

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

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, DECEMBER 11, 2007  
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL  
7:00 PM  
MINUTES**

**MEMBERS PRESENT:** Chair Jay Gooze; Secretary Jerry Gottsacker; Ruth Davis;  
Robbi Woodburn; Vice Chair Ted McNitt (arrived late)

**MEMBERS ABSENT:** Mike Sievert; Carden Welsh

**OTHERS PRESENT:** Code Administrator/Enforcement Officer Tom Johnson

**I. Approval of Agenda**

Chair Gooze noted that there were only 4 Board members present and explained that if there was a 2- 2 vote, an applicant could appeal this

He said that concerning Item II E, the Sidmore application, it was waiting on a related NHDES decision.

Mr. Johnson said NHDES would be writing a letter of deficiency concerning this matter, but said it had not been received yet. He also said Mr. Sidmore had requested a continuance to the January meeting so he could respond to the letter of deficiency. Mr. Johnson noted that there would be an order, along with the letter, to mitigate the deficiency.

Chair Gooze said this Item would therefore be postponed to the January 8<sup>th</sup> ZBA meeting.

Chair Gooze said that regarding Item II A, concerning the Mill Pond Center, the applicant had requested a postponement.

It was noted that there was also a request from an abutter, Paul Dubois, that the Board's decision be held over to February so his input could be received at that time.

Chair Gooze suggested that this Item could be postponed to Jan 8<sup>th</sup>, but with the definite idea that there would be a two part meeting on this application, and it would be continued to February. He said that would be a fair way to handle this situation.

Mr. Johnson noted that one reason for the request for a continuance to January was that the Mill Pond Center wanted to be able to get the people they wanted to testify together on the same night.

Ms. Woodburn asked if the abutter might want to be there for the presentation in January.

Chair Gooze said the abutter would have the chance to look at the tape of the January meeting, and would have the chance to rebut as well, at the February meeting.

Mr. Johnson said Mr. Dubois understood this process, and was in favor of being able to speak at the February meeting.

Regarding Item II F, the Teeri Application for an Appeal of Administrative Decision, Chair Gooze explained that the applicants had gone for a Conditional Use permit before the Planning Board, which had been approved. He said there was a 30 day appeal period regarding the approval of that application, and said they therefore had to keep this on the ZBA agenda until that time period was up, in case someone came forward. He said the applicants were asking that this be continued to January, with the idea that the appeal period would then be over.

Mr. Johnson said the 30 day appeal period would be up as of Friday, and said if there was no appeal by that time, the applicants would withdraw this application, and would also withdraw their Superior Court case.

Chair Gooze noted the Board that day had received a Request for Rehearing of the portion of the Sidmore application that had been approved at the November meeting.

Mr. Johnson asked Attorney Schulte, the attorney for the abutters in the Sidmore case, to request a continuance to the January meeting concerning this Request for Rehearing.

Attorney Shulte agreed to do this, and said he would send a letter to that effect.

***Jerry Gottsacker MOVED to approve the Agenda, which would include Items II B, C and D. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 4-0.***

## **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.

(Continued to the January 8, 2008 meeting and the February 12, 2008 meeting)

- B. CONTINUED 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. 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.

Chair Gooze opened the public hearing.

Mr. Cleary said that at the November meeting, a portion of his application was continued to this meeting, pending the Board receiving drawings of his proposal. He said these drawings had now been provided, noting that the design was still somewhat in flux and that the drawings weren't professionally drawn, although they might look like they were. He said Mr. Johnson had been very helpful in guiding him through the process, and had offered his advice on windows, egress, etc. He said Mr. Johnson had said architectural drawings didn't need to be provided.

Mr. Cleary noted that he had addressed how the five variance criteria were met at the previous meeting, but would be happy to repeat this.

Chair Gooze said he would like to hear this again. He also noted that distances hadn't been provided in the drawing, and Mr. Cleary pointed out that they were on the previous application.

