

**D-R-A-F-T**

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, SEPTEMBER 11, 2007  
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL  
7:00 P.M.**

**MEMBERS PRESENT:** Chair Jay Gooze; John deCampi; Ted McNitt; Michael Sievert; Ruth Davis; Carden Welsh

**MEMBERS ABSENT:** Jerry Gottsacker; Robbi Woodburn

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

**I. Approval of Agenda**

There was discussion regarding the rescheduling of Agenda Items II B and II C. It was also agreed that there would be a site walk for Item II A, the Adams application, at 5:00 pm., and a site walk for Item II C, the Sidmore application, at 6:00 pm.

*John deCampi MOVED to approve the Agenda as amended, with Item II B postponed until the October 9, 2007 meeting, and Item II C postponed until the November 11, 2007 meeting. Mike Sievert 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 Attorney Peter J. Loughlin, Portsmouth, New Hampshire on behalf of James & Kathleen Adams, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXIV, Section 175-139 to install a septic system within a 5,000 square foot rectangular area, 125 feet from Hydric A and Hydric B soils with a test pit showing a depth of 27" to seasonal high water and a depth of 62" to ledge where 4 test pits are required. The property involved is shown on Tax Map 20, Lot 8-1, is located at 401 Bay Road, and is in the Residence C Zoning District.

Mr. Sievert recused himself, and Chair Gooze said Ms. Davis and Mr. Welsh would both be voting members for this Agenda item.

Attorney Peter Loughlin provided background information to the Board. He explained that the Adams were proposing to subdivide an existing lot into a 15.55 acre lot and a 6.26 acre lot. He said the request for variance was unusual in that the applicants were not asking for a variance from setback, frontage, lot size, etc. requirements. He said the issue involved here was the septic provisions of the Zoning Ordinance (Section 175-39)

He said the Town required that 4 satisfactory test pits be dug within a rectangular area of suitable soils having a contiguous area of not less than 5,000 sf., and that the rectangle needed to have a minimum width of 40 ft. He said there was also the requirement that no portion of this required suitable soils area be located within 125 ft of very poorly drained or poorly drained soils or a water body.

He said because of this particular site, the applicants hadn't been able to meet these requirements, and said only one test pit satisfied all of the requirements. He noted that the applicants had already received approval from NHDES for the construction of a septic system for a 5 bedroom home in the exact location where the single family home was now proposed. He explained that on a large lot such as that owned by the Adams family, NHDES allowed the construction of a guest house.

Attorney Loughlin said soils consultant Jamie Long was present to explain that based on soils considerations, a second home could in fact be located on the site. He noted that Durham's Zoning Ordinance also said there could be a second home, but he said Mr. Johnson had turned this down because of Section 175-7 of the Ordinance, which allowed only three unrelated persons to live in a home. He said the building permit for the second home was therefore not issued.

There was discussion regarding the fact that NHDES allowed guest houses.

Attorney Loughlin provided details on the Hollis and Buxton soils found on the site, noting that the Hollis soils were generally better than the Buxton soils. He spoke about the requirement in Section 175-139 that the minimum depth to ledge was 5 ft, and said this requirement was satisfied in 3 of 9 test pits. He said the depth to ledge requirement eliminated a significant area of the lot from consideration for a septic system, and created an unnecessary hardship. He also noted that 5 of the 9 test pits satisfied the requirement in Section 175-139 concerning the requirement of a 2 ft depth to seasonal high water table.

He also said that when the septic setbacks from Hydric A and B soils, required by the Zoning Ordinance, were applied, the area where the system could be located was significantly limited. He said there was a limited area on the north side of the property, on a knoll, which it was felt would be quite suitable for a home and a septic field.

Attorney Loughlin said the applicant felt that this series of conditions resulted in an unnecessary hardship, so an area variance was needed in order to allow the proposed use, given the special conditions created by the particular soils conditions on the lot. He said the benefits could not be achieved by some other method reasonably feasible for the applicant to pursue. He noted that the applicant had pursued the guest house approach, but this hadn't worked. He said the benefit could therefore only be achieved by the granting of the variance.

He said appraiser Peter Knight would speak concerning the "no diminution of the value of surrounding properties" variance criterion.

