

*This set of minutes was APPROVED at the May 13, 2008 meeting.*

**ZONING BOARD OF ADJUSTMENT  
TUESDAY, APRIL 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

**MEMBERS ABSENT:** Carden Welsh

**OTHERS PRESENT:**

**I. Approval of Agenda**

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

**II. Public Hearings:**

- A. **PUBLIC HEARING** on a petition submitted by John L. Hill Jr. & Virginia E. Stuart, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article VII, Section 175-54 of the Zoning Ordinance to construct an attached two-car garage that extends 13 feet into the 50-foot sideyard setback. The property involved is shown on Tax Map 17, Lot 47-10, is located at 3 Falls Way, and is in the Rural Zoning District.

Mr. Hill said he would like to construct a two car attached garage, that would be 24 ft wide and 26 ft deep, and would be attached to the house by a 4 ft extension to the existing mudroom. He provided details on what was planned, and said the new setback would be 37 ft from the west side line. He said the garage would be the same style as the house, and would improve the value of the property as well as neighbor's properties. He noted that as part of this project, the existing shed on the property would be removed. He said he had contacted the abutters, and none had objected to these plans.

He said granting this variance would not decrease the value of surrounding properties, and would also be in the public interest because it would bring the property into line with other properties in the area, and would not affect the rural character there.

He said this was an area variance, and said there would be a hardship if the variance was denied. He said there was no reasonable alternative to encroaching on the 50 ft setback with this design. He noted first the narrow width of the property from front to back, and the steep grade, and said on the rear side, the sharply rising grade would require extensive excavation of the hill and tree removal to accommodate a two-car garage within the sideyard setback.

He explained that on the east side of the lot, there wasn't room for the garage because the northeast corner of the house was 50 ft from the property line. He said on the south side, which was the front of the house, the septic system was in the way. He also pointed out that the house itself was already at the side setback limit, on the western side

Mr. Hill said substantial justice would be done in approving the variance, because the decision would give them the opportunity to make the value and usefulness of the house comparable to others in the neighborhood. He said the proposed location for the garage was a reasonable place to add a feature that was common for the neighborhood, and summarized that granting the variance would balance their legitimate aspirations for their property with out interfering with the rights of neighbors.

Chair Gooze asked how the shed issue related to the proposed garage.

Mr. Hill said he had planned to remove the shed anyway, but said the reason it was sparking the garage idea was that the shed was getting to the point where it couldn't be used for storage. He said the shed demolition wasn't part of the variance request, but said they would go ahead with the demolition if the variance was granted.

Chair Gooze asked if the garage would come any closer toward the neighboring property than the plow sticks he had seen on the property, at the end of the gravel.

Mr. Hill said no, and provided details on this.

Mr. Sievert asked how old the subdivision was that this house was in, and was told it was built in the late 1970's.

Mr. Gottsacker said the side setback requirements were 50 ft and 50 ft, for a total of 100 ft, and noted that the applicant had 37 ft on one side and at least 150 ft on the other, which totaled a number greater than 100 ft.

***Robbi Woodburn MOVED to close the public hearing. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.***

Ms. Woodburn said the applicant was correct that granting this variance would not result in a decrease in the value of surrounding properties, and would not be contrary to the public interest. She said denial of the variance would be a hardship because it would mean the applicants would not be able to put a garage on the property, in a reasonable way. She said granting the variance would result in substantial justice, and also said this would align with the spirit and intent of the Ordinance.

Mr. Sievert and Mr. McNitt agreed that the variance request met the variance criteria.

Mr. Gottsacker said this lot clearly was a hardship case because it was narrow and deep.

Ms. Davis said the topography behind the house created a hardship.

Chair Gooze agreed that the application met the variance criteria, and said what was proposed matched the neighborhood. He noted that some of the other houses in the neighborhood had garages that were even closer to the setback lines.

