

These minutes were approved at the August 28, 2007 meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, JUNE 19, 2007 (Continued Meeting of June 12, 2007)
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: John deCampi; Jerry Gottsacker; Ted McNitt; Michael Sievert;
Ruth Davis; Carden Welsh

MEMBERS ABSENT: Chair Jay Gooze, Robbi Woodburn

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

I. Approval of Agenda

Mr. deCampi said he would be serving as Chair in place of regular Chair Jay Gooze, who was away. Mr. deCampi said Mr. Welsh would be a voting member on the first application, and Ms. Davis would be a voting member on the second application.

Jerry Gottsacker MOVED to approve the Agenda as submitted. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

(Ms. Davis was a voting member for this vote)

II. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by David Whitcher, Strafford, New Hampshire on behalf of Catherine Nadeau, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-53 and Section 175-54 and Article IX, Section 175-30(D)(3) of the Zoning Ordinance to build a single family home within the Coe's Corner Zoning District and within the sideyard setback. The property involved is shown on Tax Map 10, Lot 20-2, is located at 36 Dover Road, and is in the Coe's Corner Zoning District.

David Whitcher represented the applicant, and explained that the Nadeau's were not able to attend the meeting because they were abroad on business. He said their plan was to remove an existing building that was a residential student rental on a Coes Corner lot, and to rebuild a single family home on the site for their own use. He said the plan was to add a certain amount of land to the Coes Corner lot through a boundary line adjustment in order to make this lot larger. He explained that the application for this had been filed, and had been accepted by the Planning Board.

Mr. Whitcher said the Planning Board needed to see ZBA approval of the variances in order to

make its decision concerning the conditional use application. He then went through the variances that had been requested.

He said a variance was needed from Article XII, Section 175-53 because a single family residence was currently not allowed in the Coe's Corner District. He said this didn't make a lot of sense. He said there had always been a single family home there, but said in recent years, it was used as a student rental. He stated again that the Nadeau's would now like to cease that use, remove the home and build a new home for themselves.

Mr. Whitcher said a variance had also been needed from Article XII, Section 175-54, because of an insufficient side setback distance. He said with the boundary line adjustment, this variance would no longer be needed because there would be 30 ft between the house and the lot line. But he said the Nadeau's had applied for this variance just in case it was necessary.

Mr. Whitcher explained that a variance had also been needed from Article IX, Section 175-30(D)(3), which dealt with requirements for nonconforming buildings and structures in the Shoreland Protection Overlay District. He explained that the new home had to be 125 ft. back from the shoreland, and if it wasn't, could only increase in size by 15%. But he said the distance was well over this, and he provided details on this.

Mr. Welsh said it sounded like the house would be far enough beyond the water line to avoid the 15% restriction.

Mr. Johnson provided details on the setback issues, and how the boundary line adjustment addressed them.

There was discussion that there was really only one variance that was relevant, - the single family home use, and that the other two variance issues were moot since the boundary line adjustment had been granted by the Planning Board. Mr. Johnson agreed with this.

Mr. Sievert noted that this use would fall within the Shoreland Overlay district, and said it seemed that Section 175- 30 (D) (3) did apply.

Mr. Johnson explained that because the existing structure was being torn down and replaced, this provision therefore did not apply.

Mr. deCampi asked if any members of the public wished to speak in favor of these variance requests.

Peter Stanhope, 37 Dover Road, said he would like to speak in favor of this application. He said it was important to note that the area between where Beards Creek entered the Oyster River and Young Drive were residential. He said none of the properties in this area would be changed to the permitted Zoning in the foreseeable future, even though the Zoning did not permit single family homes there now.

Mr. Stanhope noted a property at 40 Dover Road, which under previous ownership had an office

use in it. He said this business was later discontinued and was offered for sale as an office building, but remained unsold for two years. He said a buyer had then come along wanting to make it a single family dwelling, and the ZBA found this to be a reasonable use, and approved the variance that was required.

Mr. Stanhope said the other issue that concerned him, as a member of the Town Council, was that there was significant concern about having a green gateway into the Town of Durham. He said the area near Beards Creek and heading into Town by the Gibbs Station was an inner belt of this gateway. He said with the existing residential uses there, and the nice vegetation that existed, this provided a good entry into the Town. He said he felt that having single family dwellings like the one in this application would ensure that the green gateway stayed in place. He encouraged the Board to support this variance application.

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

Ms. Davis said this was a use variance. She said there would be no decrease in the value of surrounding properties as a result of granting it. She said she hadn't been able to identify any adverse effects on the public interest. Concerning the hardship criterion, she said this seemed to be a reasonable use, and said it seemed to be a good place for a home.

