

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

**Zoning Board of Adjustment
Meeting Agenda
Tuesday, September 12, 2006
TOWN COUNCIL CHAMBERS -- DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Jay Gooze; Myleta Eng; Michael Sievert; Ted McNitt; Ruth Davis

MEMBERS ABSENT John deCampi; Linn Bogle

OTHERS PRESENT: Zoning Administrator Tom Johnson
Minutes Taker Victoria Parmele

I. Approval of Agenda

Chair Gooze noted that Agenda Items II A. and B. would be postponed until the September 26, 2006 ZBA meeting.

He said that alternates Michael Sievert and Ruth Davis would be voting members that evening, in place of regular Board members Linn Bogle and John deCampi.

Ted McNitt MOVED to approve the Agenda as submitted. The motion was SECONDED by Myleta Eng, and PASSED unanimously 5-0.

II. Public Hearings

- A. 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. **(This application will be postponed until September 26, 2006)**
- B. 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. **(This application will be postponed until September 26, 2006)**

- C. 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.

Chair Gooze opened the public hearing.

Mr. Sievert said he would recuse himself for this application, because of his involvement in the design of the Hotel NH project, including the movement of the duplexes.

Chair Gooze said it was up to the applicant whether he wished to be heard that evening given that there would only be four voting members of the Board for the application.

Mr. Berton said he would like to move forward with the public hearing.

Zoning Administrator Tom Johnson said that when the Hotel NH project went to the Planning Board, a condition of approval was that the duplexes would be brought up to code. He provided details on work that needed to be done in order to accomplish this. He said when the hotel project was substantially, but not completely, finished a TCO was issued, and said when the entire project was done, he then inspected the 3 duplexes, and issued a certificate of occupancy for the duplexes and the hotel.

He provided details on the basis for the Berton appeal of Administrative Decision. He said occupancy was restricted to 2 occupants per unit based on the square footage of the units. He said the tax card indicated that each of the duplexes measured 30 ft. by 27 ft. - 810 s.f. - and said the zoning allowance of 70% came up with 567 s.f. of habitable floor area. He said he had measured the interior of the duplexes and had found that there was approximately 600 s.f. of habitable floor area in each unit. He said dividing this by 300 s.f., per the 1969/71 Zoning Ordinance, came up with 2 occupants per unit.

Chair Gooze asked if there was anything in the records stating that there was an allowance for more than that.

Mr. Johnson said no actions were taken that would have granted an increase in occupancy, and provided details on this.

Mr. Berton said he didn't disagree with these measurements, but said he had documentation from a former building inspector regarding the occupancy that was permitted, which he had asked for before he bought the property. He referred to this letter, and said he was given the letter before deciding to invest in the property, providing details on how things had transpired at that time. He noted that he had asked for this kind of documentation because he had seen it for another property he owned in Durham.

There was discussion about the letter Mr. Berton had provided.

Chair Gooze asked Mr. Berton if he was given an explanation as to why he would be granted more than 1 occupant per 300 sf. of habitable floor area, given the Zoning Ordinance at that time.

There was detailed discussion about this with Mr. Berton.

Chair Gooze read through the letter provided by Mr. Berton, and asked if the occupancy ordinance mentioned in the letter was ever enacted.

Mr. Johnson said the occupancy ordinance was enacted around 1979 at Town Meeting, and said it ran until about 1990, when there was agreement between the selectmen to create the Rental Housing Commission to resolve rental disputes, so this ordinance was put by the wayside because of privacy issues, etc.

Mr. Berton said the occupancy was computed at 1.5 persons per unit in the past. He noted that the building inspector at the time had even said that a landlord could have 75 people in total in one unit if it met the life safety code. He said he had closed on the property in June of 1994. He provided details on previous occupancy of the property before he owned it.

Mr. Berton said he had wanted to be sure when he bought the property that everyone was on the same page. He said he had invested in the property based on this documentation, and noted that both the Fire Department and Police Department were happy with the property at that time.

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

Michael Sievert said he had designed the Hotel NH project, which included addressing all of the buildings on the site. He said from his involvement in the project over three years, he thought this issue should have come up during the site plan review process. He said if Mr. Berton had known there was an occupancy issue, and there was the option to put the buildings together differently, he would have looked at different options. He said a condition put on the approval was to bring the duplex up to code for code issues, not for occupancy and zoning issues. He said the code issues were addressed, for example with the redesign of the foundation.