Chair Gooze asked what Mr. Cleary meant when he said the design was in flux, and Mr. Cleary said he was referring to the fact that an architect hadn't been hired yet. He said he was spending money right now on the septic system and drainage improvements, so couldn't afford to hire an architect yet.

Mr. Cleary reviewed the variance criteria, stating that he believed that denial of the variance would result in unnecessary hardship, and that it was reasonable to have a little more space with a second floor. He said granting the variance would not be contrary to the spirit and intent of the Ordinance, which sought to promote general health, welfare and safety, and he said the structural improvements proposed would not further overcrowd the area. He said the rural character of the coastal area would be preserved with this appropriate residential improvement.

He said granting the variance would not cause a decrease in the value of surrounding properties, and in fact was likely to increase values, as the home would more closely resemble the improvements made to neighboring properties.

Ms. Woodburn said there was some inconsistency between the NH Soils Consultants plan and the most recent drawings, including the location of the driveway. She asked if the driveway would stay where it was, as indicated on the NH Soils Consultants plan.

Mr. Cleary said he wasn't sure about this. He explained that he was working on a driveway permit with the Public Works Department. He said Town Engineer Dave Cedarholm felt less pavement was better than more. Mr. Cleary said it would be good if that could be worked out, but said if it couldn't, he would leave the stone driveway as it was.

Mr. Johnson explained that right now, the driveway was stone, and said a driveway permit would be needed to widen it, increase the curb cut, or pave it. He said the

applicant was working with the Town to solve some runoff issues in the area of Cedar Point Road.

He said there were no shoreland setback issues, and said if the driveway were paved, it would not be increasing in size.

There was discussion as to whether the second floor, as proposed would conform to the footprint, and it was noted that the drawing was unclear concerning this.

Mr. Cleary said he would like to use the existing footprint. He said the deck already existed, and would not change in size. He said he was not sure if the deck was considered to be a part of the footprint.

Ms. Woodburn said the elevation indicated that the second floor would hang over the first floor, and Mr. Cleary said it was not his intent to make it look that way. Ms. Woodburn said this discrepancy in the plan could be a problem down the road.

Mr. Cleary said he intended to make the second floor follow the existing footprint.

Chair Gooze said the Minutes for this meeting would reflect the fact that the applicant was staying within the footprint, including upwards on the second floor.

Mr. Cleary said that was correct.

Ms. Woodburn noted that it was important that the intent of the applicant be clear for the record, given that the ZBA had in the past had trouble with drawings that were approved and then not built that way. She said in this instance, the way the drawing was interpreted made a big difference in terms of volume.

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

**John Valentine, 28 Cedar Point Road,** said he was an abutter, and he noted that approximately 8 projects had been built on Cedar Point since he had moved in several years back, all of which had enhanced the value of the area. He said he endorsed Mr. Cleary's septic plan, as well as his plans for the second floor.

**Timothy Finnegan, 25 Cedar Point Road,** said he had reviewed the plans, and agreed that what was proposed was an improvement. He said he had no objections to them, although noting that the second floor would slightly obstruct his view.

There were no members of the public who spoke against the application, and Chair Gooze closed the public hearing.

Ms. Woodburn said she felt the applicant's request met the five variance criteria. She said what was planned would be in keeping with the Ordinance, and said a good septic system was needed to support a house on that lot. She said doubling the volume, as long as it was within the footprint, was a good thing.

Mr. Gottsacker said he agreed, but said he thought the motion to approve the variance

should specify that these were not professional drawings.

Ms. Davis said she believed that other homes in the area had been similarly improved. She said she was a little uncomfortable with the lack of professional drawings, given the Board's recent experience with a home being built that turned out to be a shock to the neighbors. She said that in some cases the ZBA was involved in right now, there was discussion about precisely measuring the dimensions of a home and comparing it precisely to a plan. She said for the present application, there wasn't a plan at all, and asked other ZBA members what they thought about this.