**Peter Knight of Stanhope Associates** said he had over 10 years of experience with appraising waterfront properties in the Durham area. He said he was present to speak about a specific issue as well as a more general issue. He said the specific issue was whether the Adams property, with a NHDES approval septic system, would negatively impact the value of surrounding properties. He said this septic system was adequately designed, and would not discharge effluent to nearby properties. He said the only question was whether there would be a diminution of the value of surrounding properties if there was one test pit out of 4 that was considered adequate according to the Town's septic system regulations. He said he did not think there would be a decrease in value.

He described abutters' properties in various directions from the Adams property, and said of these properties, it was only the property to the north, the Kendall property, that could potentially be

impacted visually. He said the Adams would be maintaining a tree buffer along the entire property line, and noted that in the area where the visual impact would potentially be, there was an approximately 50 ft tree buffer, all of which was on the Adams' property. He noted that the views could be different depending on the season, and provided details on this.

Mr. Knight said a way to determine if there would be a decrease in values was to look at situations similar to this, to see if such a decrease in value occurred. He provided details on this approach. He said that in order to try to quantify whether the change in view impacted property values, he had looked at his database of properties in Durham.

He noted one property on Deer Meadow Road containing a large house, that a buyer had paid \$1.75 million for. He said the house was then essentially torn down and replaced with another large house of about the same size. He said the property had a lot of issues that made it not very private, including the fact that it was in a neighborhood of much smaller houses, and sat in the flight line for Pease.

He said that property was much less private than the property now in question, and said it should have sold for less, if the people who bought it thought there was a diminution of value because of less privacy. But he said the sale price told him that waterfront properties surrounded by fairly significant improvements in properties were not diminished by them.

He provided further examples of places in Durham where the property values for properties that were not private were not discounted, and he said that based on this information, the siting of the second house where the Adams proposed to site it would not diminish the value of the adjacent property.

Mr. McNitt asked how many significant properties had sold on the west side of Little Bay over the last 3 years.

Mr. Knight said he wasn't sure, but said it was probably not more than 10 properties that had been sold.

Mr. deCampi said that with the Deer Meadow property, deep anchoring was available. He also said there was the "king of the hill" effect.

Chair Gooze asked if there was any way to tell whether the Deer Meadow Road property would have sold for more without the encumbrances on it.

Mr. Knight said the data wasn't available to allow him to answer that question. But he said the property was adequately exposed to the market, and said there was a knowledgeable buyer. He said there were no special conditions of sale, and no unique financing that would cause the price to be higher. He said the property had significant privacy issues, but said that was a very high price that it was sold for.

Chair Gooze asked Mr. Knight as an appraiser whether, looking at the Kendall residence, he felt it would be worth more if there was no house next door that could be seen when the trees were bare.

Mr. Knight said no, based on the Deer Meadow Road property and some other properties, which he described. He said if it was an area where the quality of the improvements made to homes was homogenous, there was no difference. He noted that if the Adams put a 1000 sf ranch house on their

property, that would be different. But he said that given the value of their lot, no one would ever do that.

Mr. Welsh said it sounded like the neighbors thought there might be a problem with the septic system but that Mr. Knight has said this wasn't an issue.

Attorney Loughlin asked soils consultant Jamie Long to speak about the septic system issue.

**Jamie Long, NH Soils Consultants**, said he had identified the wetlands on the site, had done the test pits for the septic system, and he noted that the septic design was ultimately approved by the State. He reviewed in detail the differences between the Town and State septic system requirements, including the fact that the State required one adequate test pit, while the Durham Zoning Ordinance required 4. He said the only test pit that met the Town's requirement was test pit 6, which was where the system was designed.. He said the applicant could meet the State's requirements, but not the Town's.

He said a detailed soil map of the property had not been done, but said the lot was very big, so the lot size by soil type calculations would therefore be exceeded, which meant that the site could support an onsite septic system. He said the State wouldn't approve a system that would be polluting.

It was noted that the Town's septic requirements involved here only applied to new subdivisions, and not to lots of record, which only needed to meet the State septic requirements.

There was discussion by the Board on the value of having to get more than one adequate test pit, and about whether Durham's Zoning Ordinance was overly restrictive.

Mr. McNitt said he thought the septic regulations were developed as part of a package to manage residential growth in Durham. There was discussion about this by the Board.

Mr. deCampi said the State had to deal with pressures that the Town did not, and said Durham designed ordinances that were specific to Durham. He also said the ZBA looked at each property as unique, and said in this instance, they were trying to get clarity on the scientific issues involved.

Mr. Long said when the Board did the site walk, they would have a better appreciation of the site, the distance from wetlands, from Great Bay, etc.