She discussed the issue of whether granting this variance would frustrate the purpose of the Zoning Ordinance, noting that the Ordinance was trying to promote commercial development in this district, but in reality it appeared to be reverting to residential use. She said approving the variance would therefore not be contrary to the spirit and intent of the Ordinance. She also said there would appear to be substantial justice in granting this variance,

Mr. McNitt said he completely agreed with Ms. Davis. He said the proposed use would definitely be in the public interest in almost every aspect, especially considering what the use had been in the past. He noted among other things that it would increase the tax base and would protect the neighborhood.

Mr. deCampi said the Coes Corner district provisions had been written to provide entry to the commercial zone that started with Gibbs and Foreign Motors. He said this house would be so far back from the road that it was unlikely that it would be very visible. He said it wouldn't look commercial, residential, or anything, as someone coming into Durham looked at the property. He said he didn't think it worked against the purpose of the Zone to allow the house there.

Ted McNitt MOVED to approve an application for variances from Article XII, Section 175-53 of the Zoning Ordinance to build a single family home at 36 Dover Road within the Coe's Corner Zoning District, in the location and of the style submitted this evening with the application, and that the variances from Article XII, Section 175-54 and Article IX, Section 175-30(D)(3 are no longer needed. John deCampi SECONDED the motion, and it PASSED unanimously 5-0.

B. PUBLIC HEARING on a petition submitted by Carrie Salas, Durham, New Hampshire on

behalf of Bruce Mohl & Marian Tucker, Meredith, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-39(D) and Section 175-53 to change the use of a single family home into a professional office. The property involved is shown on Tax Map 6, Lot 9-4, is located at 24 Newmarket Road, and is in the Residence B Zoning District.

Mr. Mohl said he and Marian Tucker owned the property that was the subject of this variance request. He said the property was currently on market, and was known as the Stone House. He said it was located in the RB zone and was also located within the Historic Overlay District. He said the building was a single family home, and said they had lived there for 20 years. He said the property had been on the market for 18 months, and said the variance application was a result of the fact that Applied Geo Solutions had expressed interest in purchasing the property. He said the property was currently under agreement with this company, and said the agreement was contingent upon the variance being approved.

He said an issue for the ZBA was what the best way was to preserve this unique historic property. He said the property didn't seem to be attractive to families, noting that it was located on Newmarket Road, where there were 15,000-20,000 going by each day, and the building was close to the road. He said they would love to sell the property to a family, but said the reality was that this would not happen. Mr. Mohl said that given the length of time the property was on the market, they might have to rent it, and said this posed an issue regarding possible student rentals.

Mr. Mohl said that under the Simplex test, allowing a business use of the property was reasonable, given the unique character of the property. He noted that the Historic District Commission had given its approval of the change in use based on the criteria it utilized.

He said they were hopeful that this variance request would be viewed as way to preserve the property. He noted that the Zoning Ordinance spoke about the reuse of historic buildings for commercial and professional purposes as a way to preserve their character. He noted that he had discussed this matter with the immediate neighbors, and they supported the variance application.

He said what was proposed was not likely to diminish the value of surrounding properties, was consistent with the spirit and intent of the Ordinance in terms of the preservation of historic character, and was in the public interest. He said it was consistent with the Master Plan, and would be the best way to maintain the quality of this building.

Ms. Davis asked how many employees would work there, and Mr. Mohl said he believed there would be three employees. He spoke briefly about the company, which did computer mapping on an international basis, and said there would be no business coming into the property so parking would not be an issue. He provided details on parking that was currently available on the property, and said five cars currently parked there.

Carrie Salas explained that the Salas' had a small environmental consulting business, and had three employees. She said there were no foot traffic, no local clients, and no need for a sign. She said the company would be open from 9-5, and said she had selected this building because it was a great building.

Mr. Welsh asked Ms. Salas if she would accept a limitation on the number of employees she could ever have working there.

Ms. Salas said would like to hire more people in the future, and said there might be as many as five employees. She said she would have to move out if it became a larger business.

Mr. deCampi asked if Ms. Salas would consider a limitation of 5-6 people and no sign.

Ms. Salas said she would consider this.

Mr. deCampi asked if there were any members of the public who wished to speak for or against this application. There was no response.

Mr. Mohl noted that the parsonage across the street had a very small, respectful, sign that fit with the character of the area.

Mr. deCampi closed the public hearing.

Mr. Gottsacker asked if existing businesses in the RA and RB districts had had to come before the ZBA to get a variance in order to be allowed in those zones, or were grandfathered.

Mr. Johnson said he had not been working in Durham when this would have happened.

Mr. Welsh asked if the variance went with the building forever,

Mr. deCampi said yes unless the variance was specific to a particular use.

Mr. Welsh said his concern was that the business not be allowed to get too big in that location. He noted that he had seen houses like this in Pennsylvania that had become commercial buildings.

Mr. Gottsacker said he would hate to see this property become something that was out of character. He said he was fine with this as long as it was a professional office, and didn't have a lot of employees.