***Robbi Woodburn MOVED to approve the APPLICATION FOR VARIANCE from Article VII, Section 175-54 of the Zoning Ordinance to construct an attached two-car***

***garage that extends 13 feet into the 50-foot sideyard setback, for the property located at 3 Falls Way, and in the Rural Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED 5-0.***

- B. **PUBLIC HEARING** on a petition submitted by Matthew Beebe, Portsmouth, New Hampshire, on behalf of Timothy Finnegan, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance for the addition of a garage under the living space of a home and for the increase in width of the driveway to accommodate the garage access. 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.

Mr. Beebe noted that Mr. Finnegan had previously had a variance application to change the shape and style of a previously approved, proposed new single-family home with a garage underneath. He said at the time the applicant had come before the ZBA, a garage was not included in the proposed new design.

But he said Mr. Finnegan had subsequently rethought this. He said a substantial amount of fill would have to be brought in for the septic system in the back, which would raise the grade quite a bit around the house. He said the applicant had therefore decided to take advantage of the natural slope created with the septic system, and create a place to park his car. He said Mr. Finnegan was therefore asking for a variance to allow the addition of a garage under the living space. He said they were not modifying the footprint, but would need the increase in the width of the driveway to accommodate access to the garage.

Mr. Gottsacker noted that the Board had specified with the previous variance that the approval would not include a garage. He said they also had said there would be no opportunity for abutters to talk.

Chair Gooze said the Board would certainly be willing to hear from members of the public concerning this application. He asked if there were any members of the public who wished to speak for or against this application.

There were no members of the public who wished to speak.

***Ted McNitt MOVED to close the public hearing. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

In response to a comment from Ms. Woodburn that there wasn't a whole lot of room to back out, and make it to the curb cut they had, Mr. Beebe acknowledged that it was a small footprint, and that it was realized it would be a tight turn. He said it could be done, but also said there was the option of backing out onto Cedar Point Road, which wasn't heavily traveled.

Mr. Sievert asked what the grade was coming down from Cedar Point Road.

Mr. Beebe said from the edge of the foundation to the street, it was less than 2 feet, from

the street to the edge of the foundation of the garage. But he said from the front of the house to the back, there was about an 8 ft difference in grade.

Mr. McNitt said what the applicant proposed seemed liked a natural move, considering the site and everything else.

Chair Gooze noted that the Cedar Point Road neighborhood was a unique area of Town.

Mr. McNitt said the original project met the variance criteria, and said this application was no change from that.

The other Board members agreed.

***Ted McNitt MOVED to approve the Application for Variance from Article XII, Section 175-54 of the Zoning Ordinance for the addition of a garage under the living space of a home and for the increase in width of the driveway to accommodate the garage access, for the property located at 25 Cedar Point Road, in the Residence C Zoning District. Jerry Gottsacker SECONDED the motion.***

There was discussion that the driveway width didn't bother anyone.

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

- C. **PUBLIC HEARING** on a petition submitted by Jane Sparks, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article VII, Section 175-53 of the Zoning Ordinance to expand upon an existing variance to operate as a restaurant with a liquor license within the current operation of a Bed & Breakfast Inn. The property involved is shown on Tax Map 18, Lot 12-1, is located at 1 Stagecoach Road, and is in the Rural Zoning District.

Chair Gooze noted that a number of letters had come in concerning this application, and asked Ms. Sparks if she had seen them. She said she had, and Chair Gooze said he would summarize them at some point during the public hearing.

Ms. Sparks explained that she had previously received a variance that allowed her to put in a gourmet kitchen. She said at present, she had a dining space with 24 seats, and said she cooked for guests at the Inn, and also did special events. She said she was now at the point where she would like to expand upon the variance she had previous received, in order to be able to open the dining area to members of the public. She said as part of the variance that was previously approved, she wasn't allowed to advertise the dining area or open it to the public any time she wanted. But she said she would now like to try to do that, so was asking for an additional variance.

She said she was not proposing to do anything that was different than she was already doing. She noted that for outdoor functions, she went through the Technical Review Committee, and would continue to do that. She said she wanted to keep the charm of the Hickory Pond Inn, and also wanted to keep her operations as "green" as possible. She said the only thing that would be different was that the dining area would be open to

members of the public. She noted that she had sent a letter to the abutters, explaining her plans.