Chair Gooze asked if during the site plan review process, anyone ask about the occupancy, and Mr. Berton said no.

Mr. Sievert said occupancy was only brought up by the Planning Board in regard to parking.

Mr. Berton said parking had worked out well on the property.

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

Ms. Eng said because there was a condition by the Planning Board and the Town Council to bring the duplex up to code, this code would encompass the occupancy. She said she didn't feel that Mr. Johnson had made an error in his decision, and said she felt the occupancy should be kept at a maximum of 2 occupants per unit.

Mr. McNitt said there had been some serious misinformation in the past. But he said he didn't believe that Mr. Johnson had made an error in making his administrative decision. He said he didn't think he could support the reversal of that decision. But he said he felt there were a number of facts in this situation that were pertinent, and said it might make sense to consider a variance.

Chair Gooze said Mr. Berton was an excellent manager of his properties, but said if the Board said Mr. Johnson was wrong, and allowed the duplex to have more occupants than the maximum number permitted, Mr. Berton might not be managing this property in the future. He said the information Mr. Berton had been given by Mr. Houseman was wrong, and said Mr. Houseman's statement regarding being able to have 75 occupants showed that. Chair Gooze said the letter could not be used to show that more than two occupants per units was allowed, stating there was nothing in it that indicated that what Mr. Johnson had said was not true.

Chair Gooze said the ZBA had been very consistent regarding density issues, and when it had found there had not been good documentation in the past. He said there was nothing about this particular application that would be different than any other applicant coming to the Board wanting more occupants than what was allowed in the Ordinance. He said he felt the Board would be making a mistake if it said Mr. Johnson's decision was wrong.

Ms. Davis said the Ordinance was clear on this, and said she didn't think Mr. Johnson had misinterpreted it, and was incorrect.

Ms. Eng said requiring 300 s.f. per person was for health and safety reasons, and she said doubling this would be way too much.

There was discussion that the applicant was not asking for more occupants than what was allowed in this application, and was just asking if Mr. Johnson had made the proper decision.

Mr. Johnson asked if the Board would consider including an amendment in a motion that would allow the present occupancy to extend through the current lease period. He noted that this present occupancy situation had gone on for years, and also said the applicant could possibly request a variance next month. He said this approach would eliminate having to get involved in an enforcement action, and would avoid possible litigation for the Town. He said this kind of thing had been done in the past.

Ted McNitt MOVED that the Zoning Board of Adjustment deny the 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. No enforcement inspections will be done through the academic year September 2006 to May 2007. Myleta Eng SECONDED the motion, and it PASSED unanimously 4-0.

- D. PUBLIC HEARING** on a petition submitted by Cory Nadilo, Stratham, New Hampshire, on behalf of Ray Donner Rev Trust, Goffstown, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XXIII, Section 175-133(A) of the Zoning Ordinance to permit additional signage. The property involved is shown on Tax Map 2, Lot 14-3, is located at 13 Jenkins Court, and is in the Central Business Zoning District.

Chair Gooze opened the public hearing,

Mr. Nadilo spoke before the Board. He explained that Nextel had previously been located in the commercial space next to Wings Your Way, and when Nextel had closed, they had opened an ice cream store (The Hut). He said the back portion of the Wings Your Way space and the ice cream store were reconnected so they could share a sink, for sanitation reasons. He said that in doing this, he had to make Wings Your Way technically one tenant space, and said because of this, there were some sign restrictions.

Mr. Nadilo said Wings Your Way and The Hut were really two separate businesses. He said no additional signage was being asked for, and said he simply wanted to put a sign for the ice cream store where the Nextel sign had been.

He said as part of the variance, he was also asking for a sandwich board permit, noting that Nextel had had a permit for a sandwich board. He provided details on this.

There was detailed discussion about the relationship between Wings Your Way and The Hut, whether or not they were two separate entities.

Mr. Nadilo said they paid separate rents, had separate employees and had separate finances, and simply shared the kitchen facilities for health reasons.

Mr. Sievert led a detailed discussion as to why the variance was needed if they were actually two businesses.

