not grant the variances. He said he would vote in favor of the variance requests.

Ms. Eng said she didn't think that granting the variances was contrary to the public interest or the spirit and intent of the Ordinance. She too noted that the applicants could rebuild on the existing footprint, and would not have to get a variance in order to do this. But she said it was in their best interest to move to the proposed location, and she noted that doing so would not result in an increase in violations. She also said the applicants were rebuilding out of necessity, not because they had wanted to.

Mr. McNitt said the variance criteria were well covered by other Board members. He noted that he had the same haunting feeling about flooding that other Board members had. He said he was willing to support these variance applications, but said he would be much happier that if for each foot the house was pushed back from the shoreland, it was built one foot higher, to make the situation better for the Tonkins, the neighborhood, and the Town.

Mr. Sievert said the variance applications met all of the variance criteria.

There was brief discussion about the roof area of the proposed house, and whether this would be an increase from the roof area on the existing house.

Chair Gooze asked whether the increase in the volume of the house would impact anything. Mr. Sievert stated that since the house was being moved back farther from the shoreland, the volume increase was not as much of an issue. It was noted that the applicants would be using the same septic system. Board members indicated they didn't have a problem with the volume increase.

John deCampi MOVED to grant the variances applied for by Kevin & Kristine Tonkin, 298 Newmarket Road, as listed in the Agenda under B, C, and D, in accordance with Doucette Survey dated June 7th 2006. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said that because of the hour, some of the applications would not be heard that evening. It was agreed to hold another ZBA meeting on July 25, 2006, for at least the Krist application.

- E. CONTINUED 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.

- F. PUBLIC HEARING** on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article IX, Section 175-30(D)(3) of the Zoning Ordinance to rebuild a single family home with accessory apartment within the shoreland setback with an increase to the building size. 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 said Agenda Items E and F would be combined, as discussed previously. He then opened the public hearing.

The applicant's Attorney, F. X. Bruton, said he was serving in place of Attorney Tanguay. He noted that one of the applications before the Board had been heard at the last Board meeting, and said the applicant was notified at that meeting that another variance was needed. He said if this had been realized, all of the variances would have been presented together, and the same argument would have been made for all of them.

Attorney Bruton said he relied upon and incorporated the arguments made at the previous meeting concerning the first application. He then briefly reviewed what had been proposed the previous month. He said the issue of concern was the possible impact on the Bay from what was proposed, but said the house would be located fairly far away from the shoreland. He also explained that a natural swale would take care of drainage issues.

He said the issue regarding increasing volume, in going from one to two stories, was whether this would affect views. He noted that there was a vegetative buffer behind the house, which would remain, and said the views of properties surrounding the property in question would not be affected. He provided details on this.

He said the bottom line with the proposal was that the applicant was taking a substandard house with code issues, and putting in something that reflected the character of the existing neighborhood and maintained its charm.

Attorney Bruton noted a letter from Dwight Baldwin of the Conservation Commission, which said NHDES had no concerns about the proposal, in terms of environmental issues. He said Mr. Baldwin had raised the issue of the septic system and whether the house would remain a 3-bedroom house. Attorney Bruton said it would remain a 3-bedroom house, so there would be no need to upgrade the septic system.

He read a brief letter from Eckman Engineering, which said there were no issues of concern regarding runoff, but he said the applicant was willing to collect water in gutters that would drain into an underground chamber, in order to address any possible concerns the Board might have about this.

Attorney Bruton said a large portion of the second floor would be open space, with a cathedral ceiling. He also said the house would be smaller than abutting properties, so would fit into the area well. He said there was really no other place on the property to put what was proposed, and said there would not be a negative impact on the abutters.

Attorney Bruton noted that Attorney Tanguay had gone through the variance criteria previously, and said he would briefly do the same. He then went through how what was proposed met the variance criteria. (See minutes from June 13, 2006)

Mr. McNitt asked what percentage increase in footprint there would be from what was proposed, and was told there would be a 50% increase.

