

These minutes were approved at the January 8, 2008 meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, NOVEMBER 13, 2007
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Jay Gooze; Jerry Gottsacker; Ted McNitt; Michael Sievert;
Ruth Davis; Robbi Woodburn; Carden Welsh

MEMBERS ABSENT: Vice Chair John deCampi

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

I. Approval of Agenda

Chair Gooze noted that ZBA Vice Chair John deCampi, had died recently, after a battle with cancer. He said John had joined the Board in 2002, was a regular member from 2003-2006, and then was appointed for another term. He spoke of the fact that John had attended recent meetings despite the fact that he was undergoing cancer treatment, and said the Board was very impressed by the fact that he was still concerned about the Town during that time. He said John's wife had said he was very proud to be a member of the ZBA.

Chair Gooze asked that there be a moment of silence on Mr. deCampi's behalf.

Chair Gooze said there had been a request to postpone the Mill Pond Center for the Arts application. He also said the attorney for the Teeri's had asked that this application be continued, but he said it actually should be postponed.

Mr. Johnson said the Planning Board would hear a case from the Teeri's the following day, and said depending on how things went, the Appeal of Administrative Decision might be withdrawn.

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

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

Mike Sievert MOVED to nominate Ted McNitt as the Vice Chair of the ZBA. Jerry Gottsacker SECONDED the motion, and it PASSED 4-0-1, with Mr. McNitt abstaining.

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

II. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by the Mill Pond Center for the Arts, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a September 27, 2007, letter of Zoning Administrator, Thomas Johnson, in regards to the use of the property. The property involved is shown on Tax Map 6, Lot 9-8, is located at 50 Newmarket Road, and is in the Residence B Zoning District. This application was not heard, because the applicant had requested a postponement until the December 11, 2007 meeting.
- B. **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.

Attorney Tanguay represented the Sidmores, and said he would present a request to limit the scope of the hearing to three issues. He noted that the previous fall, the ZBA had granted variances to allow the Sidmores to allow construction on their residence. He said that after this, they had finalized various plans for the work to be done, and said these were submitted to the Town. He said the Code Officer reviewed them, and there was no indication along the way that construction needed to stop. He said it was made known that the applicants would need to come back if there were variations between the plans provided to the ZBA and the way the building was constructed.

Attorney Tanguay said Mr. Johnson had in fact requested that the applicants come back, and they applied for variances, for the September meeting. He said he had then asked that the application be continued to a future meeting because the applicants had not received a letter from Mr. Johnson specifying what they had had varied from and were in violation of. He said it had therefore seemed inappropriate to come to this Board at that point. Attorney Tanguay said there was a site walk shortly after.

He said the applicants needed to know what the issues were, in order to know how to respond. He said a big piece that was missing was that they hadn't heard back yet from DES regarding the issues having to do with the south end of the house. He said DES was at the site in August, but hadn't been heard from since that time.

He said that regardless of what DES determined, the applicants would be in a position to respond at that time. He said to come here and ask the ZBA for relief in that area before hearing from DES, and before having the applicants' engineers look at what DES said seemed premature and could cause contradiction between what the State said and the Town said. He said it therefore made sense to put the issues having to do with the south end of the house aside for now.

Attorney Tanguay said the applicants had received a letter from Mr. Johnson last Friday, which outlined five issues:

1. the 2 sided porch has been extended on a third side within the 50' sideyard setback beyond the original approvals.
2. The new chimney also located on the same side is in the sideyard setback and beyond the original approvals.
3. The certified plot plan shows an increase in elevation beyond the original foundation height approval.
4. The far end of the house includes two new retaining walls and a walkout lower level that was never authorized and is beyond the original approvals.
5. The excavation work and soil removal disturbance on this end of the house was never authorized by the original approvals.

He asked that the Board limit the scope of the hearing to the first 3 items. He said if the Board agreed with this, if the applicants then got relief concerning them, and a final inspection was then done of the property, he would ask that the Board authorize Mr. Johnson to issue an occupancy permit to occupy the primary residential unit, but not the basement, which the applicants were waiting for DES input on. He said none of these variance issues had to do with the inside of the primary residential unit.

Chair Gooze appointed Ms. Davis as a voting member. He said the Board should make a decision on how to approach this application before going further. He asked Board members if they needed to hear from the opposing side before making a decision on this, and the Board agreed that this should happen.

Attorney James Shulte, representing the Bates', abutters to the Sidmore property, said Attorney Tanguay was incorrect when he said that only the last two of the five items involved DES. He said DES had specifically granted a permit to encroach into the wetland setback with an expansion of the existing 1200 sf house by adding a 60 ft by 10 ft extension, and to add another 920 sf of farmer's porch. He said DES specifically limited the expansion to 2720 sf, and said the wrap around porch was not included in that.

He said the porch that was approved came to the edge but didn't wrap around, so what was built was an additional encroachment into the area that DES had jurisdiction over, and needed a permit. He said although the chimney issue was a smaller matter, it too was a DES issue because it was located in an area under the jurisdiction of DES. He said the height issue was not a matter of DES concern.

He said the concern was that this had been a piecemeal process, and said all of these issues should have come to the Board when the original variance requests were heard. He noted that the first time these original variances were heard, they were denied because members thought the project was too big and would impact views. He said that after further discussion, the variance was granted on a 3-2 vote. He said what was presented to the Board at that time was substantially different than what was actually built, and he said that if everything had been presented to the Board last year, the action of the Board at that time might have been different.

Attorney Shulte said he did not believe this Board had the jurisdiction to consider any of these requests based on Fischer v. Dover. He said when a ZBA acted on an appeal to the board, and that became final because it was not challenged in court, this became binding, and unless there was a substantially different application, or a change in surrounding circumstances, a ZBA couldn't go back and look at what it had voted on previously.

He said this was the kind of thing the applicants were asking for that evening. He provided further details on this, and said there was no material change in their application. He said their application was just a marginal extension of what they had asked for the last time they were before the ZBA. He said this was a piecemeal approach, when there were big issues out there that ought to be addressed all together.