There was discussion that this proposed change would not involve any changes to the 24 space dining area.

Ms. Sparks provided details on the parking spaces available at the Inn, noting that there were 85 spaces in the gravel area, and that there were up to 100 spaces on the property. She also said there was overflow parking available on a nearby property if needed, and said she had used this twice in two years. She provided details on emergency access available on the site.

Mr. Sievert asked how many spaces were available out front, and Ms. Sparks said there were 20 spaces. She also noted that about 8 spots on the neighbor's property were used for the occasional special events.

Mr. Sievert asked if there would be a bar as part of what was proposed, and Ms. Sparks said no. She also said she had written a letter in response to the concerns of the neighbors. She said she didn't have room for a bar, and wouldn't want to have one there anyway, stating that it would be against what she was trying to do at the Inn. She said she was in the process of getting a beer and wine license so these could be served with meals.

She acknowledged that the property was located at a busy intersection, but noted that there was a golf course on the property when she bought it, and that this use didn't create any less hazard than the use of the property now. She said she had no intention of changing the character of the Inn, stating that she had operated without complaints from neighbors, and intended to continue in this way.

Chair Gooze noted that one of the letters against this application spoke about incremental changes to the property over time. He said a question was what would prevent further changes relating to the serving of liquor, if the economics were such that it was tough to make a living, even with the restaurant.

Ms. Sparks said that wasn't what the intent was here. She said she had talked with Town staff and others about how to go about this process properly. She was not asking that the area be rezoned. She said she realized the Inn was located in a rural area, but she said there was less traffic at this location now than there had been when there was a golf course on the property. She said she didn't see that it made sense to put in a lounge at the Inn, even from an economic perspective. But she said that putting in a restaurant that was open to the public was very important to her from an economic perspective.

Ms. Sparks said dinner would be served until 9 pm, and Chair Gooze said his concern was that variances ran with the property, and said the next owner might decide to stay open later.

Ms. Sparks explained that in order to get a liquor license, she had to be open to the public. She suggested that there could be some kind of contingency concerning this, in order to receive the variance.

Ms. Woodburn asked Ms. Sparks if she anticipated needing to go before the Planning Board for what was proposed.

Ms. Sparks said no, explaining that the layout inside would be the same, and that there were no site plans proposed.

Mr. McNitt asked how Ms. Sparks proposed to advertise that the restaurant would be open to the public, and she said this would be indicated on the sign in front of the Inn. She said it would state that the dining area was open by reservation only.

Mr. Sievert asked what the hours of operation would be for the restaurant, and Ms. Sparks said she wouldn't be open before 7 am, or beyond 9 pm.

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

**Chris Mueller, 6 Timberbrook Road**, said he was present as a resident and also on behalf of the Town's Economic Development Committee. He said the role of the EDC was to enhance the opportunities for economic development in Town, but was also to assist in retaining the existing businesses in Durham. He said Ms. Sparks had approached the committee regarding retaining the Hickory Pond Inn as a viable business operation that could enhance the Town. He also noted that he had also spoken with an executive of a tech company who said the kinds of services that the Inn represented were an attraction in terms of locating in Durham.

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

There were no members of the public at the meeting who wished to speak. Chair Gooze said three letters against the application had been received, from the Pomerleaus, the Edmunds, and Scott Lathrop, all of whom were abutters. He summarized that these letters all said essentially the same thing, that because of the liquor license being requested, as well as concerns about extra traffic, they were opposed to the variance application.

Chair Gooze read the letter from Scott Lathrop, which said the granting of a liquor license would substantially change the character of the area. Mr. Lathrop expressed concerns about increased noise, lighting, traffic, etc. and also said there was concern about what would happen if Ms. Sparks sold the property. His letter suggested that the ZBA should do a site visit.

Chair Gooze asked if Ms. Sparks had a rebuttal concerning these comments.

