

This set of minutes was APPROVED at the March 11, 2008 meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, JANUARY 8, 2008
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Chair Jay Gooze; Vice Chair Ted McNitt; Secretary Jerry Gottsacker; Mike Sievert; Robbi Woodburn; Ruth Davis; Carden Welsh

MEMBERS ABSENT:

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

I. Approval of Agenda

Chair Gooze called the meeting to order at 7:00 pm. He noted that a letter had been received from the Teeri's requesting that their application be withdrawn (Agenda Item II C).

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

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.

There was discussion that at the December ZBA meeting, the Board had decided that the public hearing on this application would be opened at the January ZBA meeting and then continued until the February meeting, in order to allow additional public input prior to a final decision.

Chair Gooze opened the public hearing.

Walter Rous, Adams Point Road, noted that he was a Board member for the Mill Pond Center, and said Katie Muth was also present. He said they wouldn't mind postponing their presentation until the next meeting, in order to allow abutters to comment.

Chair Gooze asked Board members for their perspective on this, stating that he personally would like to hear the presentation, which had already been postponed several times.

Chair Gooze asked if any members of the public were present because of this application. One person raised his hand, and it was therefore agreed that the Board would allow public comments at the meeting.

Mr. Rous said the issue involved here was whether the Mill Pond Center would be allowed to have tents of a reasonable size for weddings. He said he had tried to figure out what exactly a tent was

categorized as, noting that it was not defined in the Zoning Ordinance under structures, or buildings. He said the applicant had been asked to submit a building application for a temporary tent, and did so, but said a noise issue had then come up, which he said he thought was a separate issue.

Mr. Rous said he would like the ZBA to think hard about whether a tent really fell under the definition of a structure. He said it was certainly temporary, and noted there was a definition of “temporary” in the Zoning Ordinance, for something that lasted less than 90 days, and didn’t have a permanent attachment to the ground. He said he didn’t see that a tent was a structure requiring a building permit.

He said the Mill Pond Center had a very vibrant program of classes and exhibits, noting that the program was gaining strength. But he said that like all arts institutions, this program didn’t support itself, so needed to rely on additional income. He said he hoped the ZBA, as a voice of the Town, would not restrict a possible source of income, with a very restrictive, narrow interpretation of the rules.

Mr. Rous said Mr. Johnson may have confused “accessory structure” with “accessory use“, and noted that people all over Town had erected tents, which weren’t considered accessory structures. He said there was a noise issue that the abutters had brought to the attention of the Town, and said this was something the Mill Pond Center would be keeping an eye on. He said this issue was governed by the Town’s noise ordinance, and should not be addressed by prohibiting or restricting tents.

Ms. Woodburn asked when and how often it was anticipated there would be functions that would require a tent, and was told there would be about 10 such events each year. Ms. Woodburn said this had a bearing on the interpretation of accessory use. She provided details on this, and said the ZBA needed to determine if what the Mill Pond Center was proposing was a use that was incidental to the primary use of the property.

Mr. Rous said there was no definition of size, for an accessory structure. But he said that concerning the concept of accessory use, if one considered all the programs the Mill Pond Center had over the course of the year, and the size of the property, 10 days of using the property for weddings, over the course of a year, would seem to be accessory to the main use of the property.

Ms. Woodburn agreed that this was not an accessory structure issue, and was an accessory use issue.

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

Jeffrey Hiller, 6 Laurel Lane, said he fully supported the arts, and appreciated the work that the Mill Pond Center did. But he said as a new resident of the neighborhood, he had experienced for the first time the effects of a wedding at the Center the past September. He said that as an abutter, 200-300 ft away from the tent, the situation was pretty noisy, and he provided details on this. He also said he had noticed overflow vehicles parked in front of his house, and beer cans that had been thrown into his yard.

He said in deciding to move to this area, it had been realized that the Mill Pond Center was located there, but he said it had not been anticipated that there would be weddings there. He said he and his wife would have taken this into consideration, in deciding whether to move there. He said if there were going to be 10 weddings held, that would pretty much cover the entire summer season. He said his biggest concern was alcohol use at these functions, noting that he had three children, and that there could be safety issues.

He questioned the size of the parking lot at the Mill Pond Center, speaking again about the overflow parking that affected his property. He said there were other facilities in Durham that were available for wedding events.