There was also discussion about other businesses at the other end of the building. Mr. Johnson said there were multiple tenants, noting that the second story had recently been renovated so there was the potential for more tenants and more signs.

In answer to a question from Chair Gooze, Mr. Johnson said the current signs on the two spaces in question were properly permitted.

Ms. Eng said because Nextel had had the same signage as The Hut was requesting, she didn't have a problem with the number of signs. But she said this area had the potential to be a food court, and to be filled with signs. She said if possible, she would like to see a condition regarding limiting the number of signs if were to happen.

It was noted that this was an area variance being requested, and that the application met the hardship criterion, so the key criteria to consider were the spirit and intent of the Ordinance and the public interest.

Mr. McNitt said he could see the day when the signs in this area would be worthless because there would be too many of them. He said this was already the trashiest part of town, and said there were incremental changes taking place. But he said he wasn't necessarily saying that this was the time to draw the line. He said that following the Zoning Ordinance, for two businesses with essentially the same ownership in the same building, the signage should be restricted accordingly.

Chair Gooze said the ZBA had to look at this application in terms of the variance criteria. He said the Nextel sign was there, and said he didn't think the signage being requested would hurt anything because it was there before. He said it seemed like these were two businesses, and said if they were in fact totally separate, no one would care about the signage issue. He also said someone looking at them would see two businesses. He said he was not against granting this variance, and said he didn't feel the application went against the variance criteria. But he said other future signs in the Jenkins Court area would have to be looked at.

Ms. Davis said the sign for The Hut was effective, and said she didn't think it would decrease the value of surrounding properties. She said granting the variance would not be contrary to the public interest because the Nextel sign was pre-existing. She said there could be unnecessary hardship if people were unable to find the ice cream shop. She said there would be substantial justice in granting the variance, and said doing so would not be contrary to the spirit and intent of the Ordinance.

Ms. Eng said in terms of the spirit and intent of the Ordinance, it was important to support businesses in Durham in order to make them successful. She said the signage would be helpful, and said she would be in favor of granting the variance.

Chair Gooze suggested that the motion should say that the sign for The Hut would be no bigger than the one that already existed there.

Mr. McNitt said one more sign would not decrease the value of surrounding properties. Regarding the criterion concerning the public interest, he said at best this was a standoff, noting that The Hut needed a sign, but one more sign added to the confusion. He said the hardship criterion was met because the business needed a sign. He said that in terms of substantial justice, this depended on whom the justice was being given to. He said that one more sign was contrary to the spirit and intent of the Ordinance.

Mr. Sievert said the question that still remained was whether this situation warranted a variance.

Michael Sievert MOVED to grant the APPLICATION FOR VARIANCE from Article XXIII, Section 175-133(A) of the Zoning Ordinance for the existing signs there to be replaced as shown, for the Hut. Ruth Davis SECONDED the motion.

Chair Gooze said the spirit and intent of the Ordinance was in part to prevent clutter. But he said that the clutter from the signs was already there.

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

- E. PUBLIC HEARING** on a petition submitted by Marion Poulin, Newmarket, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to widen outside stairs and platform to fall within the sideyard setback. The property involved is shown on Tax Map 4, Lot 20-7(A), is located at 18 Coe Drive, and is in the Residence A Zoning District.

Chair Gooze opened the public hearing.

Marion Poulin explained that there was a set of stairs and a platform on the outside of her house that lead to an upstairs apartment. She said that at the time the stairs were built, it was thought that their width would be fine, but she said it had turned out that these stairs were not very safe, especially at the top, outside the doorway. She provided details on this, and said she would like to extend the platform forward toward the stairs by about 4 ft., increase the stair width by one ft., and would also like to put in a new railing that would be easier to grasp. She explained that the variance request was necessary because the one ft. increase in the stairs would encroach on the 10 ft. sideyard setback.

Chair Gooze provided clarification that the current stairs complied with the building code, and did not exceed the setback. It was also clarified that Ms. Poulin's mother no longer lived in the upstairs apartment, and that there were separate accesses for the people living in the house and the person living in the apartment.

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.

He said he had looked at the property and other properties on Coe Drive, and said they were similar, and had the same setbacks. He said there was nothing special about this property that justified this variance for it but not for other properties on the street. He said the current stairs met the code, and said creating a platform would make things safer, and said he didn't think it was necessary to widen the stairs. He said if this variance were granted, it would be hard to say no to anyone asking for this kind of conversion.