Mr. Johnson said the Board might want to read the definition of "office" and "professional", in terms of putting restrictions on the variance.

Mr. McNitt said he thought that signs had been allowed on other properties in this area. had allowed signs on other properties in area.

There was further discussion on the sign issue, with Mr. Gottsacker noting that if someone in the future wanted a sign for the property, he would have to come back to the ZBA and ask for a variance to allow this.

There was also discussion that a future owner would have to request a variance in order to change back to a single family use.

Mr. Johnson noted that it was also possible that the Zoning Ordinance might change in the future.

Mr. Welsh said that in terms of whether the building might become a single family home again in the future, it was very close to the road.

Mr. deCampi said he was not opposed to granting this variance as long as there was a restriction that there be 5-6 employees. He said he wasn't sure the variance needed to be restricted to a specific use, and said he thought the uses listed under "Office, Professional" covered it. He said he also thought there should be a signage restriction.

He re-opened the public hearing, in response to Ms. Salas's desire to speak further.

Ms. Salas asked if they could be allowed one employee per room. It was noted that there were nine rooms. There was discussion about this.

There was discussion about signage. Ms. Davis said if it was tasteful signage, she was not against this.

Mr. Sievert agreed that the Board shouldn't restrict signage, but he said they perhaps should restrict parking, given the number of people who would be allowed there.

Mr. Johnson noted that there was currently no application for a sign. He said this was not a permitted use in that Residence B district, so the applicant would have to come back regarding the sign if she wanted one.

Mr. Gottsacker agreed that parking was an issue, given the number of people who could be working there. He said there were about 6 parking spaces, also noting that with the driveway, there could be more spaces.

Mr. Johnson said the Board was trying to establish the use right now. He said if Ms. Salas wanted to have 9 employees, she would need to increase the parking area. He said a variance might be needed for this.

Mr. deCampi noted there was land available for additional parking in the future.

Mr. Welsh asked about square footage restrictions per employee, and Mr. Johnson said there appeared to be plenty of room available in the building.

Mr. Gottsacker said it would seem that the Town would want to foster this kind of business. He said 9 employees didn't seem to be an unreasonable number, as long as the parking, etc. was sufficient.

Jerry Gottsacker MOVED to grant the variances from Article XII, Section 175-39(D) and Section 175-53 to change the use of a single family home into a professional office, for the

property located at 24 Newmarket Road in the Residence B Zoning District, with the condition that there be no more than 9 employees in the building. John deCampi SECONDED the motion.

Mr. McNitt said this was a use variance, and said the location of the property almost forced the change of use. He said he couldn't believe that granting it would decrease the value of surrounding properties. He said the neighborhood was changing, and said this building was the logical place for such a change to occur. He said the owner didn't have other opportunities given the closeness of the building to the road.

He said granting the variance would not be contrary to the public interest in any way, and also said granting it would result in substantial justice for the applicant with no counterbalancing injustice to someone else. He said granting the variance would also not be contrary to the spirit of the Ordinance, because this neighborhood was in the process of changing. He noted that other properties in the area had already changed. Mr. McNitt said he felt the variance request met all of the five variance criteria.

The motion PASSED 5-0.

III. Approval of Minutes

April 10, 2007

Add page numbers

Page 6, bottom paragraph, should read “..the preference here was apartments. She also said there was limited well capacity.”

Page 8, 2nd paragraph from bottom, should read “ Richard Gallant, 594 Durham Point Road,..”

Page 10, 5th paragraph from bottom, should read “..the 20 ft. requirement.”

Page 15, 4th full paragraph, should read “..and the sun then shone on it.”

Page 24, should say the meeting ended after 11 pm.

May 8, 2007

The Minutes should note that Ruth Davis was present at the meeting. The spelling of Carden Welsh should be corrected throughout these Minutes.

Page 1, 2nd paragraph, should read “..the Board would like to hear from...”

Page 2, 5th paragraph, should read “3. Rectangle of contiguous...”

Page 3, 1st full paragraph, should read “..they actually were useful in removing nitrates.”

Page 4, 3rd paragraph from bottom, should read Mr. Gottsacker said that it was not correct to say that nothing....”

Page 6th paragraph, should read “..could be done in a rational manner.”

Page 14, 9th paragraph from bottom, should read “..and explained that their house...”

“...providing details on this. He noted among other things...” Also, 8th paragraph from bottom, should read “...the plan was to put it back 10 ft from...”

IV. Other Business

Mr. Johnson noted that during the public hearing regarding the Paine property, the Board heard testimony from an appraiser. He said Ms. Sandberg had asked that some photos the appraiser had taken of the interior of her house be removed from the Town files.

The Board agreed that this information was not relevant and was private, and should be removed from the Town files.

V. Adjournment

Carden Welsh MOVED to adjourn the meeting. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

Adjournment at 8:15 pm.

Jerry Gottsacker, Secretary