Attorney Tanguay said the Code officer had wanted the applicants to come back before the ZBA. He also said Fischer v. Dover was a case in which an applicant came before the Board and lost, and then, having lost, asked again for some relief. He said the Court had said the applicant couldn't do this, and that in order to do so, the circumstances had to be different. Attorney Tanguay said even if that did apply, in this case the circumstances had in fact changed. He said there wasn't a project alive where something didn't change when it was actually built. He said in this case, there was nothing that came as a surprise, and said everything that was done was on a plan. He provided details on this.

Attorney Shulte said that a change of circumstances didn't occur when someone violated what it told the ZBA it was going to do, and didn't occur when someone violated the Zoning Ordinance as drafted. He said Attorney Tanguay had argued that when the applicants violated the ordinance, after having told the Board something else, this justified allowing them to come back and ask for relief. He said nothing in Fischer v. Dover said the applicant had to lose the case, but said they couldn't come back with essentially the same application unless something else happened, and that something else could not be the harm inflicted by the applicants themselves by violating what the Ordinance required.

Chair Gooze said if someone brought an application before the ZBA for a deck and the Board approved it, what was to stop that person from coming back and saying he/she wanted another variance in order to make the deck bigger.

Attorney Shulte said the question would be whether the application was different, and if so, why. He said there might be justification for an increase in a deck, and he provided details on this. He said in this case, when the applicants went to DES for permits, they presented a landscape plan that indicated that the all of the vegetation on the south end of the building would remain. He also said the plans and drawing shown to DES and the Town showed that the new home would be built on grade, and nothing was said about excavation.

He said there was no need for the excavation for the emergency egress from the basement apartment. He said the DES permit said the work had to be done in strict conformance with a landscape plan the Sidmores provided. But he said they instead excavated the fill, and took out the landscaping. He said if they wanted a walkout basement, why not tell the ZBA this previously so this could have been taken into account.

Chair Gooze said the public hearing was open, but said the Board needed to discuss how to handle this situation. He decided to close the public hearing so the Board could decide how to proceed. There was discussion on how DES's decision related to the role the ZBA played in this situation.

Mr. Welsh asked if DES might say the Sidmores would have to take down the third side of the porch that had been built and remove the chimney, and Mr. Johnson said they probably wouldn't have to take out that third side of the porch/deck because it was on grade and was supported by sonotubes. But he said they might be required to take out the retaining walls and put the soil back, and pay a fine.

After discussion by the Board, Chair Gooze summarized the options for the Board:

- Agree with Attorney Schulte that this is essentially the same application
- Agree to hear the application, but also agree that the five issues need to be addressed together, so the hearing should be continued because DES hasn't weighed in yet on two of these issues
- Agree to discuss the three issues not involving DES, and leave the other two to a future meeting after DES has responded

Mr. Gottsacker said he thought a key question was whether the Board agreed that DES had jurisdiction rather than the Board.

Chair Gooze said if the Board felt the situation with DES would influence the overall decision the Board made on this application, it should continue this hearing. He said if the Board felt there was enough of a change to justify the present request for variances, and the Board felt it could make a decision on the three issues not involving DES, it could hear them at the present meeting.

Mr. Sievert said he had heard Attorney Shulte say that if something changed with a project, like finding ledge at 10 ft and therefore needing to go out to 15 ft, how one could know this without starting construction. He said it seemed that circumstances had changed for the Sidmores out in the field.

Mr. Welsh said Attorney Shulte's position was that the circumstances didn't change, and the Sidmore's simply wanted to build a bigger porch.

Mr. Gottsacker said he didn't agree with that. He said the site walk notes indicated that the foundation was replaced because problems were found with the old one. He also said the notes indicated that the surveyor's measurements indicated that the new foundation was 6 inches higher than the old foundation. He said this wasn't a major change, and was perhaps within the margin of error. He said the issues involved seemed to be run of the mill decisions the Sidmores had made when they ran into things during construction.

Chair Gooze said he agreed that the 6 inches didn't make much difference. He said he didn't think a little bit of wrap around porch would make a big difference, although stating that at the time the ZBA heard this case, there was concern about the size of the whole project, including

the porch. He also noted that with the Christensen case, the applicant had asked for a little more of a porch, and the Board had agreed there was enough difference to allow another variance application.

He said an applicant had the right to ask for another variance, including if more was being asked for than in a previous application. He said the Sidmores should have asked for these variances before it was built, but it didn't mean the Board couldn't make a decision. He said if the Board decided the variance wouldn't be granted, they would have to take it down.

There was discussion that the original plans showed a wrap around deck, but it didn't go around to the back. There was discussion as to whether there had been a door in the back.

There was discussion on where the status of DES decision, and how this decision could impact the various issues that were involved with this application. There was detailed discussion about the two issues concerning the south side of the property, involving the retaining wall and excavation work, and the removal and disturbance of soil.

There was discussion that the Board could grant variances for three of the issues, and that these variances would be contingent on a lack of disapproval by DES. There was discussion that two issues concerning the south side of the property could be continued until the DES response was received.

There was discussion that if DES said no, it didn't matter what the ZBA said, because both the Town and the State requirements had to be met.

Mr. McNitt said that with the Sidmores' previous application, the landscaping proposal made the application into something relatively acceptable to neighbors, people looking at the property from the water, and people looking at it from Route 4. He said this was countered by the work that was actually done. He said he would hate to see the Board give approval for the first three items, and essentially leave issues four and five up to DES. He said if DES approved this, he would hate to see this project as it was, without landscaping provided to address impacts to the neighborhood.

Mr. Sievert referenced the as built plan and the pictures that were presented, and said one wouldn't see any difference from the water as compared to what the Board had previously been shown.

Mr. McNitt said that was true in terms of looking at the property from the water. But he said this site was located on a point of land, and was a location that was very obvious from various perspectives.

Ms. Woodburn said the first three issues seemed to be innocuous, but she said when they were put together with the other two issues, - the amount of grading and the wall on the south side of the building, the application took on a different tone. She agreed that the three issues could easily be separated out, but said if the Board was considering the abutters, looking at all the issues as a

whole was a bit different. She said separating out the three issues therefore made her uncomfortable.