Ms. Woodburn said the Board did have the NH Soils Consultants map, which was scalable, and showed the existing footprint. She also said the applicant had stated that the second floor would be an extruded version of the first floor, and said they did have the height measurement above which the building couldn't go. She said the applicant had made a great effort to get the application to this point without an architect.

Chair Gooze noted a recent project which, when built seemed larger than what the Board had expected from the variance application, because of the basement aspect of the building. But he said in this current application, what they saw in the plans would be what would be built.

Ms. Davis noted that the neighbor didn't appear to have a problem with the change in view that would occur. She said granting the variance would not decrease the value of surrounding properties, and said the project was consistent with what the neighborhood was doing. She said granting it would not be contrary to the public interest, stating that no one had spoken against it. She said that because of the nature of the area and density, the increase in volume that was proposed was reasonable.

She said she felt that relief could be granted to the applicant without frustrating the purpose of the Ordinance. She said the proposed project would not interfere with the use and enjoyment of others' property. She said substantial justice would be done in granting the variance. She said that regarding the spirit and intent of the Ordinance, this application represented a volume issue. She said she believed that volume increases were being granted in this area because the homes there were so small to begin with.

Chair Gooze said the public interest and spirit and intent of the Ordinance criteria were related. He said in this particular case, it was important to examine whether granting the variance would alter the character of the locality. He said he could see that the houses in this area were of the same size, and said he felt the variance met all of the criteria.

Ms. Davis said she thought there was a pretty good chance the deck would be changed during the building process.

Chair Gooze noted that Mr. Cleary had said he would stay within the same footprint.

Mr. Cleary agreed, and said there were no proposals regarding the deck.

Chair Gooze noted that if there were a change proposed concerning this, it would have to come before the Board.

Ms. Woodburn said this kind of discussion had been her point, concerning having a drawing that was not that precise.

Mr. Cleary said when he was ready to go forward, he intended to run everything by Mr. Johnson.

Mr. Johnson noted that this project didn't involve tearing a building down and rebuilding it, and was a second floor addition.

Chair Gooze said the variance being requested represented a volume increase, and said if the applicant wanted to do anything else, another variance would be required.

***Jerry Gottsacker MOVED to approve the 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, with the understanding that the second floor would match the existing footprint of the existing building. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 4-0.***

- C. PUBLIC HEARING** on a petition submitted by Timothy Finnegan, Alexandria, Virginia, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to change the shape and style of a previously approved, proposed new single family home with garage underneath and to allow for a mudroom at the back of this proposed building to extend 4.5 feet into the 50-foot rear-yard setback. The property involved is shown on Tax Map 12, Lot 1-16, is located at 25 Cedar Point Road, and is in the Residence C Zoning District.

Chair Gooze opened the public hearing. He asked Mr. Finnegan if he accepted the fact that there were only 4 members on the Board that evening, and Mr. Finnegan said he did.

Mr. Finnegan said the designer/builder, Mathew Beebe, would speak on his behalf concerning the variance request.

Mr. Beebe noted that the property had already received a variance so had been approved for a single family home. He said the applicant was now seeking to modify the style of the house, and to change slightly its location. He said the placement of the house on the lot would be better in most respects, although it would encroach 4.5 ft into the rear yard setback. He said the sideyard setback conditions on both sides had actually been improved, and said the house had not been moved any closer to the street.

He said the project would actually represent a decrease in the footprint compared to what the previous owner had proposed, although there would be the 4.5 ft

encroachment into the rear setback. But he noted there was a line of trees at the rear of the property between it and the abutters, so they probably wouldn't even notice the change.

Mr. Beebe said when the former owner, Eva Reed, had appeared before the ZBA in 2005, she had some setback issues. He noted that the lot was small, compared to what was required in the zone, so it was almost impossible to put a reasonably sized house on the property. He said he and the applicant had decreased the proposed footprint by 38% over what the ZBA had originally approved. He said the style of the house had also been modified, but said it was still in keeping with the neighborhood. He said the design fit the property well, and said the home would enhance surrounding properties.