There was discussion between Mr. Welsh and Mr. Long that the septic system would be mounded.

Attorney Loughlin asked how far the leach field would be from the Kendall property, and whether scientifically there was a way that it could impact their property, or wetlands, or Great Bay.

Mr. Long said if the system was properly constructed and maintained, he didn't see how it would have a negative impact on any abutter. He noted that the 75 ft. well protection radius requirement, and said if that distance was adequate to protect drinking water, the distance spoke for itself.

Ms. Davis asked how common mounded septic systems were, and there was discussion.

Chair Gooze asked what Attorney Loughlin thought the purpose was of Durham's requirement that there be 4 test pits.

Attorney Loughlin said he thought the purpose was growth control.

Mr. Johnson noted that the State approval of the two septic systems was overseen well by the Town. He said he had been there to enforce the Durham regulations, and said while there were 4 State approved test pits, there were not 4 Durham approved test pits.

Attorney Loughlin said from a scientific point of view, there was no reason to believe that having only one Town approved test pit meant there was a pollution problem.

**Mike Sievert, MJS Engineering**, said this was an unreasonably restrictive requirement, noting that the variance was only being asked for concerning the number of test pits, which had nothing to do with the type of soils on the property. He said the EPA, the State, the Small Flows Clearinghouse, etc. stated that this type of soil, even the Buxton soils, could be acceptable for septic systems. He provided details on this, and said in no way would a soils expert feel that this system would overload the site hydrologically. He also provided details on the fact that an Enviroseptic system was planned for the site, which resulted in a 60% reduction in the leach field size that was needed.

He said all of the variance criteria were met with this application, and requested that the variance be granted. Concerning the spirit and intent of the Ordinance, he said it was designed to allow lots that could accommodate a septic system. He said there was scientific evidence that a 6.2 acre lot could accommodate a septic system.

**Attorney Sharon Somers** said she represented the Kendalls, who were the abutters to the north of the Adams property. She submitted a letter, and read through it. She said she was pleased to hear that the Board had decided to respond to the request for a site walk, and that the Board would be looking at the view from the Kendall house as well as the view from the Adams house. She encouraged the Board to allow additional time for the presentation of expert opinion, noting that soils consultant Jim Gove was present to respond to the testimony so far.

Attorney Somers said that while this had been presented as an area variance, she felt the Board should look for evidence under the use variance criteria. She said the essence of the question was whether or not the wording in the Zoning Ordinance concerning the preservation of character applied to the proposed use. She said it was the abutters' opinion that in imposing this new subdivision in the neighborhood, the applicant was required to preserve the character of the surrounding area.

She said for this reason, this should properly be considered a use variance. She invited the Board to therefore deny this application, and to have the applicant come back with a use variance application. But she said that under either variance scenario, the applicant didn't carry the burden of proof.

Attorney Somers provided details on Durham's regulations, and said it was clear that the Town had strict soils criteria. She said while the septic system that was designed meet State standards, it was clear as a matter of law that the Town had the ability to adopt more stringent standards than NHDES. She provided details on this, and said this was apparently what the Town had chosen to do. She said it was clear that an overriding purpose of the Ordinance was to make sure that septic systems were placed in suitable locations, in accordance with Town standards.

She said that concerning the issue of the variance criterion regarding the diminution of the value of

surrounding properties, Mr. Knight worked for Stanhope Associates, and Mr. Stanhope was on the Town Council. She said this might be a conflict of interest. She also said that Mr. Knight's analysis only went so far. She said he had based his argument on incorrect assumptions, which the Board would realize once it saw the Adams property, and the view of it from the Kendall property.

Attorney Somers said a concern of the Kendalls was what the outside of the property would look like. She noted that the Kendall site had magnificent landscaping, and said Mr. Knight didn't take into account the impact the further development of the Adams property could have on this. She said there could be overhead wires, tree removal, etc, that could be related to a diminution of value of the Kendall property.

She said the variance should be denied whether it was an area variance or a use variance. She stated again that she was pleased that the Board would be doing a site walk, and said she would come back at a future meeting with additional testimony concerning this application.

Soils consultant Jim Gove said he had not visited the Adams site yet, but said he would be attending the site walk. He reviewed an expert opinion letter he had provided concerning the variance request. He described the land patterns and soils on the Adams property, as observed from the maps that had been provided. He said the way the subdivision of the property had been laid out defined a pork chop subdivision, and he said the fat part of the pork chop was where the test pits were done. He said given the way the lot line was drawn, this was the only area that could support a septic system.