After further discussion, the Board agreed there was enough of a difference in this application to hear it. It was then determined that all voting members of the Board except Mr. McNitt thought that the first three issues could be heard by the Board that evening. Mr. McNitt said all five issues should be heard together.

Mr. Johnson noted that the Board would need to address the certificate of occupancy issue. Chair Gooze said this would be addressed if the variances were received.

Mr. McNitt asked if the Board did this, it would have any recourse for the project as a whole if DES said the applicant didn't have to change anything. Ms. Woodburn said yes, because the disturbance was within the Town's shoreland setback.

Chair Gooze opened the public hearing.

Attorney Tanguay said that regarding the height of the building, there was a letter dated August 24, 2007 from Eckman Engineering explaining that the height was 6 inches higher, with an explanation as to how that had occurred. He said this was not a variance item to begin with, and was not violating the Zoning Ordinance, so was more a matter of the applicant coming back and asking the Board for its blessing even though it wasn't exactly what the Board had previously been told it would be.

Regarding the chimney issue, Attorney Tanguay noted the certified foundation plan by Eckman Engineering dated August 28th. He said the original building was 20 ft wide, and a 10 ft variance was granted to allow it to be 30 ft wide. He said the plan showed that the chimney was placed within the 10 ft area that was allowed. He said he didn't think the applicants even needed the variance in this instance, but he said if the Board wanted to talk about a variance, there was a chimney shown on the diagram of what the building would look like, although it was not shown on the actual floor plan. He said it was understood that the chimney would be built, and said there wasn't really any other place to put it.

Concerning the third issue, the wrap around porch, he agreed that it was not on the plans that the ZBA had seen. He said the idea had come about in the field when construction occurred, and said it had seemed like the appropriate thing to do. He said it was on the plans for which the building permit was granted, and said the applicant would be back sooner if were told they couldn't do this.

He said the porch extended beyond the rear of the building, and would not have a roof. He said it was merely a deck that was 6 ft wide, with a 3 ft landing outside the door. He said a 3 ft by 3 ft stairs would actually stick out more and be more of an encroachment than having this deck, which allowed the stairs to run parallel with the building. He also noted that Mrs. Sidmore's mother, who had owned the property for years, was now in a nursing home, and a temporary ramp allowing her to enter the house would be consistent with this deck.

Attorney Tanguay said he could go through the variance criteria for these three issues if the Board desired.

Attorney Shulte provided pictures of what the house looked like previously, and a picture of what the ZBA was told the house would be, including the south and westerly side of the property. He said the Board was told the house would be built at grade on the existing foundations, but that the foundation would be extended out 10 ft toward the Bates' home. He said a third picture was what was actually built.

He provided copies of the application to DES, which included the landscape plan that was provided by the applicants. He said it talked about the existing shrubbery and trees, including lilac bushes down by the water. He said DES had jurisdiction over this area, including almost all the way to the back side of the house to the Bates' property, because the State's Shoreland Protection Act applied within 250 ft of the shore. He said DES had to approve the foundation just as the ZBA did, and had to approve construction of the retaining walls. He said what was shown in the plan, a small cape sitting on the existing foundation, was what the Board and DES were told would be built.

He noted the report from Eckman Engineering from July 2006. He said a concern of the Board previously was how big the project would be. He said the Board was told that the new house would be only 2 ½ ft taller than Bates' house, and 3 ½ ft taller than the Roberts' house. He showed a picture of what was built, and said they were told that the existing 20 ft wide foundation would be replaced with a 30 ft wide foundation, but he said what was built only wound up 8 ft closer to Bates'. He said there was some concern on this.

Attorney Shulte also said the house that was built was a good 10 ft taller than the Roberts home, and 11 ft taller than Bates' home. He also said that on the back of the house, there was a full dormer, and said the property now looked down on the Bates' property, which had taken away their privacy. He noted that the Bates' had supported the original variance request.

He said the concern was not whether the foundation was actually 6 inches taller than it had been. He said the objection was that the whole property was a good 7 ft taller than the Board had been told it would be. He said if the Board had been told it would be this much taller, and would overshadow the neighbor's property, it might have done something different. He said some big mistakes had been made, and said they were variances from what the Board was told.

Attorney Shulte said that regarding the chimney, it might be the case that it was only 31 ft from the property line. But he said the wrap around deck, which was not on the plans, was now 25 ft from the Bates' home, which also moved it further into the setback, in an area that DES would also have to approve. He said the concern was that having the deck wrap around changed the use of the walkout doors built on that end, the use of the back yard, and the way the apartment would be used, which would impact the Bates' use of their back yard.

He said this was the Bates' concern about the excavation that was done, aside from the fact that it wasn't permitted. He also noted that the view from the Bates' back yard was of a stockade

fence that had been built right down the property line, with the unfinished side facing out. He said all of these things would change the dynamics of how the Bates' property would be used.

He asked again that the Board look at this request for variances in its totality, which indicated that it was a gross violation of the Zoning Ordinance, State laws, and had a dramatic impact on the Bates'. He said if this had been presented in a straightforward fashion that addressed the wrap around deck, height difference, etc, the Board would have had a fair chance to evaluate it. He said all that could be done now was to not allow further encroachment, and incremental chewing up of the Ordinance, by denying the variance requests for these three issues.

He said the applicant had the burden of proof concerning impacts on property values of surrounding properties etc. He said there had been no evidence presented tonight on any of the variance criteria. He said all the Board saw on the application was that it was not their fault, and that it was Mr. Johnson's fault.

Mr. Sievert asked if there was actual evidence that the building was 7 ft. higher than it had previously been, besides the picture. He said the surveyor indicated that it was 6 inches higher, which meant that it would be only 3 ft taller than Bates', and 4 ft taller than the Roberts.