There was discussion that while percentage wise, this was a big increase, the house was small to start with.

Mr. Bogle said there was a proposed accessory apartment, and asked for details on this.

Attorney Bruton said there was an existing basement apartment in the house, and noted that it was permitted. There was discussion about this, and the fact that it was a grandfathered use.

Ms. Davis asked if the drainage design that had been described was actually being proposed.

Attorney Bruton said although it was felt this system was overkill, the applicant was willing to put it in, so was proposing that it be included in the project.

There was discussion about the proposed volume increase, and what percentage increase in the existing structure this represented.

Chair Gooze said before going any further, the Board needed to discuss whether to hear Agenda Items G and H that evening. He noted that he was an abutter concerning these applications, and said Mr. deCampi would therefore lead the discussion on this. It was determined that this application would be rescheduled for the August 8, 2006 ZBA meeting.

The Board then decided to put Agenda Item I, the Hartmann application, off until the July 25, 2006 meeting.

After some discussion and calculations, it was determined that what the expansion proposed for the Sidmore property would result in approximately 1,000 additional cubic feet of volume. It was noted that what was permitted was 30%, and what was proposed would be a 110% increase.

Robert Calnan, 3 Cedar Point, said he thought that what was proposed would enhance the area, and said he would like to see the applications approved.

Steven Kalvelage, 2 Cedar Point Road, said he was definitely in favor of this project, and said this would be a great thing for the neighborhood.

Mr. McNitt asked how the square footage proposed compared to that of surrounding properties and there was discussion about this.

Richard Delude, 9 Cedar Point Road, said he was totally behind the project. He said it would improve the view from the Bay, although noting it also might raise his taxes.

Lois Roberts, 6 Cedar Point Road, said she was very much in favor of the proposed expansion of the house, and provided details on this. But she said she had a problem with the proposed pool, noting it would be very close to her master bedroom window, and that there was a real privacy issue involved. She said everything that would go on at the pool would be heard at her property. She said a fence would not be adequate in cutting out sounds or sight. She said the pool could be moved someplace else on the property, and suggested that it perhaps could be put where the swale was, which wouldn't impact the view at all.

Chair Gooze asked if any other members of the public wished to speak in favor of the applications. He then asked if anyone wished to speak against the applications. He asked Attorney Bruton if he wished to present a rebuttal.

Attorney Bruton said the pool needed to be put in the proposed location for safety reasons, and also said that if it were placed in the swale area, with a fence, this would affect the view of abutters. He said the Sidmores would create a retaining wall to level off the property, and would add a fence on top of this, which would create a very high buffer, which hopefully would help.

He noted that Mrs. Roberts had said that because the area was so small, noise would be able to be heard from the pool. He said noise would also be able to be heard if there were a picnic table where the pool was. He said the pool represented a modest proposal, and would be placed in an area that was considered to be tucked away, a design which fit with the unique characteristics of the property. He said the scenic views the Ordinance talked about would not be affected, and asked the Board to consider these factors when considering the proposal for the pool.

There was discussion on the scenic view issue, with Attorney Bruton noting that the Ordinance elevated this issue over some of the other issues.

Richard Roberts, 6 Cedar Point Road, said he liked the ideas for the new home, but said the proposed pool would be located 10 ft. from his property line, and noted the setback requirement was actually 50 ft. He said most people didn't have a sideyard pool, they had a backyard pool. He also noted other possible locations for the pool, and said he hoped the Board would not allow a pool to be located 10 ft. from his property line. He noted there was talk about fencing and plantings to buffer the pool, but asked how the Board could make the applicants do this.

Mrs. Roberts said the Ordinance was concerned about the view up from the water, and said if that were true, locating the pool in a swale area wouldn't influence that view at all. She also noted concerning the idea of various activities of neighbors causing noise that this was why sideline setbacks existed, so that the normal noises of neighbors were removed a certain distance from each other. She said this was what she and her husband were trying to preserve.