He suggested that an alternative, more conventional subdivision design of the property, which had 21 acres and a lot of upland, would result in lots that would meet the septic criteria. He provided details on this. He said the question that therefore came to mind was whether, by drawing the lot line the way they did, the applicants had created the need for the variance, and whether if the lot line was drawn to include more upland area, that a more suitable location, based on the Zoning Ordinance, could have been found for the septic system. He said he didn't know this for sure because he hadn't dug on the site, but he noted that two of three test pits dug in the upland area had been acceptable.

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

**Patsy Kendall, 395 Bay Road**, described in detail the layout of her property relative to the Adams property. She said she and her family were against the request for variance. She said she and her husband had planned to spend their retirement years at this property in Durham. She spoke about wanting to continue the degree of privacy they currently enjoyed and said granting the variance would have a negative impact on her family.

She said the proposed house would be located 150 ft away from her property, and she provided details on how this would affect her family's property. She said there would be visual loss of the country setting, especially in the winter, and said she was fearful that this would have a negative impact on the value of their property. She said it was hard to justify that on the Adams 21 acre parcel, there was no other location to achieve their goals without having such a negative influence on the Kendall property.

Chair Gooze and Vice Chair deCampi read letters into the public record from property owners **Frederick and Emily Slama, 367 Durham Point Road, Frank and Joan Graf, 360 Durham Point Road, and Patricia Pratt, 402 Bay Road**, which all spoke against this variance request.

**Steven Fellows, 426 Bay Road**, spoke about noise issues and ecological issues that were of concern to him because of this proposed subdivision. He spoke in detail about the issue of fragmentation of the forest in that area, and about the possibility that invasive species could be introduced to the area, with additional driveways in the forest. He said what was proposed would be detrimental to the character and the appearance of this area. He noted that he had come to live in this area because of the low density of development.

**Sallie Ford, 433 Bay Road**, said what was proposed by the applicants was very ill conceived, and was done with total disregard for the area. She said while the property could be seen from her land and there would be some impact from this, it was the Kendalls' property that would be most impacted. She said there would be a substantial decrease in the value of their land. She said the Kendalls had built their house with the greatest of care for the existing neighborhood and the land. She provided details on previous changes to the land on the Adams property.

**Roger Worboys, 591 Bay Road**, said he no problem with an additional house being put on the Adams property, but said with a lot this size, surely there was some acreage where the Adams could put in a house and have a less adverse impact on the surrounding area. He said because of the test pit situation, the area proposed for the septic system should be somewhat suspect. He said it was somewhat wet out there, so care was needed in positioning a septic system. He also said it was prudent on the Town's part to have strict provisions in the Ordinance relative to Great Bay.

**Firoze Katrak, 565 Bay Road**, said the applicant's proposal was very unreasonable, on a number of counts. He said if the applicants were serious, they should come up with a more reasonable proposal.

Chair Gooze noted that this public hearing would be continued to the October 9<sup>th</sup> ZBA meeting, and said in the mean time, there would be a site walk of the property.

#### **Recess 9:20-9:30**

- B. PUBLIC HEARING** on a petition submitted by Michael Cleary, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article IX, Section 175-30(D)(3)(d) of the Zoning Ordinance to add a second floor to an existing house within the original footprint and from Article XIV, Sections 175-74(A) and 175-75.1(E) of the Zoning Ordinance to replace the existing septic system within the shoreland setback. The property involved is shown on Tax Map 12, Lot 1-15, is located at 26 Cedar Point Road, and is in the Residence C Zoning District.

This hearing was postpone until the October 9<sup>th</sup> ZBA meeting, at the request of the applicant.

- C. PUBLIC HEARING** on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an APPLICATION FOR VARIANCES from Article IX, Section 175-30(D)(3), Article XIV, Section 175-74(A)(1) and Article XII, Section 175-54 of the Zoning Ordinance to install cement retaining walls for soil removal and erosion control on south end of the basement and north end, 8 feet east from original house stairs, and also, to construct rear door egress stairs from south door, north door stairs, deck/landings and chimney within the shoreland and sideyard 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.

This hearing was postponed until the November 11<sup>th</sup> ZBA meeting, at the request of the applicant.