Attorney Shulte said the surveyor only had said the foundation was higher. Attorney Shulte said he was going on what the pictures he had provided showed, and on what he had observed at the site and. He said the property was now significantly higher than 3ft higher than the Bates' home. He said that providing evidence concerning this was the burden of the applicants, in that it related to impacts on the neighbors.

There was detailed discussion on this issue by Mr. Sievert and Mr. Shulte, and on where the misleading information might be coming from.

Ms. Woodburn said the pictures didn't mean much because they didn't address perspective issues. She said in a perspective shot, the building that was farther away would seem to be lower.

There was discussion on how the Board could obtain the information on the true building height.

Attorney Shulte said the issue was whether anyone from the Town had verified the measurements. He also said the plan in the new application was substantially different than the plan the Board had acted on last year.

Mr. Welsh asked what Attorney Shulte felt was wrong in the letter, stating that it sounded like the applicants were planning to do a lot of things.

Attorney Schulte noted that the DES permit was based on the Sidmores following the planting plan, which did not indicate that there would be removal of fill, or removal of vegetation. He said what they had done on the site could not be reconciled with the plan.

Mr. Gottsacker said it was his understanding that construction wasn't complete, and said he therefore didn't think it was reasonable to expect the landscaping to go in yet.

It was noted that the excavation issue wasn't supposed to be under discussion yet, but that Attorney Shulte was merely trying to preserve the record concerning this issue, since a question concerning it had been asked.

Chair Gooze asked if there were members of the public who wished to speak in favor of the application.

Steven Kalvelage, 2 Cedar Point Road, first stated that a person did have the right to come back for a variance on top of an existing variance. He said he took great offense at statements that said otherwise. He also said from his standpoint as someone who lived near this property, his property values had gone up as a result of the changes that had occurred there. He said the property previously had been an eyesore, and said although what was there now was larger, aesthetically it was a significant improvement. He said he didn't see the chimney and the porch from his property, and also said that although he could see the Bates' property from the water, the Sidmore addition was barely visible from the water. He said the addition to this home was a significant improvement for the neighborhood.

Mr. Johnson read a letter from **Richard and Dawn Delude, 9 Cedar Point Road**, which said the Sidmore home now looked beautiful from the water and the land, and was a welcome change from the mobile home that had existed on the site before. They asked that the Board approve the variances being requested.

Chair Gooze asked if there were members of the public who wished to speak against this application, and there was no response.

Attorney Tanguay said plans 3 A and 3 B were substantially the same as the plans the Board saw the first time around. He said they did show the walkout, and said the wrap around porch was different, but he said the height, width and size of the structure were basically the same as what had been proposed.

He also said the original variance was not appealed, and said this was not the place to re-argue that case.

Attorney Shulte said the plans submitted in April were substantially different from the original plans submitted, showing a full basement where previously the applicants were going to use the old basement. He said even those plans didn't show the wrap around porch the Bates' were objecting to. He said the building was also taller than what was presented, noting that the Bates' had lived in this location for 40 years.

Chair Gooze closed the public hearing.

The Board first discussed the height issue.

Mr. Sievert said the northerly elevations on the first plan and the second plan were the same. He said he didn't see how the house could be 7-8 ft taller, given the pitches that were shown.

Ms. Woodburn said she thought the problem came from the drawing, and said if the difference in the grade for the two buildings was not taken into consideration, there may have been a greater perceived height difference than what had been presented in the drawing.

There was detailed discussion on this issue by the Board, with Mr. Sievert stating there was confusion as to where the misrepresentation was coming from.

Ms. Woodburn said she didn't think the drawing that showed the relative heights of peaks was correct.

There was further detailed discussion on this. Among other things, it was noted that a full dormer was included in all of the plans.

Chair Gooze said he didn't think this was a variance issue, but if it was, it met the variance criteria.

There was discussion on whether a consideration of the average height of the house, and the relative grades of the different house, might explain the perceived height difference. Ms. Woodburn said with the way the grades were, it would be good to know what the average height was before the Board made a decision on this.

Concerning the chimney and its encroachment into the shoreland setback, Chair Gooze said that it was placed on the side away from the water.

Mr. Gottsacker noted that the chimney was shown on the original plans.

There was discussion that the chimney was located within the original 10 ft. area that the Board had granted a variance for, so Board members were OK with this variance request.

There was discussion that the wrap around porch/deck extended beyond the area for which the previous variance had been granted. There was discussion that this was a sideyard setback issue, so possible impacts on neighbors, especially the Bates', needed to be considered.

Ms. Davis noted that Attorney Tanguay had said that another design, where the stairs came out straight from the house, would be more impacting.

Chair Gooze asked if members of the Board felt this variance request met the variance criteria.

Ms. Woodburn asked if the deck was a necessary means of egress, and Mr. Johnson said it was not, because this was a single-family home, where the only necessary means of egress was the front door.

There was discussion on whether granting this variance for the deck would have a negative impact on property values. There was also discussion on whether granting it would be in the public interest and would meet the spirit and intent of the Ordinance.

Chair Gooze said he didn't think this was against the public interest. He said this was a sideyard setback issue, in terms of the spirit and intent of the Ordinance, and noted that there were abutters who were unhappy with the deck.

There was discussion as to whether or not the deck impacted the neighborhood, in terms of spacing. Ms. Woodburn said it was not significantly different than what was there now in the neighborhood.

Concerning the hardship criterion, Chair Gooze said this was an area variance, and the issue was whether the nature of the property was such that the variance was needed in order to allow them to do what they wanted to do. He said he thought this variance request came down to the public interest and spirit and intent of the Ordinance criteria.

The Board agreed that the height issue needed to be clarified, and that the applicants would need to address this, by getting grades around the house, and the mean height. There was discussion that this issue was not a variance request, but rather was more of a code issue.

Mr. Sievert said he thought the difference was that there had been excavation, which had changed the average height of the house.

Mr. McNitt said what was there before was a one-floor house, and said although there had been two floors, the basement had been hidden for the most part. He said that from the north one floor was visible. He said now what one saw was three floors, including the lower floor. He said he didn't think there was much of a height difference now, although it appeared that there was. But he said he agreed that the height needed to be verified.