Chair Gooze noted that the Board would be deciding on an Administrative Appeal, not a variance request concerning this property, so would be looking at the situation from a fairly restricted perspective. He asked if Ms. Muth had a rebuttal to the comments made by Mr. Hiller.

Ms. Muth said the weddings never had over 100 people, and said the Mill Pond Center always had staff stationed in the parking lot and at the top of the hill, who were vigilant that there would be no parking on Route 108 or Laurel Lane. She said shuttles were also used when necessary. She noted that the sound system was positioned so that it didn't face neighbors' houses. She also said that one of the abutters had held a large private party in September.

Mr. Hiller said he was aware of this private party. He said he appreciated the vigilance on the part of the Mill Pond Center, but said that on the date of a wedding held at the Center in September, there were vehicles parked in front of his house, and beer cans in his front yard.

Ted McNitt MOVED to continue the 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, to the February 12, 2008 ZBA meeting. Jerry Gottsacker SECONDED the motion.

Chair Gooze said more testimony would be taken from members of the public at the next meeting, and said the Board would then discuss and deliberate on this application.

The motion PASSED unanimously 5-0.

- B. 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.

Attorney Tanguay, representing the Sidmores, reviewed the situation with this application, which had come before the Board at the November ZBA meeting. He said the applicants had been waiting to hear from NHDES, and said the letter was received on December 11th. He said this letter indicated that the Sidmores needed to retain a professional engineer to depict the extent of disturbance on the site, and to develop a plan to address this. He said Eckman Engineering had been retained to do this work, and had done a site evaluation although it had not completed the required plan yet.

He said the Sidmores would work with NHDES, and fully intended to comply with what was required. But he said they felt it would be premature to move forward with the variance request right now, when it wasn't known what NHDES would say about the plan that was being developed. He said as soon as the approved plan was available, the Sidmores would be back before the ZBA again.

Chair Gooze said that made sense, but noted that the Board didn't necessarily need to take the DES approved plan as gospel. He provided details on this, and said he wasn't sure if the Board should continue this public hearing to a future meeting or not.

Attorney Tanguay said coming back with a firm plan approved by NHDES would possibly avoid a conflicting situation between what the ZBA said and what NHDES said.

Attorney Schulte, representing the Bates, abutters to the Sidmore property, said it didn't seem that it was the ZBA's responsibility to design a solution now. He said the ZBA needed to know what the applicants' plan was before proceeding.

Mr. Johnson said some things that the Board had been waiting on concerning this application was the letter from NHDES as well as a measurement of the height of the house. He said he had been out at the property to do the final inspection on the main part of the house, and said when all factors were considered, the height was 24.2 ft, which was well within the Ordinance requirement.

He noted that a temporary certificate of occupancy had been granted until January 15th for the main part of the house, and said this could be renewed for another month. He said there was a restriction on issuing a temporary certificate of occupancy for the basement, and asked if the Board wanted to continue this restriction. He noted that the basement area now met the building code, and provided further details on the situation, including egress available from that basement apartment

There was discussion by the Board on the issue of egress from the basement apartment, and on what the Board as well as NHDES thought about this. There was also discussion on whether there was any reason not to give a temporary certificate of occupancy for the basement apartment based on what was there now.

Attorney Schulte said depending on what the ZBA decided concerning the egress issue at a future meeting, the construction on the basement apartment might not be finished, so it was premature to allow an occupancy permit. He also said he didn't think the Board had the power to tell the Code officer what he could or could not do concerning this. He said the Bates would therefore oppose a vote by the ZBA to issue a temporary occupancy permit for the basement apartment until it was known what the final plan looked like.

Attorney Tanguay said regardless of what NHDES said about the egress corridor, the basement apartment would have a window that was large enough to use as a second means of egress. He noted that the Sidmores hadn't asked for a temporary certificate of occupancy for the basement apartment, but he said even if turned out that the sliders had to come out, the apartment would still be able to be occupied.

Ellen Bates, 10 Cedar Point Road, said the first floor had been constructed improperly, and said she thought it would have to be reconstructed. She said letting someone live there now would therefore be ridiculous. She provided details that there had been an illegal apartment there before, with no egress, and said this had now turned into a grand apartment that had not been there before.