Attorney Bruton said the swale being discussed was not that deep, about 1-2 ft. deep.

Mr. Sievert said there appeared to be some conflicting information, and said he had three questions: - whether the pool was 10 ft or 25 from the side property line; what size it was; and whether it met the 125 ft. shoreland setback or not.

Attorney Bruton said the pool met the 125 ft. setback, and said it would be located 10 ft. away from the sideyard setback. He also said he realized the pool shape was different in different pictures that had been provided to the Board.

Chair Gooze closed the public hearing. He suggested that the Board deal with the house – its footprint and volume first, and then deal with the issue of the pool separately. He reopened the public hearing briefly to see if Attorney Bruton agreed to this, and Attorney Bruton said he did.

Ms. Eng said granting the variances would not decrease the value of surrounding properties. She also said it appeared to be in the public interest, noting the neighbors were in favor of the renovation

She noted the special conditions of the property that created hardship, and said she felt some relief concerning this was necessary. She said the problem she had with the proposal was that it would involve digging an additional 10 ft. of basement. She noted that when another applicant had proposed an addition, including a basement, to his property located in the shoreland area, the Board had asked him to move back, and had not allowed the basement. She said she would rather see the applicant put in a concrete foundation than dig a basement.

She said some relief was necessary concerning the spirit and intent of the Ordinance criterion, because the lots were small. But she said the spirit and intent was to protect the bay, and said she was concerned with the expansion so close to the Bay. She noted that she didn't have a problem with the increase in volume that was being requested.

Mr. deCampi said he was amazed that the neighbors had said they would like what was proposed, stating that this would be a much larger house, in an obvious location. He said having a farmer's porch on both sides seemed unreasonably large. He said he would be willing to vote in favor of the expansion but only on the condition that the shed be destroyed and removed, noting his concern was the increase in impervious coverage.

Chair Gooze noted that that there had been a site walk of the property by the Board on June 19, 2006.

Mr. Bogle said the proposed house would be twice as wide and high as the current house, and would be conspicuous. He said it came back to the idea of the ratcheting up effect, which they had discussed regarding an application earlier that evening, and said this what they had here. He said he found it difficult to agree with the proposal, because it violated the setbacks, and involved a footprint increase and a volume increase.

He said he didn't think he could vote for the application as it now stood. He said the applicants were entitled to rebuild, and to have a certain amount of increase in the footprint. He said the Board could work with them on that, but said he thought the current application went too far. He noted that approving the present application would make it more difficult to deal with other proposals in the shoreland area

Ms. Davis said the applicants had indicated that their current home was small, and she agreed it was narrow. But she noted a previous case that evening, where the applicants were asking to

rebuild a much smaller house that was near the water. She noted that the house in the current application didn't have trees in front of it, so would be seen from the water.

She said she didn't deny that rebuilding the house would be good, and said property values wouldn't decrease as a result of doing this. She also said doing so would not be contrary to the public interest. Concerning the hardship criterion, she said she didn't know whether if the home were smaller, this would be a hardship. She said she agreed with Mr. Bogle that this represented a big change in the footprint and the volume of the house. She said she liked the engineered solution proposed concerning runoff. Concerning the spirit and intent of the Ordinance criterion, she said she would need to listen more to what others had to say.

Mr. McNitt said in view of the neighborhood and the present house, there was definitely a reason for approving an expansion. He also said he wasn't concerned about the runoff issue, given the existence of the swale and the amount of construction proposed. But he said he was concerned about the enormous increase in bulk that was proposed, although the house would be more attractive than the old one. He said he liked the idea of using trees to break up the outline of the house. He said he didn't feel granting the variance would result in a decrease in property values, and also said the approval of the neighbors indicated that what was proposed met the public interest. But he said that unless the expansion was carefully done, it was a negative in terms of the view from the water, and from Route 4.