Mike Sievert MOVED that the height be verified, and that if a variance is required, the Board will request it at the continued meeting on this application. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said the chimney was located within the 10 ft area for which a variance had been granted before. He said he believed it met all the variance criteria, and felt the variance should be granted.

Mike Sievert MOVED to grant the variance for the chimney on the east side of the house. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

Mike Sievert MOVED to approve the wrap-around deck on the east corner, as shown on the certified foundation plan.

Chair Gooze said he didn't think there was that much encroachment into the sideyard setback by the deck, and said he thought this variance request met the variance criteria.

Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze MOVED to direct the Code Enforcement Officer to grant a temporary 90 day certificate of occupancy when all the requests from the Code Enforcement Officer's letter of November 9, 2007 have been met, but that the accessory apartment shall not have a certificate of occupancy until the remaining variances are received and the height verification has been received. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

Recess from 9:05 to 9:15 pm

- C. 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.

Ms. Woodburn was appointed as a voting member for this application.

Applicant Michael Cleary said there were two projects for which variances were being requested: The installation of a new state of the art septic system, and the addition of a second floor addition.

He explained that his septic system was substantially damaged during spring storms, and said his property had qualified for FEMA assistance. He said the damage included destabilization of the banking and septic system damage, and said since that time, the septic system had gotten worse and had essentially failed.

He said he had obtained a design for the best and in fact the only septic system solution, which was essentially a miniature water treatment system, and said it would dramatically improve water quality in the surrounding area.

Mr. Cleary next spoke about the variance request to add a second floor to the existing house, in order to be able move the two bedrooms upstairs, and also add a closet, a bathroom, a children's playroom upstairs. He also said he wanted to enlarge the living room and allow an office downstairs. He said what was proposed would not decrease the value of surrounding properties because the new septic system would be a vast improvement environmentally over what was there now. He also said that the structural changes to the house were appropriate for the neighborhood and would improve property values. He noted that the majority of the homes in the neighborhood were of a substantial size.

He said that denial of the variance would result in unnecessary hardship because it was reasonable to have a little more space with a second floor. He also said that given the specific size of the property and the location of the well, denial of the variance for the septic system would cause harm to the environment. He said granting of the variance would allow for substantial justice because what was being asked for was fair and would improve the neighborhood. He said the design for the second floor was in flux, and said he had been advised that the details could be taken care of at the building permit stage.

Mr. Cleary said he wanted to get the septic system issue taken care of before the ground froze, so there was a sense of urgency, and said he had received emergency authorization from Dori Wiggins of DES to do the project. . He provided a statement from soils consultant Jed Shepard that the septic system had in fact failed. He also noted that he had gotten a previous approval from DES to use rip rap to stabilize the banking

Mr. Welsh said his understanding was that when a property near the water had a failed septic system, a closed, holding tank system was the approach that was used.

Mr. Cleary said the proposed system had three tanks and didn't have a leachfield, explaining that the leachfield function occurred in the third chamber, and that after this the effluent flowed out to a dispersal trench.

Mr. Shepard said a holding tank would be the safest system if it was faithfully pumped out. But he said the State had realized that requiring this was not a solution, because of the high cost involved in keeping a holding tank pumped out. He said the existing septic system had been a pollution hazard for the last 40 years.

He provided details on the design of the proposed septic system, which would treat wastes within chambers, as opposed to a leachfield, essentially as a very small water treatment plant. He said a question was still what to do with the water once it was treated. He said the soil on the site wasn't good for a septic system, noting among other things that the State expected to see at least 2 feet of separation from the septic system and the water table. He said the plan was to use a flat area of land, with old loam gravel fill for the dispersal field.

Mr. Welsh asked if the two variance requests were linked, and was told that the requests were completely separate.

There was discussion by the Board that they didn't have the actual plans for the expansion, so it was tough to address this second variance request.

Mr. Cleary said Mr. Johnson had suggested that he come in for the septic system variance and hear discussion from the Board on the expansion issue.

Chair Gooze asked if there were any members of the public who wished to speak for or against the variance request. There were no members of the public who came forward to speak.

Chair Gooze asked if any Board members felt the septic system variance request didn't meet the five variance criteria. Board members agreed that all of the criteria were met. There was discussion about possibly waiting to hear the variance request for the expansion since there was no site plan yet to look at.

Mr. Sievert said although the variance would probably be granted if what was proposed fit with the neighborhood, the Board needed to see something specific about what was proposed. He said it was hard to know how many variances would be needed.

There was further discussion about this.

Mr. Johnson noted that there was a vacant lot across the street, whose owner was granted a variance to build a house, although there were no architectural drawings. It was noted that a site plan had been provided for that variance application. He suggested that the Board vote only on the septic system variance request, and continue the hearing on the application for 60 days so the applicant could develop some designs for the expansion.

Chair Gooze noted to Mr. Cleary that if the variance for the septic system was granted, there was a 30-day appeal period, so there was some risk in terms of going ahead immediately with the installation of the septic system.

Robbi Woodburn MOVED to grant the petition submitted by Michael Cleary, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XIV, Sections 175-74(A) and 175-75.1(E) of the Zoning Ordinance to allow the replacement of the existing septic system within the shoreland setback, and continue the request for variance 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. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

- D. **PUBLIC HEARING** on a petition submitted by Attorney Christopher A. Wyskiel, Dover, New Hampshire on behalf of Robert S. Teeri Living Rev Trust and Gale S. Teeri Living Rev Trust, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a June 13, 2007, decision of the Durham Planning Board denying a Conditional Use Permit Application to expand a non-conforming use and occupancy of 15 Main Street by ten individuals as a Rooming and/or Boarding House. The property involved is shown on Tax Map 5, Lot 2-2, is located at 15 Main Street and is in the Church Hill Zoning District.

This public hearing was postponed.