He noted that a recent variance granted for a similar situation was in fact different because the property next door was offset on the lot. He stated that this one bothered him in that all the structures were the same. He said even though this was not an incursion of the building into the setback, the variance request bothered him.

There was discussion about the accuracy of the measurements taken of the stairs and their distance from the setback.

Ms. Eng said she was in favor of granting the variance because this would address the safety issue, and said this took precedence over encroaching into the setback.

Chair Gooze asked what this actually addressed, since the stairway already met the code (36 inch minimum stairway width).

Ms. Eng said that a 36 inch stairway was quite narrow, and noted that the applicant had said this was a dangerous situation. She said that based on this, she would be in favor of granting the variance. She said there was no other way to widen the stairs without going into the setback, so this met the hardship criterion.

Mr. Sievert received clarification that 36 inches was not the minimum width allowed for a main egress, and that the main egress for the house was elsewhere than the stairs.

Ms. Davis said she too had looked at the house, and wondered if the stairs was really 36 inches wide, noting that they did look narrow. She said she wouldn't want to penalize the property owner, and said this was the only property in the area with an apartment over the garage. She said granting the variance wouldn't decrease the value of surrounding properties, and would not be against the public interest.

She said she thought the spirit and intent of the Ordinance was to maintain the integrity of the neighborhood, and said she could see Chair Gooze's argument concerning this. She also said she could also see Ms. Eng's argument regarding safety, and said she wondered if the platform and reconfiguration of the handrail would address the safety issue. She said she did think granting the variance would set a precedent.

Mr. McNitt said he agreed with Ms. Eng, and said he thought it would be in the public interest to increase the safety of the building, in case of fire, etc. He said the value of surrounding properties would be virtually unchanged as a result of granting the variance. Concerning the area hardship criterion, he said he didn't see anything unique about this property, but said he didn't see that there was any other way to address the safety issue. He said the intent of the basic Ordinance was to promote public safety, and said he would be very surprised if there was more than 28 inches of usable space on the stairway.

Chair Gooze said he was against increasing the width of the stairway if it already met the code, and noted that he was basing this on the fact that the stairway was in fact 36 inches. He said if it was actually less than this, they would find that out.

Ted McNitt MOVED that the Zoning Board of Adjustment approve the petition submitted by Marion Poulin, Newmarket, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII, Section 175-54 of the Zoning Ordinance to widen outside stairs and platform to fall within the sideyard setback with the condition that the platform deck will be no more than 4'x10' with a 4' wide stair. Myleta Eng SECONDED the motion.

Mr. Sievert said he agreed that the variance request met the variance criteria, except that he didn't see there were special conditions of the property under the hardship aspect for an area variance. He said it was unfortunate that there weren't exact measurements for the stairway, noting that it would be a special condition if the stairs turned out to be 27-28 inches wide, and were right at the setback. He said he agreed about the safety issue.

There was additional discussion about the stairway width issue, about the design for the platform and about the configuration of the door to the apartment. Chair Gooze re-opened and then closed the public hearing to discuss this with the applicant.

Mr. Sievert said if the stairway was right at the setback, and there was no other design option, there was in fact a special condition. He said it was a very tight situation, and said this made granting a variance a little more reasonable.

Chair Gooze said he still had a problem with the possibility of other residents wanting apartments to encroach into the setback with stairs.

The motion PASSED 3-2, with Chair Gooze and Ruth Davis voting against it.

- F. PUBLIC HEARING** on a petition submitted by Samuel & Jane Pollard, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to build a new deck on the house and an overhang on the garage, both within the sideyard setback. The property involved is shown on Tax Map 11, Lot 16-14 is located at 16 Shearwater Street, and is in the Residence C Zoning District.

Chair Gooze opened the public hearing.

Sam Pollard said he wanted to replace two mini-decks with a better deck and a screen house, and to construct an overhang on the garage. He said the house had been built in 1994, as part of a cluster subdivision, and said the width of the property was about 125 ft. He said the current setbacks were 50 ft. so that theoretically, one couldn't now build a house on the property. He noted that the setbacks in place when the house was built were 25 ft.