Concerning the hardship criterion, Mr. McNitt said some expansion was definitely needed, and said alternative locations were not desirable. He said the substantial justice criterion was debatable. He said he felt the application did not meet the spirit and intent of the Ordinance, in terms of maintenance of natural and scenic beauty in the shoreland zone. He said he could be talked into approving the application if some things were done, such as landscaping, so that the property would grow into something that would look more like typical Durham shoreland. He noted this was one of the areas of Town that really stood out.

Mr. Sievert said he had taken a boat by the house on Sunday, and said it didn't draw his attention. He said what was proposed was a little cape house, and said he didn't think it would be that bad. He said he did not think it would result in a decrease in property values, and also said granting the variance would not be contrary to the public interest.

He said he felt the application met the hardship criteria, and also said that in terms of substantial justice, the benefits outweighed the negatives. He said the application met the spirit and intent of the Ordinance, noting that protection of water quality would be achieved by managing stormwater runoff. He said he would leave it to others to consider the aesthetic issues.

Chair Gooze said he felt the application met the hardship criteria, noting this was a permitted use, there were special conditions of the property, and there was no other reasonably feasible alternative. He noted that many cases would now meet the hardship criterion, based on case law, and said it would be important for the Board to start thinking seriously, on area variances, about how it felt about the spirit and intent and public interest criteria. He provided details on his thinking concerning this.

He noted this application in relation to other cases that evening. He said he felt this application did meet the spirit and intent and public interest criteria, when considering other properties in the area, and proper runoff. He said he did not think granting the variance would damage property

values in the area, and said substantial justice would be granted, in terms of protection of the shoreland.

Chair Gooze said he was in favor of granting the variance, but noted that for another case in the future involving a property in the shoreland zone, he might find that it did not meet the spirit and intent of the Ordinance.

Mr. Sievert noted that with the Kleinmann application, the property didn't have a basement to begin with, and Mr. Kleinmann wanted to dig a full foundation, which was different than this situation, where there already was a basement. He also said he thought the applicants were trying to use the existing footprint as much as they could.

John deCampi MOVED to deny the petition of Evelyn Sidmore, Durham, NH for an application for variance from the Zoning Ordinance to allow the construction of a substantially larger home on their property at 8 Cedar Point Road, as not meeting the spirit and intent of the Ordinance, and not being in the public interest. Linn Bogle SECONDED the motion, and it PASSED 3-2, with Chair Jay Gooze and Ted McNitt voting against the motion.

Mr. deCampi said he did think the Sidmores should be allowed a larger property, but said the farmers' porch with all of its runoff was too large. He said he would be in favor of granting something somewhat smaller.

Attorney Bruton asked for the written reasons for the denial. There was discussion about this.

Chair Gooze said the Board would now consider the issue of the pool, which involved an area variance.

Mr. Sievert said he was not in favor of approving the pool, stating that he believed there was no hardship because it could be put in a different area on the property and would be more of a benefit in a different area. He said as currently proposed, it might diminish the value of surrounding properties because it would be so close to the property line. He said the application probably met the public interest, stating he didn't know if one person constituted the public interest.

Mr. McNitt said he could not support the pool, noting property values could very well decrease. He said he wouldn't say it was against the public interest. He suggested looking for an alternate location. He said the application was probably not contrary to the spirit and intent of the Ordinance.

Ms. Eng said she was not in favor of granting a variance to allow the pool, especially because this would be contrary to the public interest because of possible noise from the pool and overcrowding of the area. She said the pool would be blatantly within the sideyard setback, and would be contrary to the spirit and intent of the Ordinance. She said it would infringe upon the Roberts.

Mr. deCampi said he was opposed to granting the variance, noting that if the house were sold to a family with kids in the future, this would be a disaster. He said he couldn't support the pool at

the proposed location, and said although he wasn't sure it could be located elsewhere on the property, he would be open minded concerning this.