- E. **PUBLIC HEARING** on a petition submitted by John H. Farrell, Durham, New Hampshire on behalf of Shirley A. Thompson Rev Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 to allow a reduction in minimum lot size for two of three proposed lots from 20,000 square feet to as little as 10,000 square feet. The property involved is shown on Tax Map 3, Lot 3-5, is located at 48 Bagdad Road, and is in the Residence A Zoning District.

Jack Farrell, representing the applicant, said the property, a single lot, had an onsite well and septic, but also had water and sewer nearby. He said the owner, Shirley Thompson, who had lived at the property for many years, had moved and wanted to sell the property. He said it currently qualified for a subdivision into two lots, and said it was thought that it would make sense to ask for a variance to allow three lots. He noted that the property had almost enough frontage for 5 lots. He said the spacing that would result from a three-lot subdivision would be similar to the house spacing that was currently in that area, and provided details on the spacing of

other properties in the area. He also said the variance request was similar to the variance granted recently for a Madbury Road property.

He said the property currently had four curb cuts, going back to the time when the Zoning Ordinance allowed 10,000 sf lot sizes for this district. He said if this proposal had been brought forward a few years ago, a variance wouldn't have been needed, and it would have gone directly to the Planning Board. He said the plan was to connect the houses in the subdivision up to Town water and sewer. He said the applicant was only 9000 sf short of having enough acreage for three lots.

Mr. Farrell provided details on the fact that the various setback requirements were met, and he showed the buildable areas on the site. He noted that lot had a portion of land within the flood hazard area, but said there was still sufficient buildable area on it.

Mr. Gottsacker said he assumed that one of the proposed lots was larger because of the setback issues. Mr. Farrell said that was correct, and provided details on this. He clarified that the applicant didn't need variances 2 and 3 in order to make variance 1 make sense. He said there would still be sufficient buildable area on the three proposed lots even if those second two variances weren't received, and would simply separate the homes more.

Mr. Farrell said that the crux of the logic behind the variance request was that because of the road frontage and the amount separation, the layout would meet the intent of the Ordinance.

There was detailed discussion about the fact that Mr. Farrell had said that the spacing for the lots in the proposed subdivision was similar to other properties in the area. Mr. Farrell said for the most part, lots along Bagdad Road and Emerson Road were tight, noting there were exceptions.

Mr. Welsh asked whether the 75 setback meant there couldn't be a lawn, and there was discussion that there would have to be 25 ft of natural vegetation. Mr. Farrell said a condition could be added concerning this area.

Mr. Sievert said the tax map showed the lots adjacent to the lot in question were pretty large, until one got to the Little Hale neighborhood. There was further discussion on this.

Ms. Davis asked if this was proposed to be a subdivision for single-family homes, and Mr. Farrell said yes, noting that this was the only residential use allowed in this zone. He also noted that the plan would still have to be approved by the Planning Board if it was approved by the ZBA.

Chair Gooze asked if any members of the public wished to speak in favor of the application, and there was no response. He then asked if any members of the public wished to speak against the application.

Chair Gooze noted there was an email from **John Carroll, 54 Canney Road**, which stated that granting this variance would constitute a change in Zoning, and would set a bad precedent for future variance requests like this.

Trina Ingelfinger, 35 Bagdad Road said she was a direct abutter who lived downstream. She said there was a large amount of wetlands on her property that was fed by Little Hale Creek. She noted that this was a neighborhood where an increasing number of people were obtaining voluntary conservation easements. She said her sense was that this subdivision would be benefiting the owner at the expense of the neighbors. She said she was concerned about environmental impacts on the wetlands from the proposed development, and was also concerned about impacts on the character of the neighborhood. She said the variance request was against the public interest, in terms of her and her neighbors, and said she was opposed to it.

Chair Gooze asked how Ms. Ingelfinger thought the subdivision would be detrimental, regarding the fact that there would be smaller lots.

Ms. Ingelfinger said the lot to be subdivided was already a small lot, when viewed as part of the area as a whole. She said this was a wooded neighborhood, and said the subdivision would significantly impact the configuration of the neighborhood and the way it would be viewed. She said the curb cuts and frontage made the lot subdividable, but said the houses would create a visual impact, when what was there now was woods.

Mr. Welsh noted that Ms. Ingelfinger had said the subdivision would impact views, and asked how she would feel if there was no change in the vegetation, and whether that would allow the area retain its character even with the houses there.

Ms. Ingelfinger said this would still mean the density would be changing, and said this would substantially change her view, even if the vegetation was retained. She also said she didn't think the variance request met the hardship standard, in that she didn't feel the variance was necessary.

Michael Everngam, 49 Emerson Road, said he lived directly across from where the lot proposed for subdivision was. He said his lot was just less than 4/10 of an acre, and said it was about 70% larger than the smallest of these three proposed lots. He said his lot was one of the smaller lots in the area. He also said the intersection nearby hosted all of the school buses in Town, and said it was already a dangerous intersection. He said he was concerned that the sight distance would be cut down by putting houses fairly close to the road.

Chair Gooze questioned what would prevent the owner from putting the houses in the same spot, even if this were a two-lot subdivision.

Mr. Everngam said nothing would actually prevent this, but he said the present design forced the houses closer to the road.

Chair Gooze asked if the Board would be willing to hear all three applications for this same property beyond 10:00 pm, and Board members said yes. Chair Gooze noted that Mr. Welsh was a voting member for this application.

Duane Hyde, 47 Emerson Road, said he was not quite a direct abutter. He said it was difficult to speak against this variance request, because Shirley Thompson had been a lovely neighbor.

But he said she was leaving the neighborhood, and the neighbors were left behind. He said that as a professional planner, it was also difficult to speak against infill development, and said he felt it was important for Durham to develop its inner core, and not develop the outer core of Town. But he said he felt such development should be consistent with the character of the neighborhood and the Zoning Ordinance. He noted that one of the purposes of the RA district was to maintain the integrity and character of the existing neighborhood, and to allow development that was consistent with the existing neighborhood. He said what was proposed didn't fit with this, and therefore didn't meet the spirit and intent of the Ordinance. He said he couldn't find one lot in the neighborhood that was 10,000 sf, stating that the smallest lot was 0.36 acres, or approximately 15,000 sf. He provided further details on lot sizes in the neighborhood. He said one of the lots in the proposed subdivision was 36% smaller than his own lot.