Mr. Pollard said there was an architectural review committee as part of the Johnson's Creek subdivision, and he read the letter from the committee regarding his plans.

Chair Gooze said it appeared there were no wetlands on the property. He also noted the applicant was already in the 50 ft. setback because of a bulkhead. He asked who lived on that side of the property, and Mr. Pollard said this was the person who had written the letter from the architectural review committee.

Ms. Eng asked if the proposed overhang could be moved from the front of the garage to the back.

Mr. Pollard said that because of design considerations, that would not be possible.

Chair Gooze asked if any members of the public wished to speak for or against the application. He noted letters in Board members' packets concerning the application, and then closed the public hearing.

Mr. Sievert said it was unfortunate that residents had to get a variance for an existing lot of record, which was part of a subdivision that was approved under much less stringent setback requirements. He said that unfortunately there was nothing in the Ordinance that said a proposed

project was acceptable if it met the original setbacks. He said he felt this application met the variance criteria, and said he was in favor of granting the variance.

There was discussion about the present nonconforming lot issue based on the Zoning rewrite, and possible ways to address this.

Ms. Eng said she was in favor of granting the variance because what was proposed wouldn't encroach further into the setback than what was currently on the property. She said what the applicant was proposing couldn't be achieved by another method, so the application met the hardship criterion. She said it met the spirit and intent of the Ordinance and the remaining criteria, and said she was in favor of granting the variance.

Mr. McNitt said he agreed. He said there would be no visible impact from the project, so the application met the public interest criterion, and also said granting the variance would not decrease the value of surrounding properties. He said he didn't see any way the applicants could achieve the benefit of deck space other than doing this the way that had been designed, and also said that substantial justice was achieved. He said there would be no impact on rural character or scenic values, so the application met the spirit and intent of the Ordinance.

Chair Gooze said he agreed that what was proposed by the applicant should be looked at in terms of the pre-existing setback requirements, on a building that already existed.

Ruth Davis MOVED to grant the VARIANCE from Article XII, Section 175-54 of the Zoning Ordinance to build a new deck on the house and an overhang on the garage, both within the sideyard setback, at the property located at 16 Shearwater Street, in the Residence C Zoning District. Mike Sievert SECONDED the motion, and it PASSED 5-0.

G. PUBLIC HEARING on a petition submitted by William Bryon & Dale Tock, Lee & Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-53 of the Zoning Ordinance to change the use of a property from commercial to residential. The property involved is shown on Tax Map 10, Lot 20-4, is located at 40 Dover Road, and is in the Coe's Corner Zoning District.

Applicant Bill Bryon said the property had been bought in 1994, and at that time was zoned residential. He explained that he had gotten a variance in order to be able to put an office in the one story contemporary single family home. He said this zone had subsequently rezoned and was now part of the new Coe's Corner Zoning District.

He said he and Mr. Tock had sold their business, and said the Bubars, who were direct abutters to the property, would like to buy the house and use it as a residence for an elderly relative. He said this seemed like a good use of the property, noting that there would be no physical change to the look of the property or building. He said the house was completely surrounded by residences, and said there would not be a negative impact on the value of surrounding properties as a result of noise, traffic, etc., He said granting the variance would mean the property would be used as a single family residence, as was originally intended

Mr. Bryon said the Nadeaus, who were also neighbors, were in strong support of the project. Chair Gooze read the letter from the Nadeaus, which stated that they were in favor of granting the variance.

Mr. Bubar noted that he owned the property immediately behind the property in question, and fully supported this variance request.

There was discussion about the changes to the district over time, and about the history of the property.

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

Dave Lefebvre said he was commercial real estate broker and appraiser from the Seacoast area, and said he was familiar with transitional neighborhoods like the Coe's Corner district. He said it typically took some time for a neighborhood to make this kind of transition based on a change in the zoning district, and provided some details on this.

He spoke about how and why it appeared that the property in question had not been exposed substantially to the commercial market, and said there was in fact a market out there for this property in a commercial zone. He noted that he had written a letter to that effect. He said although the property could be used as a residence with no substantial changes to it, it could also be used for a number of commercial uses in the Coe's Corner District.

Mr. Pollard said the property had been listed on the market for some time. He also said a lot of work had been done on the property over time, and said it mattered to them what would go in there. He said the Bubars seemed like a good fit.