**D. PUBLIC HEARING** on a petition submitted by Attorney Mr. deCampi P. McGee Jr., Portsmouth, New Hampshire on behalf of Mr. deCampi Palmer, Exeter, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a July 23, 2007, decision of the Code Enforcement Officer, Thomas Johnson, upholding a previous decision to deny the building of a home on a lot. The property involved is shown on Tax Map 15, Lot 14-1, is located on Newmarket Road, and is in the Residence B Zoning District.

Chair Gooze assigned Mr. Welsh as a voting member. He said Board needed to decide if would hear this. He said in the past, when the same application as one that had been presented to the ZBA before came before the Board again, it was not heard. He said otherwise, everyone would be coming in for things like this. He read a letter from former Planning Director Rob Houseman from 1995 to Mr. Palmer, and said this letter referred specifically to the issue that was before the Board now. He read from this letter. He said there was now the same appeal, and the same Ordinance provisions involved, and said he felt strongly that this appeal should therefore not be heard. But he said the Board needed to decide this.

Mr. deCampi said the present application reiterated the Houseman letter. (This letter had determined in 1995 that the lots did not meet the criteria for granting a building permit because there was no access to a Class V highway or better.) He noted that Mr. Johnson's recent letter to the applicant had indicated that there were other possible remedies.

Mr. McNitt said he agreed concerning the appropriate procedure. He said he would have no objection to not having a public hearing on this matter.

Mr. deCampi said he did feel that the Board should give Attorney McGee the opportunity to make some comments.

Chair Gooze said he disagreed, and noted there were remedies out there for the applicant.

Mr. Sievert said it was perhaps more appropriate for the applicant to go for a variance.

Attorney McGee said in fairness that under due process, the 5<sup>th</sup> clause of the Constitution, he should be given the opportunity to speak before the Board before it predetermined the issue, without letting the applicant state what his position was.

Chair Gooze said he was not opening the public hearing, but would allow Attorney McGee to speak.

There was discussion as to whether what Attorney McGee was going to speak about was whether there was something different about this appeal, as compared to what was in the 1995 appeal.

Attorney McGee said he first needed to speak about the 1995 decision, and said there had been no procedure for this decision to be made in 1995.

Chair Gooze asked if there had been an appeal of the 1995 decision within 30 days, and Attorney McGee said there was nothing upon which to make such an appeal.

There was discussion as to whether it was unclear from the previous denial by Mr. Houseman that



there was 30 days to appeal his decision. It was noted that the Palmers had not made this appeal within 30 days.

Mr. McGee said Mr. Palmer had never applied for anything, and had just asked the building inspector a question. He said the denial in 1995 was wrongly issued.

Ms. Davis said it did look like the original letter from Mr. Palmer was not asking for a building permit. But she said there was this letter from Mr. Houseman, which said Mr. Palmer should get back to him within 30 days, but there was no response from Mr. Palmer.

Chair Gooze said from his previous dealings with the Town, personally, he knew that letters from the Code Enforcement Officer offered the right of appeal. He said he felt strongly that the Board shouldn't hear this current Appeal.

Mr. deCampi read the letter from Mr. Palmer written in 1995, and said it seemed to be what Mr. Houseman had responded to in his letter.

There was further discussion by the Board on this previous correspondence.

Attorney McGee said there was a second issue he wished to discuss, that the right of way on which the Palmer property was located was actually considered to be a private road, based on the Town map he had just seen at Town Hall. He provided details on this, and said the property was also shown on the Zoning map and tax map as being on a private road.

He said that given this, and the fact that the building inspector should have referred the matter in question to the governing body in 1995, this was now a different matter than what was presented in 1995. He said in 1995, Mr. Palmer was told he had no frontage, He said this represented a difference that allowed this matter to be heard now by the ZBA.

He said the Board was wrong in denying the appeal because there was nothing upon which the original administrative decision had been made. He said the building inspector should have referred this to the governing body, under RSA 674 41-1 D. He also said that if the ZBA wouldn't listen to his client, they would take this to the Town Council.

There was discussion by the Board. Mr. deCampi said the governing body clearly had a right to hear this, but said this was not a matter for Mr. Johnson and the ZBA.

Mr. Sievert asked how it was unclear from Mr. Houseman's 1995 letter to Mr. Palmer that he had 30 days to appeal the decision. There was further discussion about this, as well as detailed discussion about whether this was a private road, and whether it made a difference as to what the status of the road was.

Chair Gooze agreed to open the public hearing in order to get more information on the private road issue.

**Robert Crooks, 1 Hamel Drive**, said he had prepared a memo, and requested permission to distribute it. He said it included a picture of this "private road". He said this was not a private road, and said he would like the Board to see what it was.