Chair Gooze asked why the building couldn't be shortened a bit in the back, and be made a bit wider instead, so it wouldn't have a problem with meeting the rear yard setback.

Mr. Beebe said the design followed the desires of his client, while staying as much as possible within the setback requirements. He noted that the project was more affordable at this considerably smaller size, and also said the mudroom really needed to be off the back of the house.

There was further discussion on this.

Ms. Woodburn said she could see the tradeoff involved concerning the design. But she noted that the driveway was on one side of the building while the mudroom was on the opposite back corner. It was noted that the steps pointed to the east, so the design worked in terms of connecting the driveway to the mudroom.

Mr. Gottsacker asked what the original footprint was, and Mr. Beebe said it was 1338 sf, while the new footprint was about 848 sf. There was discussion that the old as well as the new design was for a two story house. Mr. Beebe said the building he had designed was within the height requirement.

Mr. Johnson noted that when Ms. Reed had come in with the original design, she did this because she wanted to sell the property, and needed to obtain variances. He said now, the purchaser of the property wanted a different design.

Mr. Beebe said the previous design was an old one, and said it shouldn't come as a surprise that the person who owned the property now would like to do something different.

Ms. Davis asked if the driveway would extend to the rear of the property.

Mr. Beebe said the intent was to come up far enough so there would be only a short walk to the mudroom. He said the original driveway design had been shorter. He said this present design would get the cars further away from the

street. He noted that no garage was proposed.

Chair Gooze asked why no garage had been proposed, and Mr. Finnegan said he had felt this would violate the Ordinance, because it wouldn't meet the setback in the back.

Mr. McNitt arrived at the meeting.

Mr. Beebe said there was no garage because of cost considerations, and because it didn't seem there was a lot of room to work with in the back, given that the septic system was there. He said the applicant also realized that he could come back to the ZBA in the future if he wanted to propose a garage.

Mr. Johnson said the plan showed the driveway for 30 ft and then stopping, and said he wanted to determine exactly where the cars would be parked, so this could be locked into the plan.

Mr. Beebe said he had been remiss in not extending the driveway farther on the plan. He said the applicant would like this variance application to be approved pending the driveway being allowed to come in toward the rear edge of the house. He said pulling the cars further back into the yard made sense, and would look better to the neighbors.

Ms. Woodburn noted that pervious material would be used for the driveway.

Mr. Beebe said he was prepared to go through the 5 variance criteria, but noted that the variance to build the single family house there had already been approved. He said the property had less than a tenth of the amount of a standard lot, so it met the hardship criterion. He said the other things that had been designed as part of the project would only increase the character of the neighborhood, and would increase the value of surrounding properties. He said what was being requested was clearly within the spirit and intent of the Ordinance, noting that a house with a larger footprint had previously been approved for this site.

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

**John Valentine, 28 Cedar Point Road**, said he had reviewed the plans and said what was proposed would enhance the neighborhood, and was another good move on that road to increase the value of properties in that area.

**Michael Cleary, 26 Cedar Point Road**, said he lived across the street, and was in favor of granting this variance. He said it clearly met the 5 variance criteria, and said it was an appropriate structure for this neighborhood, so it was reasonable to let the applicant build this house there.

Chair Gooze determined that there were no members of the public who wished to speak against this application, and he closed the public hearing.

Ms. Davis said she didn't think granting the variance would decrease the value of surrounding properties, and said what was proposed seemed consistent with the neighborhood. She said granting the variance would not be contrary to the public interest, noting that the abutters support it.

She said denying the variance request would result in an unnecessary hardship to the owner, given the special conditions of the property, which was so small. She said substantial justice would be done in granting the variance, and also said it would not be contrary to the spirit and intent of the Ordinance. She said the Board was seeing similar developments along Cedar Point Road.

Mr. Gottsacker agreed, and said this was a better plan than the original plan for this site that had been developed.

Ms. Woodburn said she agreed, especially given the fact that with this design, there were now greater sideyard setbacks, while there was minimal incursion into the rear yard setback.