Ted McNitt MOVED to continue the Public Hearing on 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 the south end of the basement and the north end, 8 feet east from the original house

stairs, and also, to construct rear door egress stairs from the south door and north door stairs within the shoreland and sideyard setbacks to the February 12, 2008 ZBA meeting. Jerry Gottsacker SECONDED the motion.

Ms. Woodburn said the Board first needed to see the plan from NHDES. Regarding the occupancy permit, she noted that the reason the Board had asked, in its previous motion concerning this property, that there be no certificate of occupancy for the basement apartment was that it wanted to hear from NHDES first. She also said the Board's direction to Mr. Johnson had been taken care of, and it was up to him to decide whether a temporary or regular certificate of occupancy could be granted for the apartment.

Mr. Gottsacker agreed, and said the Board should not move forward until it saw the plan.

Chair Gooze agreed as well.

There was discussion on the issue of egress from the basement apartment, and whether the plan being developed by Eckman Engineering might not only include an egress corridor, but also another option with no corridor.

Chair Gooze noted that he had had previous dealings with both Attorney Tanguay and Attorney Schulte, outside of his role on the ZBA, and said if either one of them felt this created a conflict, he would like them to state this.

Both Attorneys said they didn't see there was a problem concerning this.

There was further discussion by the Board on what its role was concerning the issuance of a temporary certificate of occupancy for the basement apartment. It was agreed that no further action was needed by the Board right now other than what was in the motion that had been developed.

The motion PASSED unanimously 5-0.

Chair Gooze summarized that a certificate of occupancy for the basement apartment had still not been issued, but that a temporary certificate of occupancy for the main house had been issued.

- C. 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 application was withdrawn at the request of the applicant.

- D. PUBLIC HEARING** on a petition submitted by Mark H. Henderson, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXI, Section 175-112 to reduce the number of parking spaces required for 13 proposed residential units. The property involved is shown on Tax Map 4, Lot 1-0, is located at 1 Madbury Road, and is in the Central Business Zoning District.

Mr. Sievert and Ms. Woodburn recused themselves for this application, and Mr. Welsh and Ms. Davis

were appointed voting members in their place.

Mr. Johnson noted that there was a letter from Mr. Henderson authorizing MJS Engineering to act on his behalf.

Michael Sievert of MJS Engineering represented Mr. Henderson. He provided details on the property in question, which contained the Ballard Building, and was located at the intersection of Madbury Road and Main Street. He said the project proposal was to build a new 3-story building on the site, with approximately 8,800 sf of Office/Retail Use on the first level, and 13 new residential dwelling units on the second and third floors. He said the dwelling units would be a mix of 3 and 4 bedroom units. He noted that most of the existing Ballard building would remain, as 1,350 sf of office space on the first level, and with 2 existing residential units on the second level.

He said there would be 22 lower level parking spaces provided. He said the variance request was concerned with the amount of parking required, noting that 37 spaces were required for the residential portion of the development, but only 4 could be provided. He also noted that the total number of commercial spaces available was 19, but that nonresidential uses were exempt from parking requirements in the Central Business District, because the number of parking spaces would not be reduced as a result of this development. He said there were 22 spaces now, and said there would be the same number of spaces when the project was completed.

Mr. Sievert next went through the variance criteria, explaining how they were met with this application. He said there would be no decrease in the value of surrounding properties, because what was proposed would be an upgrade of the property, and would be in keeping with the surrounding neighborhood.

Concerning the hardship criterion, he said the Town allowed the proposed residential development density under the Zoning Ordinance but there was no physical way to fit the required parking spaces on this property. He said the benefits sought by the applicant couldn't be achieved in some other way, explaining that there was simply no way to provide the additional parking that was required. He said the parking that existed already on the property would continue to be available, and now would be undercover parking, which would create a better situation.

He said granting the variance would result in substantial justice because it would provide an additional 8,800 sf of commercial space, as well as additional residential space downtown, which was supported by the Table of Dimensional Requirements and the Table of Uses in the Zoning Ordinance.

He said granting the variance would not be contrary to the spirit and intent of the Zoning Ordinance because the development would result in more downtown residential accommodations, which would augment the character of the walking downtown area while preserving the outlying residential neighborhoods.