Chair Gooze said he thought this would be a different situation if the Board did feel this was a private road.

Mr. deCampi said the situation was still the same even if it was, and said it couldn't be built on. He said the Houseman decision said Mr. Palmer couldn't build on a private road either, without jumping through all kinds of hoops. Mr. deCampi noted that he was stating his opinion on this.

There was discussion by the Board as to whether Attorney McGee should be able to make his case, and it was agreed that he could. There was then discussion on what the issue was that Attorney McGee should be able to speak to.

Chair Gooze asked whether there had been a previous decision by the governing body that had allowed building on that road.

Attorney McGee said this matter was never presented to the governing body in 1995, to his knowledge.

Chair Gooze said that being the case, this present situation was no different than the situation in 1995.

Attorney McGee said he disagreed, and said there was nothing in State statute that said he couldn't come back to the ZBA concerning this issue.

Chair Gooze closed the public hearing,

***John deCampi MOVED to not hear this Appeal of Administrative Decision because the time limit of 30 days for appeal of the administrative decision was not met in 1995. Chair Gooze SECONDED the motion.***

Mr. McNitt noted that in the exhibit provided by the applicant, the road was called a right of way. There was further discussion on this issue.

Chair Gooze referenced the specific language in the Houseman letter, and also referenced wording from a Law Lecture series concerning the NH State statute on NH roads.

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

Attorney McGee said there was a pending building permit application from the Palmers' trustees that was now formally being withdrawn. He stated that there had been no determination on this.

There was discussion by the Board that Items II D and E had been merged for purposes of the previous discussion.

***Ted McNitt MOVED that this decision applies to Agenda Item II D (Lot 14-1) and Agenda Item II E (Lot 14-2). John deCampi SECONDED the motion, and it PASSED unanimously 5-0.***

- E. PUBLIC HEARING** on a petition submitted by Attorney Mr. deCampi P. McGee Jr., Portsmouth, New Hampshire on behalf of Mr. deCampi Palmer, Exeter, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a July 23, 2007, decision of the Code Enforcement Officer, Thomas Mr. deCampison, upholding a previous decision to deny the building of

a home on a lot. The property involved is shown on Tax Map 15, Lot 14-2, is located on Newmarket Road, and is in the Residence B Zoning District.

### **III. Approval of Minutes – July 10, 2007**

Page 6, bottom paragraph, should read “Ms. Davis asked whether any of the proposed...”

Page 7, 6<sup>th</sup> paragraph, should read, “...a lot of sump pumps that would be needed...”

Page 8, 3<sup>rd</sup> paragraph from bottom, should read “..related to the situation with this proposed development.”

Page 9, 4<sup>th</sup> full paragraph, should read “..would be up to the builder/homeowner...”

Page 15, 3<sup>rd</sup> paragraph from bottom, should read “..was a Planning Board issue, but said it...”

Page 16, 4<sup>th</sup> paragraph, should read “...water problems including himself were having in Durham...”  
Same paragraph, last sentence, should read “..could be a house built on the land, which could sell....”

Page 17, top paragraph, should read “...because that flow could probably be managed.”

Page 18, 4<sup>th</sup> paragraph, should read “conservation subdivision with unusable land provisions to minimize the impacts...” Next paragraph, should read “He said the unusable land provisions were new and came as a shock, but they should be observed.”

***Ted McNitt MOVED to approve the July 10, 2007 Minutes as amended. Mike Sievert SECONDED the motion, and it PASSED unanimously 5-0.***

### **V. Other Business**

Mr. Johnson reviewed current court cases involving previous ZBA decisions. He also noted that the Planning Board had filed a Request for Rehearing of the Administrative appeal concerning the Stonemark application.

Chair Gooze said the ZBA might need to get its own attorney for this matter.

Mr. Johnson noted that the Town Council had recently passed the revised definition of home occupation, and as part of this had developed a definition of the word “premises”. He provided details on the derivation of this definition.

There was discussion concerning the spirit and intent of Zoning Ordinance provisions. Chair Gooze said the ZBA needed to keep pushing for the Planning Board to clarify this, in order to make things easier for the ZBA to interpret.

B. Next Regular Meeting of the Board: \*\*October 9, 2007

### **IV. Adjournment**

***Ted McNitt MOVED to adjourn the meeting. Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.***

Adjournment at 10:27 pm

Victoria Parmele, Minutes taker