Chair Gooze said he agreed with what other Board members had said.

***Jerry Gottsacker MOVED to approve the APPLICATION FOR VARIANCE from Article XII, Section 175-54 of the Zoning Ordinance to change the shape and style of a previously approved, proposed new single family home with garage underneath and to allow for a mudroom at the back of this proposed building, to extend 4.5 feet into the 50-foot rear-yard setback, with the understanding that the drawing of the driveway is incorrect and that the driveway will be allowed to extend to the back of the house, allowing the egress to the mudroom. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 4-0.***

- D. PUBLIC HEARING** on a petition submitted by Miguel Maranhao, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XXI, Section 175-116(C)(1) and Article XII, Section 175-54 of the Zoning Ordinance to allow for a second curb cut on a property and to allow for a parking lot to be built within the frontyard setback. The property involved is shown on Tax Map 4, Lot 41-3, is located at 4 Bayview Road, and is in the Residence A Zoning District.

Chair Gooze opened the public hearing.

Mr. Maranhao said he was requesting a variance to allow a parking area off to the side of an existing driveway, which was not wide enough. He provided details on this.

Chair Gooze noted that he had not visited the site, and Ms. Davis said she had. She said the existing driveway was on the left side where a garage used to be.

Mr. Johnson said driveways were allowed, but said if the driveway didn't lead to

a garage, and cars were parked outdoors, this was considered a parking lot, and every parking space had to be 9 ft by 18 ft.

Mr. Gottsacker asked what would happen with the existing driveway and curb cut.

Mr. Maranhao said he planned to leave it that way, or it could disappear.

Chair Gooze said if it disappeared, the variance would still be needed, and Mr. Johnson said that was correct, because the applicant wanted to put the parking area in the front yard setback.

Chair Gooze asked how much space there was between the house and this proposed parking area, and Mr. Maranhao said there was 30-40 ft.

There was discussion about the fact that there was no garage. Mr. Maranhao said if he did decide to put in a garage, it wouldn't be on that side of the house.

Ms. Woodburn said the existing road frontage was 174 ft, which was considerable. She said they had the dimension of 30-40 ft off the house, but said no measurements had been provided concerning the setbacks.

There was discussion about this, and there was also discussion that a driveway permit would be needed from the Public Works Department, and that the variance was needed for the curb cut and the parking spaces before the permit was processed.

Ms. Woodburn noted that the Ordinance said one curb cut was allowed per 200 ft, and that a variance wouldn't be needed if the applicant had another 26 ft.

Ms. Davis asked whether, if the applicant was asking for a garage with an associated driveway, he would need a variance.

Mr. Johnson said yes, because of the second curb cut, but he said if the applicant got rid of the first curb cut, he wouldn't need a variance for the second one. He also said the applicant would still need a variance for the parking area in the front yard, unless a garage was built instead.

Ms. Woodburn received clarification that the curb cut was 12 ft wide, and it widened out to 18 ft on the lot.

Chair Gooze said it would be nice to see a plan of the street, and how what was proposed would look relative to the rest of the street.

Ms. Woodburn said she would like to see more specificity as to how the parking area would be laid out.

Mr. Maranhao said he hadn't put this down on paper because he wasn't sure what dimensions the Town required.

Mr. Johnson said the limit for the curb cut was 12 ft., and said the driveway could then be as wide as 22 ft once it got off of the Town right of way.

Mr. Gottsacker said the dimensions proposed were tentative, and suggested that this application could be continued to the next meeting, when the Board could get more details, including a scaled drawing.

Ms. Davis said she had driven up and down this street. She also noted that she too had a small driveway, with a bunch of cars to park. She said she wasn't sure what made this property unique concerning this, and said she felt the applicant at least would have to get rid of the first curb cut.

Mr. Maranhao described the parking situations for other properties in the area.

Chair Gooze asked whether, if there was a garage there, there could be a 22 ft wide driveway that would connect back to it, so no variance would be needed.