Chair Gooze asked where things currently stood with the Planning Board, concerning this project.

Mr. Sievert said preliminary design discussion and design review had taken place with the Planning Board, and also said there had been discussion with the Historic District Commission. He said the plan presented now before the ZBA had been shown to the Planning Board.

Mr. Gottsacker said at first he had wondered why the existing 22 spaces couldn't simply be called residential, in which case the applicant would only need a variance for 11 residential spaces. But he

now understands the zoning ordinance does not allow this sort of substitution.

Mr. Welsh asked how many residents would live in the total of 15 residential units, and it was determined that there could be a total of 48 residents.

Ms. Davis said the majority of the parking spots that would be available would be for commercial use, and asked how this would be enforced.

Mr. Sievert said Mr. Henderson's management people would enforce this, and said there would be signs that would say the parking spaces were not for residential use.

Mr. Gottsacker asked whether it would really matter who parked there, from a code enforcement perspective.

Mr. Johnson said no, but said the property owner would most likely hire someone to patrol the area, just as was done at Mill Plaza.

Mr. Gottsacker agreed that this was really the property owner's responsibility.

Mr. Welsh asked if the apartments would be limited to students, and Mr. Henderson said no. There was discussion about this.

Chair Gooze asked if any members of the public wished to speak for or against the application. There were no comments.

Ms. Davis asked Mr. Henderson what prospective students would say about the unavailability of parking spaces.

Mr. Henderson said there were guidelines in place now, for the existing residences in the building. He said tenants found other places to park if they had cars. He also noted that a reason parents liked kids to live downtown was that they then didn't need a car.

Chair Gooze made note of the fact that the Planning Board hadn't decreased the amount of parking required for the mixed use application for a property near his own.

Mr. Henderson said there was less and less parking being provided downtown, and said this reflected the spirit and intent of the Zoning Ordinance. He also noted that he was providing parking on the lower level and not putting commercial development there, and said someone else might not decide to do this.

Mr. Welsh said it seems like not requiring parking for residents downtown was creating a big problem for the future, in terms of traffic congestion downtown. He said it seemed like parking was becoming a bigger issue in Town, and he asked where these residents would be able to park. There was discussion on this with Mr. Henderson.

Ms. Woodburn said she was on the Master Plan committee that had discussed the idea of changing the Central Business district to be an area of Town that would be pedestrian friendly, and would allow greater density without requiring associated parking. She said this was why the plan for rebuilding Libby's had been accepted. She said the intent of the Master Plan was to support exactly what this proposed development was.

There was further discussion on this between Mr. Welsh and Ms. Woodburn.

Mr. Johnson explained that the Zoning Rewrite committee was an ongoing entity, and said the Planning Board was still working to rewrite portions of the Zoning Ordinance. He said the Board was currently working on the parking provisions and sign provisions to bring them in line with the Master Plan.

Mr. Sievert provided details on a yearly fee that some people in Town paid for parking spaces, and said this was a matter that was addressed by the Town Council. He also noted that the ZBA had granted a variance to a property on Jenkins Court, and there was no parking at all there. He said there was parking on Mr. Henderson's property, and said the amount of parking provided there certainly exceeded what was available at Libby's.

Ted McNitt MOVED to close the Public Hearing. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said he understood the problem Mr. Welsh was having with this variance request. He said although the Ordinance had not been changed yet, there was pretty much agreement that there should be more pedestrian oriented development downtown. He said this was why the Jenkins Court application went the way it did.

He noted that the ZBA had to decide on this application in terms of whether it met the variance criteria. He said he had no problem with saying the hardship criterion was met. He said he did have somewhat of a problem with the spirit and intent and public interest criteria, but on balance felt the application met these criteria. He said he felt the situation would be different if this property was located next to a property where allowing this variance would hurt the abutting properties. He said he felt this development was good for the Town, but said he wished the Planning Board would get the Zoning Ordinance caught up with the Master Plan.

Ms. Davis noted that the Master Plan, as the backup for the Ordinance, recommended the elimination of parking requirements for the Central Business district.

Mr. Gottsacker said that with the Jenkins Court application, there had been discussion that there was a contradiction between the Master Plan and the Zoning Ordinance, and that it seemed that the Zoning Ordinance hadn't caught up to the Master Plan yet, which was a defect.