Mr. Johnson said he wondered if the current residents would be willing to surrender the two variances they had previously received concerning the property. He noted this was a change of use from commercial to residential, so the variances wouldn't run with the property.

The applicants said they had no objection to this.

Chair Gooze said this could be added as a condition to granting the variance, if the Board wished to do this.

There was discussion about the listing of the property in various locations. It was clarified that the property was listed as a commercial property under the MLS.

Mr. McNitt asked Mr. Lefebvre what his objective was and Mr. Lefebvre said he would like to see the property remain commercial.

Chair Gooze noted that this was a use variance being requested.

Mr. McNitt said this was a tough one, noting the goal was to have a gradual transition from residential to commercial for selected businesses in the Coe's Corner District. He provided details on this. He said from the point of view of having an orderly transition, making this property residential again would slow the impact of commercial development on houses to the west and east of it.

Mr. McNitt said changing the property back to residential probably wouldn't decrease the value of properties in the neighborhood. Concerning the public interest criterion, he said the change to residential might decrease the amount of traffic in the immediate area. He said the house was used as a residence historically and the neighboring properties were residences so there was substantial justice. He said in terms of the spirit and intent of the Ordinance criterion, using the property as a residence would make the transition of the district more orderly and slower.

Ms. Eng said she agreed with Mr. McNitt, and said her only concern was that if it reverted back to residential, it would be designated as a single-family elderly residence.

Mr. Johnson said if the variance request was approved, it should say the property would be converted to a single-family residence, and should not include anything on age restriction.

Ms. Eng said she was in favor of granting the variance.

Mr. Sievert said it had been clarified that the surrounding properties were residential, and said granting the variance wouldn't decrease the value of these properties. He noted that he was surprised at the previous variance to make the property a commercial use.

He said he was not sure how the public interest was met with this variance request, and was not sure how the spirit and intent was met, noting that the district was recently changed. He said the use variance criteria were met because this was a unique situation. He said the property looked like it would be really restricted for commercial use, so he thought there was substantial justice in converting the property back to residential.

Chair Gooze said the Zoning Ordinance talked about this as a transition zone, where a goal was to maintain the features of existing properties there. He said looking at the uniqueness of the property and where it was located, he thought the Board could say it was appropriate to grant the variance.

Mr. McNitt said this would fit with long-term orderly changes in the district.

Ms. Davis said the purpose of the Coe's Corner district was to create a transition. She said looking at the residences in the area, it didn't seem to be the perfect place for commercial uses, especially given the shoreland nearby. She said what was proposed seemed to be a reasonable considering the unique setting, and said she did not think that granting the variances would be against the spirit and intent of the Ordinance.

Chair Gooze said that regarding the use variance hardship criteria, it could be said that the unique setting of the property interfered with reasonable use of the property, and that no fair and

substantial relationship existed between the general purposes of the Zoning Ordinance and the specific restriction on the property. He also said the variance would not injure the public or private rights of others. He said he believed the application met all the variance criteria very well.

Ted McNitt MOVED to approve the VARIANCE petition submitted by William Bryon and Dale Tock, Lee and Durham, New Hampshire from Article XII, Section 175-53 of the Zoning Ordinance to change the use of a property located at 40 Dover Road, in the Coe's Corner Zoning District, from commercial to single family residential. Myleta Eng SECONDED the motion, and it PASSED unanimously 5-0.

III. Board Correspondence and/or Discussion

- A. REQUEST FOR REHEARING** on a July 11, 2006, denial by the Zoning Board of Adjustment on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article XII, Section 175-54, Article XIV, Section 175-74(A) and Article IX, Section 175-30(D)(3) of the Zoning Ordinance to rebuild a single family home with accessory apartment, addition, and porch within the sideyard and shoreland setbacks 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 the Board had had the time to look at materials it had received at the last ZBA meeting. He made note of the items that had been received, and also said there were additional color pictures that had just been received. He said the Board had to decide if there was any new evidence, or if it had made any factual errors in its previous decision concerning the application.

He noted that he and Mr. McNitt had voted in favor of the previous variance request, but said the vote had been 3-2 to deny it. He said he felt that better evidence had now been presented, and would to allow the rehearing to discuss neighboring properties, and issues of how the property would look from the road and the shore.