Ms. Sparks noted that she had indicated previously that the size of the dining area would not increase, and that it would only be open until 9 pm. She said there would be no change to the exterior lighting, and said there would be no additional noise generated. She said she had 75 events the previous year, including a few outside, and there were no complaints. She said she was not opposed to the idea of having the variances contingent

upon her ownership of the property.

In answer to a question from Ms. Davis, Ms. Sparks provided details on how things would work, in terms of having the restaurant open by reservation only. She said this would allow her to control the usage of the restaurant, for a number of reasons.

***Mike Sievert MOVED to close the public hearing. Ted McNitt SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Goose said this was a use variance, and said the problem he was having with the application was that it was so open ended. He noted that three abutters were against the application, for valid reasons, and said it couldn't be pinned down what the use would be in the future. He said he therefore was having trouble with the hardship criterion, in terms of the issue of possible injury to the private rights of others. He said the Residence C District wasn't zoned for restaurants, and also said that economic issues weren't really taken into account with a use variance.

Mr. Gottsacker said he thought a lot of specifics on the use had in fact been provided, in terms of the time of operation, the fact that there would be no change in the lighting, etc. He also said he didn't see that there was a reason why conditions couldn't be put on the approval.

Ms. Woodburn said Ms. Sparks had already gone before the Planning Board in the past. She also said no more seating was proposed than was there now and that people would be in and out of the restaurant during dinner hours. She said alcohol was the big issue. She also said that if it was felt the hardship criterion was met given the uniqueness of the Inn in the rural setting, the Board could put conditions on the approval.

Chair Gooze said he wanted to make sure that the abutters were comfortable that if Ms. Sparks sold the property, the new owner couldn't operate the restaurant in a different manner. He said he would like to see more specifics concerning the use of the restaurant.

Mr. Sievert said the specifics were that there would be no physical changes to the property in terms of lighting, parking, curb cuts, seating, and square footage, and that there would be specific hours of operation. He suggested that perhaps the Board should say the variance would be approved based on the fact that there would be no changes, and based on specific hours of operation.

Mr. Gottsacker said it was hard to imagine a bar there, but suggested that prohibiting this, as a condition of approval of the variance, would be a win-win situation.

Chair Gooze said he wanted to be sure that conditions could be included that would protect the abutters, who had watched the use of the Inn grow over time.

Ms. Woodburn said she thought it would be too harsh to say there could be no physical changes at all. There was further detailed on the idea of including conditions, and on what they might be.

Chair Gooze suggested that the Board could perhaps wait a month, and that specific conditions could be brought back. He said this application was open-ended, and said usually there was a plan in front of the Board.

Mr. Gottsacker asked whether, if Ms. Sparks got the liquor license and then sold the property, this would run with the property.

There was discussion about this, and about whether to decide on the application that evening or instead have Ms. Sparks come back the following month.

Mr. McNitt said the only way to get beyond not passing the variance criteria was to create a comprehensive list. He said without this, the application wouldn't meet the hardship and spirit and intent of the Ordinance criteria. He said that perhaps it would meet the public interest criterion, based on EDC issues.

Mr. Gottsacker said time was sometimes of the essence, noting that the Town had recently lost 3 Durham businesses: Houghton Hardware, the Copy Store, and Zylas.

Mr. Sievert said that with conditions, the application could meet the variance criteria.

Chair Gooze agreed. He suggested that a list of conditions could be developed and the application could be resolved that evening, or the Board could wait until the next meeting in order to allow the abutters the opportunity to speak.

Mr. Sievert said he agreed that there should be a list of conditions, but said that if they could, they should vote on the application that evening.

Ms. Woodburn said the Board should be able to put the list together, based on the neighbors' letters, and Mr. Gottsacker agreed.

Mr. McNitt said that at present, the use was clearly against the spirit and intent of the district.

Chair Gooze said he was not against granting this variance, but was against it if was unaltered. He said he would be willing to approve it if there were some good conditions. He suggested that the applicant could come up with something, and could then come back to the Board in a month. But he said he wanted to hear what the Board thought about this.