Mr. Bogle said the application did not meet any of the variance criteria. He said granting this variance would result in a decrease in the value of surrounding properties, and also said it would be contrary to the public interest in that the abutters would be inconvenienced. He said he thought the benefits of the pool could be sought by placing it in another location, noting that placing it in the area where the swale was would not be detrimental to the Bates' view of the bay. He said granting the variance would be contrary to the spirit and intent of the Ordinance because the pool would be so close to neighbors' houses. He also said it would not be substantial justice to grant the variance.

Ms. Davis said she agreed with what other Board members had said, and said she was opposed to the pool in this location.

Chair Gooze said he also was against granting the variance for the pool. He said that in a way he did feel the application met the hardship criterion, but said it did not meet the public interest and substantial justice criteria because it would be located so close to the neighbors, and would injure the rights of others. He said property values of surrounding properties could go down if the pool were located within the side setback.

Mr. deCampi suggested adding the upcoming motion to the previous motion, and Attorney Bruton requested that this not be done.

John deCampi MOVED to deny the petition of Evelyn Sidmore, Durham, NH, for an application for variance to allow the construction of a pool within the sideyard setbacks at 8 Cedar Point Road, because this potentially does not meet the spirit and intent of the Ordinance; is against the public interest; because substantial justice will not be done; and because it will result in a diminution in the value of surrounding properties, as per the discussion. Ted McNitt SECONDED the motion, and it PASSED 5-0.

- G. PUBLIC HEARING** on a petition submitted by Steven F. Kimball, Pine Ledge Holdings Inc., Auburn, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to increase the impervious surface ratio of the property to 65 percent. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Postponed until the August 8, 2006 ZBA meeting.

- H. PUBLIC HEARING** on a petition submitted by Steven F. Kimball, Pine Ledge Holdings Inc., Auburn, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article II, Section 175-53(B)(1) of the Zoning Ordinance to increase the occupancy of a dwelling unit to four unrelated people for up to 12 dwelling units. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Postponed until the August 8, 2006 ZBA meeting.

- I. PUBLIC HEARING** on a petition submitted by Kecia Hartmann, Greenland, New Hampshire, for an **APPLICATION FOR VARIANCE** from the Zoning Ordinance to address and change the conditions on Zoning Board variance approvals of May 25, 2004 and February 8, 2005. The property involved is shown on Tax Map 12, Lot 1-21, is located at 18-20 Cedar Point Road, and is in the Residential Coastal Zoning District.

This hearing was postponed until the July 25, 2006 ZBA meeting.

- J. PUBLIC HEARING** on a petition submitted by Krist Farm, LLC, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to build a garage addition within the sideyard setback. The property involved is shown on Tax Map 16, Lot 30-1, is located at 25 Winecellar Road, and is in the Rural Zoning District.

This hearing was postponed until the July 25, 2006 ZBA meeting.

- K. PUBLIC HEARING** on a petition submitted by Paul Berton, Fall Line Properties Inc., Portsmouth, New Hampshire, for an **APPEAL OF AN ADMINISTRATIVE DECISION** from a decision of Thomas Johnson, Zoning Administrator/CEO, to limit the number of occupants in each of the units at 16-21 Dover Road to two people. The property involved is shown on Tax Map 4, Lot 50-0, is located at 16-21 Dover Road, and is in the Courthouse Zoning District.

This hearing was continued to the August 8, 2006, Zoning Board meeting.

III. Approval of Minutes – June 13, 2006

Postponed until July 25, 2006 ZBA meeting.

IV. Other Business

Next Regular Meeting of the Board: ****August 8, 2006**

V. Adjournment

John deCampi MOVED to continue the meeting until July 25, 2006. The motion was SECONDED by Linn Bogle, and PASSED unanimously 5-0.

11:15 pm adjournment

Victoria Parmele, Minutes taker

Myleta Eng, Secretary