Concerning the hardship criterion, Mr. Hyde said he didn't see unique conditions that warranted granting this variance. He said the applicant appeared to rely on the frontage issue as something that was unique, but he said it was not. He said there plenty of lots in the neighborhood with excess frontage, and using the frontage logic, all of these lots should be able to subdivide further. He provided examples of this, and said that clearly, this was not a unique situation.

Mr. Hyde said that the sight distance issue was clearly a concern because the residences with this design had been pushed toward the intersection, and said this related to the public interest criterion. He also urged the ZBA to look at Section 175-55 C of the Ordinance, stating that he wasn't clear whether what was proposed met the corner clearance provision, so might be contrary to the spirit of the Ordinance for that reason.

Robin Mower, Faculty Road, read into the record a letter from **Malcolm McGregor, 53 Bagdad Road**. Mr. McGregor's letter said he was not in favor of granting the variance, noting that the Zoning Ordinance allowed lots that were 20,000 sf and greater, and that most of the abutting lots were of a larger size than this. He said a reduction in the lot size in this instance, if allowed, would be spot zoning, and said it would mean that reductions in lot sizes for other properties in the area should also be allowed.

Mr. McGregor's letter said that an increase in density like what was proposed was out of place in this particular neighborhood, where there were properties with small single-family homes and where large portions of the lots were either vacant or wooded, resulting in an open feeling in the area. He said that putting three buildings on three lots that together totaled about an acre of land would change the character and the streetscape of the area, especially if a large, multi-family rental structure was built. He provided details on this. He said if the ZBA allowed these lots, he had no reservation over it also allowing the proposed reduction of the setbacks. He said approving this variance request would be contrary to the spirit and intent of the Ordinance.

Ms. Mower also said it was one thing to request a small variance, but said this represented a 50% reduction in the land area required by the Zoning Ordinance, which was considerable.

Sally Needell, 36 Bagdad Road, provided further details on the sizes of lots in the surrounding area. She said she was not an abutter but lived nearby, and lived on an acre of land. She said the

abutters to the property question all had more than an acre of land and that others in the area had more than acre of land as well noting that they mostly had an acre or more of property.

Mr. Farrell said the difference on average for the proposed lots was only 3000 sf per lot, although noting that one of the lots was particularly small due the proximity of lot 3 to Little Hale Creek and the frontage requirements. He said if it had not been for this, the lines could have been drawn differently, but said the frontage had defined how the lots, and was a distinction of this property.

He suggested that the 2nd and 3rd variance requests could be withdrawn, and there could be some kind of open space easement that would require that the vegetation would be left. He said Mrs. Thompson would be open to this. He said if this were a two-lot subdivision, no variance would be needed, and there would be no need for this easement, and much of the land could be cleared. He said there could therefore be a community benefit from granting the first variance.

He said that regarding the side setbacks, that without a variance, someone could build there. He said as a condition of granting this requested variance, the ZBA could request an increase in the setbacks. He said there would still be buildable area left.

He said that regarding the issue concerning Section 175-55 C of the Zoning Ordinance that Mr. Hyde had referred to this was a Zoning matter for the Planning Board to interpret.

He also said multifamily housing wasn't allowed in this area, and said the ZBA could impose a condition that rentals and apartments would not be allowed. He said the concerns of the neighbors were appreciated, and said he felt there could be some concessions to address this.

Mr. Hyde said the neighborhood understood there would be changes there, and expected to see infill, but he said it was the size and scale of what was proposed that was of concern. He said even with an increased setback off of Bagdad Road, this would simply decrease the building envelope, and would not allow a layout that would fit with the neighborhood, and which the Ordinance had established.

He noted that he was the Town planner from 1997-2000, and said a 10,000 sf lot size for this district did not exist at that time, and therefore was not as recent as Mr. Farrell had said. He also noted that he hadn't opposed Fitz Farm because he was in favor of infill, said the design of that development was such that the buildings didn't feel cramped.

Mr. Welsh asked if it would make a difference if the natural vegetation were retained.

Mr. Hyde said designing the lots in such a way that two of the houses would be close together and close to the road created a cramped feeling, even if there was openness elsewhere in the subdivision.

Chair Gooze closed the public hearing. He said this was an area variance the use was permitted, and this was a lot size issue. He said the hardship issue was a difficult one in this instance, noting that the courts were still in flux concerning what made a property unique. He said he felt that

what the applicant wanted to do, putting three lots on the site, represented uniqueness, and said he felt this met the hardship criterion. He asked Board members to indicate where they stood on this criterion.

He said the key criteria were whether the Board felt the variance request met the spirit and intent of the Ordinance and the public interest.

Mr. Welsh said he was conflicted on this application in that the subdivision that was proposed represented infill development, but this was a beautiful area that deserved to be protected. He said the feedback from the neighbors was overwhelming, and reflected concerns about potential decreases in the values of surrounding properties. He said he wasn't sure about whether the hardship criterion was met, or whether the substantial justice and spirit and intent criteria were met.

Ms. Woodburn said that the small lots in the neighborhood were not close to this immediate area, so she didn't necessarily buy the applicant's arguments concerning the size of abutting properties. She said that 20,000 sf was different than 10,000 sf, and said the abutters were right that the 10,000 sf size didn't exist in that area. She said this lot size was too small, and said she didn't feel it met the spirit and intent of the Ordinance.

Mr. Gottsacker said he knew this lot well, and walked by it often. He said he didn't buy the frontage argument as being a one to one relationship. He also said that regarding the character of the neighborhood, it was a mix of owner occupied and rental units. He said the problem he had was that this was a beautiful lot, and asked if there was a possible win-win solution. He said a portion of the lot would make a great park, something that the community could get out of this subdivision. He said this was a hard application to decide on.

Ms. Woodburn said that regarding neighborhood character, she didn't see this in terms of specific uses, but rather in terms of scenic qualities.