Mr. Sievert said that regarding the spirit and intent of the Ordinance, he had lived on Stagecoach Road, and said he didn't feel it was a dangerous intersection. He said there was plenty of sight distance.

There was detailed discussion on what the conditions should be. Mr. McNitt said the alcohol issue needed to be closely controlled. The following conditions were developed by the Board:

- 1 There will be no additional seats beyond 24 seats
- 2 Hours of operation are limited to 7 am to 9 pm



3 There will be no bar or lounge

Chair Gooze said a good point had previously been made about the amount of activity when there had been a golf course on the property. He then said he would like to have the abutters present to weigh in on these conditions. There was discussion about this, and Chair Gooze asked Board members if they felt the conditions that had been proposed provided enough protections.

Ms. Davis posed the question of whether the conditions would be adequate if Ms. Sparks sold the property.

Mr. McNitt said he would vote in favor of this application, but not easily. He said he had seen the use of the Inn grow over time, but said the conditions that had been proposed responded to the needs of the Town, the applicant and the neighborhood.

***Mike Sievert MOVED to grant the VARIANCE from Article VII, Section 175-53 of the Zoning Ordinance to expand upon an existing variance to operate as a restaurant with a liquor license within the current operation of a Bed & Breakfast Inn, located at 1 Stagecoach Road, in the Rural Zoning District, with the following conditions: hours of operation are limited to 7 am to 9 pm; there will be no bar or lounge; and there will be no additional seating capacity exceeding the existing 24 seats. Jerry Gottsacker SECONDED the motion.***

Chair Gooze said he had been having trouble with the hardship criterion, and specifically the issue of possible injury to the private rights of others. But he said he believed that with these protections, the application did meet all the variance criteria. He said the public interest was served, and also said he didn't think approving the variance would hurt the public interest. He said granting it met the spirit and intent of the Ordinance, noting that this was a nonconforming use that had been there already.

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

- D. PUBLIC HEARING** on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an **APPLICATION FOR EQUITABLE WAIVER** from dimensional requirements of the side yard setback and the shoreland setback for the new construction of a home. 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 said a letter had been provided by the Board stating that the Sidmores desired to proceed with this application if possible. He said there were a lot of reasons to go forward with the application, including legal reasons. But he said a concern was that the applicants were not able to be present at this meeting.

He said if the Board was willing to take the facts that had been presented in the April 4, 2008 letter as undisputed facts and proceed, the application should proceed. But he said if the Board felt that these were not undisputed facts, and needed to hear from the abutters, the Sidmores should be able to respond. He also said the fact that Mr. Johnson was not present was a bit troubling. But he said it was a question for the Board, as to whether it

wanted to proceed.

Attorney Tanguay reviewed the facts in the April 4, 2008 letter. There was detailed discussion by the Board, and with Attorney Tanguay, concerning these facts that had been presented, and whether the Board should take the facts, stay with them, and proceed with the application.

Chair Gooze said he was very reluctant to accept this as it was.

Ms. Woodburn noted that she has not been present at the February 12, 2008 meeting, but Chair Gooze said he had watched the DVD of the meeting.

Mr. McNitt said he had not been present either, but Chair Gooze said he knew the case quite well.

Attorney Tanguay said this application had to do with an equitable waiver, which was a different issue, and said he therefore had no problem with Ms. Woodburn and Mr. McNitt being voting members.

Ms. Woodburn said she would dispute the facts, unless she could be shown differently on the drawings submitted to Mr. Johnson. She said she had seen the Zoning drawings, and they were different, on the south side of the building, than what was actually built.

Attorney Tanguay agreed, and said he had the building permit plans with him.

Ms. Davis noted that Mr. Johnson might have insight into this situation, and provided details on this. She said she could therefore understand the fact that Attorney Tanguay was uncomfortable proceeding without Mr. Johnson being present.

Mr. Gottsacker said he would have a difficult time making decisions regarding Mr. Johnson's actions when he wasn't able to ask him questions.