Chair Gooze said he wouldn't be in favor of granting this variance unless the Master Plan said what it said, concerning the spirit and intent of the Central Business district. But he said again that he understood Mr. Welsh' concerns.

Mr. Welsh asked if the Master Plan meant that there should be no more parking requirements in the downtown area. He said he felt this was against the public interest, when there was already too much traffic in the Central Business district. He said it was a fact of life that people used their cars, elaborating on this, and said the traffic would only get worse in the future. He said they were sort of building that reality into the decisions they made, and said who could know when more parking might be built downtown.

Mr. Gottsacker said the Master Plan provided a vision, and said the Town could get there over a period of many years. He said what Mr. Welsh had described was a transitional problem, and noted that he

personally had grown up in an area with traffic problems, but which now was pedestrian oriented. He said Durham was headed in the right direction, but they couldn't get there overnight. He said he would like to see more foot traffic downtown, and said if the Town didn't want cars downtown, it shouldn't provide parking there.

Chair Gooze said he didn't want to play the role of the Planning Board and change the Ordinance. He said the ZBA had to say that there was something about this property that warranted the granting of this variance. He said a way he saw this as a unique situation was that the applicant would be keeping the existing parking. He said if there was no parking available there, when a lot of parking was required, he would look at this situation differently. He noted that this kind of situation might not exist for every application that came forward regarding a property in the Central Business district.

Mr. Welsh said he didn't see what was especially unique about this property. He said it met the density requirements, but there wasn't enough room for parking. He said he was sure this was true of other properties in the area, and therefore questioned whether this was a unique situation.

Mr. McNitt said he had mixed feelings as to whether this application met the public interest, and provided details on this. He said that on balance he did feel it met the public interest. But he said he could not say that this application was not contrary to the spirit and intent of the Ordinance. He noted that this issue with the Ordinance needed to be straightened out by the Planning Board.

Mr. Gottsacker said he didn't agree, and said this was penalizing the applicant because the Planning Board hadn't yet acted.

Mr. McNitt said the Planning Board could do something about this.

Mr. Gottsacker said he thought the Planning Board always told the applicant to get the variances first.

Chair Gooze said the question was whether the ZBA could make the decision without the Planning Board changing the Ordinance, and Mr. Gottsacker said that was what a variance was for. Chair Gooze said there was still a question as to whether this was a unique situation.

Mr. Gottsacker said he had been following Mill Plaza discussions and the TIF discussions, and said everyone wanted high density development in the downtown area. He said that was precisely what Mr. Henderson's proposed development involved.

Chair Gooze said perhaps that desire for more density downtown would push toward putting in a public parking lot downtown, given all these properties that existed there.

Mr. McNitt perhaps it was simply a matter of changing the Ordinance to say that parking was not required for upper residential accommodations in the downtown area.

Mr. Gottsacker said he was against holding the property owner hostage to the ZBA trying to get the Planning Board to move.

Mr. McNitt said ZBA members took a pledge to not accept something that was contrary to the spirit and intent of the Ordinance.

There was further discussion on this.

Chair Gooze said he would be in agreement with Mr. McNitt if the Master Plan hadn't provided support for reducing the parking requirements downtown.

Ms. Davis said regarding the issue of the public interest, she felt the building that was proposed would be a huge improvement to the downtown area, so would be in the public interest.

Jerry Gottsacker MOVED to approve the APPLICATION FOR VARIANCE from Article XXI, Section 175-112 to reduce the number of parking spaces required for 13 proposed residential units for the property located at 1 Madbury Road, in the Central Business Zoning District. Ruth Davis SECONDED the motion, and it PASSED 3-2, with Carden Welsh and Ted McNitt voting against it.

Recess from 8:30 to 8:40 pm

III. Board Correspondence and/or Discussion

- A. **REQUEST FOR REHEARING** on a November 13, 2007 approval of the 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 for the chimney on the east side of the house and the wrap-around deck on the east corner, as shown on the certified foundation plan. The Board directed the Code Enforcement Officer to grant a temporary, 90-day certificate of occupancy for the main house 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. The Board also requested that a height verification on the main house be obtained before a final certificate of occupancy is issued. Chair Gooze noted a letter had been received from Attorney Tanguay objecting to this Request for Rehearing. He said he had decided not to bring that letter into the Board's present discussion. He then noted that Attorney Schulte had made 25 points as to why the Request for Rehearing should be granted.