Chair Gooze said he thought that approving this variance would be a case of spot zoning. He said this was a completely different situation than the Madbury Road application, where the neighbors said their lots were also small. He said he felt the Board would be making a mistake to allow this size lot in this area, and said this would be against the public interest and the spirit and intent of the Ordinance. He said when the lot sizes were increased for this area, there were reasons for doing this, - to prevent this from happening to properties. He said the Town wanted a little more space for these lots.

Regarding the hardship issue, and special conditions of the property, there was still some confusion on this, so he wouldn't use that criterion. He said concerning the substantial justice criterion, he felt the public interest outweighed the individual's interests in this situation. He noted that a number of abutters felt strongly about this.

Mr. McNitt said he was not sure whether there would be a negative impact on the value of surrounding properties if this variance were approved, but said there was no question that the neighborhood didn't desire it. He said that concerning the public interest criterion, there would

conceivably be some traffic hazards as a result of the subdivision, but said he couldn't make a big point about this. He also said that although the desired use might be unreasonable, he wouldn't argue concerning the hardship criterion.

He said this came down to the spirit and intent of the Ordinance, and said based on that criterion, the case for this variance could not be made. He spoke about the purpose of this RA district, and said three lots on this property would be highly contrary to the spirit and intent of the Ordinance. He said he felt the existing lot could be divided into two very attractive lots that fit with the neighborhood, in accordance with the Zoning Ordinance.

Mr. Sievert said he didn't necessarily think that what was proposed would decrease the value of surrounding properties. But he said granting the variance would be contrary to the public interest, especially because the appearance at the front of the lots wouldn't be consistent with the appearance of other lots in the vicinity. He also said he didn't think the spirit and intent of the Ordinance and substantial justice criteria were met. He said he did think the hardship criterion was met.

Ms. Davis said she agreed with Chair Gooze that when the ZBA approved the Madbury Road application, one factor was that there wasn't neighborhood opposition to it. She said the lots on Madbury Road were smaller, so what was proposed was more consistent with this. She said this was a different situation, and said 10,000 sf was not consistent with the size of the other lots in the area. She said she didn't think the variance request met the spirit and intent of the Ordinance or the public interest criteria.

Mr. Welsh said he agreed with what others had said.

Mr. Gottsacker said with the Madbury Road decision, no abutters spoke against the variance application, and he also said the spacing in that instance was consistent.

Mike Sievert MOVED to deny the petition submitted by John H. Farrell, Durham, New Hampshire on behalf of Shirley A. Thompson Rev Trust, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-54 to allow a reduction in minimum lot size for two of three proposed lots from 20,000 square feet to as little as 10,000 square feet, at the property located at 48 Bagdad Road, in the Residence A Zoning District, because it does not meet the public interest, spirit and intent of the Zoning Ordinance, and substantial justice criteria. Chair Gooze SECONDED the motion, and it PASSED unanimously 5-0.

- F. **PUBLIC HEARING** on a petition submitted by John H. Farrell, Durham, New Hampshire on behalf of Shirley A. Thompson Rev Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59 to allow a reduction in the wetlands setback for some proposed lots from 75 feet to 50 feet. The property involved is shown on Tax Map 3, Lot 3-5, is located at 48 Bagdad Road, and is in the Residence A Zoning District.

This application was withdrawn.

- G. **PUBLIC HEARING** on a petition submitted by John H. Farrell, Durham, New Hampshire on behalf of Shirley A. Thompson Rev Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIV, Section 175-74(A) to allow reduction in the shoreland setback for one of three proposed lots from 75 feet to 50 feet. The property involved is shown on Tax Map 3, Lot 3-5, is located at 48 Bagdad Road, and is in the Residence A Zoning District.

This application was withdrawn.

III. Board Correspondence and/or Discussion

- A. **REQUEST FOR REHEARING** on a September 11, 2007, decision by the Zoning Board not to hear a petition submitted by Attorney John P. McGee Jr., Portsmouth, New Hampshire on behalf of John 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.
- B. **REQUEST FOR REHEARING** on a September 11, 2007, decision by the Zoning Board not to hear a petition submitted by Attorney John P. McGee Jr., Portsmouth, New Hampshire on behalf of John 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 14-2, is located on Newmarket Road, and is in the Residence B Zoning District.

The Board agreed to do both of these Requests for Rehearing.

Chair Gooze appointed Ms. Davis as a voting member for these applications.

After discussion by the Board, Chair Gooze said there was nothing different about this application that he could see, as compared to the first application.

Mr. McNitt agreed that there was nothing new that had been presented to justify these rehearings.

Jerry Gottsacker MOVED that applications III A and B, covering Tax Map 15, Lots 14-1 and 14-2, located on Newmarket Road, in the Residence B Zoning District, contain no new evidence and do not show that a legal error was made, and that we reject the appeal. Mike Sievert SECONDED the motion, and it PASSED unanimously 5-0.

IV. Approval of Minutes – September 11, 2007 and October 9, 2007

The Board agreed to approve the Minutes at a separate meeting the following Tuesday.

V. Other Business

Mr. Johnson noted that concerning the Wyman case, involving the property located at 116 Dover Road, the ZBA's decision had been upheld by the Court.

He also said the Court had upheld the Board's decision that the Christensen application didn't meet the public interest and the spirit and intent of the Ordinance.

Ms. Davis noted that the Board had made the point concerning this application that the drainage system could fail, and that the judge in the case had said the Board had made a reasonable decision.

B. Next Regular Meeting of the Board: **December 11, 2007

V. Adjournment

Chair Gooze said he would miss John deCampi, who had been an excellent member of the ZBA.

Ms. Davis said she had attended a presentation on wetland and shoreland buffers, and said the woman who gave the talk had said she would be glad to discuss buffer issues with the members of the Town boards.

Ted McNitt MOVED to adjourn the meeting. Jerry Gottsacker SECONDED the meeting, and it PASSED unanimously 5-0.

Adjournment at 10:55 pm.

Victoria Parmele, Minutes taker

Jerry Gottsacker, Secretary