Mr. Johnson said that could be done as long as the garage was built at least 30 ft from the property line.

Chair Gooze said the issues involved here had to do with sight distance, and how parking lots looked when they were place in the frontyard setback.

Ms. Woodburn suggested that the Board could get a drawing that was more specific, and Board members could drive by the site. She said they could continue the application to the next meeting and could make a decision on it then.

Mr. Gottsacker said it would be good to have some photos.

Chair Gooze noted that a key issue was having enough information to make a decision.

Mr. McNitt asked if there was any reason why the applicant couldn't use the same 12 ft curb cut that was proposed, which would then flair out to 22 ft, and go back as far as needed on the property. He said this wouldn't bother the neighbors because of the trees, and it would leave the front yard uncluttered, and without the setback intrusion. He said this would look better, and would allow the cars to get in and out.

Ms. Woodburn agreed that the question was whether the proposed parking actually had to be located in the frontyard setback.

Mr. McNitt said the only problem was that there would be more paving involved. But he said it wouldn't bother the neighbors, and it would look better in front.

Chair Gooze said it would then be a matter of the Board granting a variance for a second curb cut, or saying the applicant should get rid of the other one.

Mr. Maranhao said the main entrance was on the side of the house toward the new curb cut, so this wouldn't be affected if he had to get rid of the old curb cut. He said he had thought about getting rid of the existing curb cut.

Chair Gooze said there were other ways to do this that didn't require a variance. He noted that one of the hardship criteria was concerned with whether there was another feasible way to accomplish what the applicant wanted. He asked if any members of the public wished to speak for or against this application.

**Karen D'Amours, 6 Bayview Road,** said she wanted to get more information about the application. She said she had concerns about what was proposed, and said she was in favor of Mr. McNitt's suggestion of using the new curb cut and getting rid of the old one.

**Glendowlyn Howard, 5 Bayview Road,** said she could appreciate the applicant's situation. But she asked the ZBA to consider the spirit and the intent of the Ordinance. She said there were ways to grant what the applicant was essentially looking for, but said there were concerns about the variance as presently requested.

She questioned the 4 additional parking spaces that would be created, which meant there would be a total of 6 spaces, and said allowing a new 6 car parking lot was not in keeping with the purpose of the RA district. She said there were only two properties on Bayview Road that had a second curb cut, and both had been approved for a second dwelling that the second curb cut serviced.

Ms. Howard asked that the ZBA allow the applicant 2 additional parking spaces for a total of 4 spaces, and said this seemed reasonable. She also asked that the Board require the applicant to provide documentation concerning the dimensions involved, and a plan showing the striping for the parking spaces, so it would be clear how many cars could be parked on the property. She noted that this neighborhood had a history of issues with students, stating that these problems had now been solved and she would like to keep it that way.

She said she didn't want to create a situation that enabled another residence to be converted to housing a lot of non-resident people. She said she agreed with Mr. McNitt about the idea of getting rid of the first curb cut and using the second curb cut, but she cautioned the Board about allowing a lot of parking back there.

Chair Gooze closed the public hearing. He said he was having difficulty with the hardship issue, and said there were feasible ways to handle this parking situation. He said it would not be particularly expensive to do what Mr. McNitt had suggested, and would be better for everyone involved. He said if this were done, he didn't think the applicant would need the existing curb cut.

Ms. Woodburn asked whether, if the applicant removed the first curb cut, used the

other one, and got the parking spaces out of the front setback, there would be a limitation on how many cars could be put in a paved area of the site. She said this might be easier because the property appeared to have enough depth to allow this. She said the variance request didn't meet the hardship criterion.

Mr. Gottsacker said the Board had received sketchy information on this application, and said if the Board continued it, the applicant could provide the information the Board needed, or might even withdraw the variance application and change the configuration.

Chair Gooze said he didn't agree with this approach.