Chair Gooze noted a letter from Attorney Tanguay on behalf of the applicants that the Board had done something wrong in putting off considering the request for rehearing. But he explained that the Board had not gotten the additional information until the night of the previous meeting, and had decided that it couldn't make a decision because it hadn't had the chance to go through this information. He noted that the letter said the Sidmores were upset about the delay at the previous meeting, but he said they didn't appear to be upset at that time.

Ms. Eng asked if the issue of the pool had now been withdrawn.

Chair Gooze said the Sidmores had agreed to take the issue of the pool out of the application, and provided details on this.

Mr. Sievert said he thought the Board should rehear the application. He said he thought the Board had made a mistake in its previous decision on the application, based on the information it was given.

Ms. Davis noted that they had tried to do volume calculations the previous time the application was heard. She said there was now new information to allow better volume calculations, so there was better evidence for the Board to consider.

Mr. McNitt said there was no question that the hearing had been confusing because of the information that was provided.

Board members agreed that the project was easier to understand now.

Ted McNitt MOVED to grant the REHEARING on a July 11, 2006, denial by the Zoning Board of Adjustment on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article XII, Section 175-54, Article XIV, Section 175-74(A) and Article IX, Section 175-30(D)(3) of the Zoning Ordinance to rebuild a single family home with accessory apartment, addition, and porch within the sideyard and shoreland setbacks with an increase to the building size, for the property located at 8 Cedar Point Road, in the Residence C Zoning District, because there were sufficient questions during the hearing to justify a rehearing. Michael Sievert SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said the Sidmore application would be re-heard at the next regular meeting, in October.

IV. Approval of Minutes – August 8, 2006
August 8, 2006 Minutes

Page #'s are needed for the Minutes

Under Members Present on page 1, should say Vice Chair John deCampi; under Members Absent, should say Secretary Myleta Eng.

Page 4, 3rd paragraph, should read “..wetland was a seasonal drainage ditch...”

Ted McNitt MOVED to approve the August 8, 2006 Minutes as amended. The motion was SECONDED by Ruth Davis, and PASSED unanimously 5-0.

V. Other Business

- A. Mr. Johnson updated the Board on a fraternity house that had previously been before the Board for a matter that included a UNH recognition issue. He said the fraternity was currently trying to sell the property.

There was discussion about the status of the Christensen case.

Chair Gooze noted that he had recently gone before the Town Council and the Planning Board to discuss ZBA concerns about interpreting the shoreland protection overlay district provisions of the Zoning Ordinance. He said he had suggested that they might want to look at providing more precision concerning the spirit and intent of the Ordinance in regard to rebuilds along the shoreland, and in regard to the State shoreland setback. He provided details on this issue, and said the Council and the Board were beginning to look at this.

He said if ZBA members had issues with other provisions of the Ordinance, and thought they should be looked at, they should let him know, and he would keep them in a folder and bring them up to the Town Council and Planning Board at some point.

Mr. McNitt said the damage to the shoreland from development was directly proportional to its closeness to the water. He said this explained the fact that he was tough on some applications involving the shoreland, and not as tough on others.

Chair Gooze said although the ZBA could currently make decisions based on the Ordinance, and did a pretty good job with this, its decisions could be more precise if there was more precision in the Ordinance.

Mr. Sievert said the issues were different depending on the particular property, with its particular conditions.

Mr. Johnson noted the upcoming Office of Energy and Planning conference, and the NH Municipal Association's Fall Law Lecture series.

Mr. Johnson said he had recently spent 2-3 hours at the Supreme Court regarding the Fischer vs. State of NH case. He noted this was the Young Drive case that involved the State fire marshal, and said that hopefully there would soon be a decision on it.

B. Next Regular Meeting of the Board: **September 26, 2006

It was noted that there would be a special meeting of the ZBA to hear the Kimball variance applications on September 26th.

VI. Adjournment

IS POSSIBLE THERE WASN'T A MOTION TO ADJOURN BECAUSE I DIDN'T TYPE ONE. TAPE HAD A PROBLEM SO I COULDN'T CHECK THIS

The meeting adjourned at 9:30 p.m.

Victoria Parmele, Minutes Taker

Myleta Eng, Secretary