Mr. Sievert said that regarding the height issue, he felt this still needed to be verified by a surveyor or engineer, which was the applicant's responsibility. He said it couldn't be said there was a height issue unless there was evidence concerning this, and said he didn't feel this had been shown.

Mr. Sievert also said he thought the Board had already had discussion that the proposed porch on the original plan, and what was built weren't substantially different. He provided details on this.

Mr. McNitt said he thought the whole thing was fuzzy, and said the project had changed over the course of construction, more than most projects. He said the big items were the excavation of earth at both ends and the destruction of the natural shoreland vegetation. He said there was also the opening up of a full three stories of view, instead of two stories that were shown in the proposed plans. He said he could see why the abutters had complained about this.

Chair Gooze said the Request for Rehearing was specific to the things the ZBA had allowed. He said he did not see anything different in terms of what had been presented in this request.

Mr. Gottsacker said three issues were addressed in the variance application, the chimney, the wrap around deck and the height. He said the question was whether the Board had made a

mistake in its decision concerning these issues. He said the Board had previously discussed the chimney and deck issues and had decided that they were not a problem. He said Mr. Johnson had measured the height, and said there was a large margin for error, even if the measurement was done more accurately.

Ms. Woodburn said she agreed with Mr. Gottsacker.

There was discussion on why the house looked like it was so much higher now, when Mr. Johnson had determined that the height was well below the height limit in the Ordinance. It was noted that the excavation had gone down all the way to the basement floor so what was then constructed looked bigger than what was in the drawing, although it still met the code.

Mr. McNitt said he thought the property would look different if the two ends were hidden by landscaping.

Ted McNitt MOVED that there is no basis for Rehearing the Application. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

IV. Approval of Minutes –

November 13, 2007

Page 3, Item #2 at top of page, should read "...on the same side is in the sideyard setback..."
Page 6, 4th paragraph from bottom, should read "He said he would hat to see the Board give approval..."

Page 7, top paragraph, should read "It was then determined that all..."

3rd paragraph on same page, should read "...if the Board did this, it would have any recourse..."

Jerry Gottsacker MOVED to approve the November 13, 2007 Minutes as amended. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.

December 11, 2007

The only minutes correction for the December 11, 2007 Minutes was that there should be page numbers on each of the pages.

Robbi Woodburn MOVED to approve the December 11, 2007 Minutes as amended. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

(Ms. Davis was a voting member for this motion because Mr. Sievert was not at the December 11th meeting).

V. Other Business

A.

B. Next Regular Meeting of the Board: **February 12, 2008

Chair Gooze said he would be meeting the following day with Attorney Bernie Waugh, regarding the Stonemark case.

Concerning the ZBA's Rules and Regulations, he asked that Board members look them over and decide whether perhaps some changes were needed. He said this could be discussed at the next ZBA meeting.

Mr. Johnson said the next meeting of the Economic Development Committee would take place on Friday morning, at 7:30 am. He said there would be discussion on the density downtown, and on some things that would be coming before the Town Council and the Planning Board concerning redevelopment of the downtown area. He said this meeting might be of interest to ZBA members.

He said NHDES would be having its final public hearing on the changes to the Shoreland Protection Act on January 16th. He said these changes would go into effect on April 1st. He said the Planning Board might be making some changes to the Ordinance so it would be in line with the State RSA, and noted that the Town would still not be likely to be less restrictive than the State requirements.

He said the Strafford Avenue fraternity case would probably settle out of court. He said the Palmer case was still under review, and said the ZBA might be asked to rehear it at some point.

There was discussion that the ZBA Rules and Regulations would be provided to Board members in the next packet, and that they would be discussed under Other Business.

There was discussion about political signs seen in Town that had been cut in half, and Mr. Johnson explained that some of these signs had been too big. He said he couldn't take them down on private property, but said some residents had therefore gotten creative in order to meet the requirements.

VI. Adjournment

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

Adjournment at 9:05 pm

Victoria Parmele, Minutes taker