Ms. Davis said she agreed that this application didn't meet the hardship criterion. She said she could see that the cost of the extra paving might be a consideration for the applicant. But she noted that this was an area variance, and that financial hardship didn't come into play, as it did with a use variance.

There was discussion by the Board on the hardship criterion, and that it was not met when there were alternatives available.

Mr. Gottsacker said he would like to withdraw what he had previously said.

There was discussion that there was plenty of land available, so there was no constraint on the property except the frontyard setback. It was noted that this was not a shallow lot, and that the applicant could get around the setback issue with a different approach. It was also noted that if the ZBA denied the present application, the applicant could come back with a different approach.

Mr. McNitt asked Mr. Johnson for his perspective.

Mr. Johnson said this situation had the potential to be a Pandora's box. He said granting a variance would allow the Board to place some restrictions on the number of cars, size, and location of a parking area. He said if instead this came in for a building permit, there wasn't as much he could do to limit the size of the parking area. He provided details on this, and said down the road, when 12 cars were parked there, he could imagine having to issue citations for operating a commercial business in a residential zone.

Chair Gooze said he didn't think the Board should make a decision based on the fact that something might happen down the line.

Ms. Woodburn said Mr. Johnson could advise the applicant concerning this issue when he came in to get a building permit.

Mr. Gottsacker said the bottom line was that the Board couldn't grant the variance if there was at least one variance criterion that wasn't met.

Chair Gooze said he couldn't see granting this variance under the hardship criterion, and perhaps others. He said there were no special conditions that

required using the frontyard setback, and said the benefits could be achieved by another method, so both parts of the hardship criterion were not met. He also said the variance request didn't meet the public interest, or the spirit and intent of the Ordinance.

***Robbi Woodburn MOVED to deny the APPLICATION FOR VARIANCES from Article XXI, Section 175-116(C)(1) and Article XII, Section 175-54 of the Zoning Ordinance to allow for a second curb cut on a property and to allow for a parking lot to be built within the frontyard setback, based on the fact that there are no special conditions of the lot that support hardship, there are other obvious ways to achieve the same result without a variance, and the request doesn't meet the public interest and the spirit and intent of the Ordinance. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.***

- E. CONTINUED 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 and north door stairs 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.

(Continued to the January 8, 2008 ZBA meeting)

- F. 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.

(Continued to the January 8, 2008 ZBA meeting.)

### **III. Approval of Minutes – November 20, 2007**

The Board reviewed and okayed the Minutes corrections they had made at the November 20, 2007 meeting for the September 11, 2007 and October 9, 2007 Minutes.

### **IV. Other Business**

- A. Chair Gooze noted that Attorney Bernie Waugh has been hired to represent the ZBA in the Stonemark case, and provided details on this. He discussed the fact

that some Board members weren't involved with this application, or had to recuse themselves.

Mr. Johnson said the Board might want to have a short executive session on this matter at the January 8<sup>th</sup> ZBA meeting.

There was discussion that Ms. Woodburn had presented for the applicant, in the original Stonemark application before the Planning Board.

There was discussion about whether the Board should discuss the Sidmore's Request for Rehearing at the present meeting. It was agreed that since an extension had been granted, they would wait until the January meeting to address this, and in the meantime would have time to digest the information that had been provided.

Mr. Johnson said he would be meeting the following day with Attorney Laura Spector of Mitchell and Bates, as part of preparing for a Superior Court case concerning the 6 Strafford Ave property. He said there was no definite court date yet.

Mr. Johnson noted that the Board would be getting copies of the revised State Shoreland Protection Ordinance. He said the Administrative Rules for this revised statute would hopefully be adopted by April 1<sup>st</sup>. He provided some details on the changes to the Statute.

Chair Gooze noted that there were some proposed Zoning Ordinance changes being worked on by the Planning Board and the Town Council.

Mr. Johnson provided some details on this, and said once they were formally adopted, the ZBA would receive copies of them.

## **V. Adjournment**

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

Adjournment at 8:51 pm

Victoria Parmele, Minute-taker

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Jerry Gottsacker, Secretary