Attorney Tanguay provided the building permit plans to Board members, and there was some discussion about them.

Chair Gooze said he had difficulty with item E, stating he couldn't say that was true, and simply didn't know. He said if the hearing was continued, Mr. Johnson would be present for the next meeting. He said the Board might even have the Town attorney weigh in on this, noting that the issues were getting very complicated. He said he couldn't sign off on this without having further input on it.

Attorney Tanguay said he didn't have a problem with this.

Chair Gooze noted that the ZBA membership would have changed somewhat by the next meeting.

***Mike Sievert MOVED to continue the PUBLIC HEARING on a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an APPLICATION FOR EQUITABLE***

***WAIVER from dimensional requirements of the side yard setback and the shoreland setback for the new construction of a home, for the property located at 8 Cedar Point Road, in the Residence C Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

### **III. Board Correspondence and/or Discussion**

- A. **REQUEST FOR REHEARING** on a February 12, 2008, denial of a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from 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 within the sideyard setback. 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.

Chair Gooze noted the email from Mr. Johnson concerning the 2 ft versus 3 ft. issue, and Mr. Gottsacker read the email out loud.

Chair Gooze said what Mr. Johnson was saying was that the reason the Board denied the variance was that there was another feasible way to get out, which was egress windows. Chair Gooze said the letter represented new evidence that should be looked at, even though he said he might still come to the same conclusion.

Ms. Woodburn noted that the Sidmores also wanted to present information from their engineer, and said she would like to hear this.

Chair Gooze noted a request for DES to weigh in again.

Attorney Tanguay said his understanding was that after they were last before the Board, they went back to DES, but DES said it didn't want to act until after the ZBA had rendered its decision.

Chair Gooze said in other words, it was still up to the ZBA. He noted that there some things in the request for rehearing that he didn't agree with, such as the comment that the Board had nothing to say about the area under the porch. He said if not for the email from Mr. Johnson, he didn't think the rehearing was needed, in terms of anything the Board had done wrong, or new information.

Chair Gooze said the email had convinced him that there should be another hearing. He also said he hoped that before that hearing happened, something could be worked out between the parties that would allow a variance to be granted.

Mike asked what the original egress was, and there was discussion.

Chair Gooze said the way the ZBA did this, there was no option. He said the Board has said to re-grade to the original grade, which meant that the applicants couldn't get the egress windows in at that grade. He said the Board didn't add that last part that said they could therefore have an additional foot. He said he thought the email was therefore new

information.

After further discussion, Board members agreed there was a basis for the rehearing.

Chair Gooze said he wanted the Board to be clear on what it would be rehearing.

Ms. Woodburn said the Board took up the last two issues of the five issues at the Feb 12<sup>th</sup> meeting, noting that the first three issues had already been decided on. There was discussion on this, and it was clarified that the two issues were the two new retaining walls and the excavation work and soil work that was never authorized with the original approvals.

***Robbi Woodburn MOVED to grant the Request for Rehearing on a February 12, 2008, denial of a petition submitted by Evelyn Sidmore, Durham, New Hampshire, for an Application for Variance from 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 north end, 8 feet east from original house stairs within the sideyard setback, for the property located at 8 Cedar Point Road, in the Residence C Zoning District, because of new evidence presented. Jerry Gottsacker SECONDED the motion.***

Mr. Gottsacker said this was a very complicated case, and said that when they had the rehearing, it was important that the timeline on this application and project be clearer than it currently was.

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

Attorney Schulte said his understanding was that the standard for rehearing was that the applicant had to supply new evidence. He said the Board had just voted to rehear the application based on evidence provided by someone else. He said the general rule was not to allow outside input into consideration.

He noted that when he had submitted a request for rehearing, the Board wouldn't even look at Attorney Tanguay's response to that.

There was discussion on this.

Attorney Schulte said the second question was that if this request for variance hadn't come before the Board and been voted on in February, he presumed that the egress issue would have been dealt with on the basis of the original variance that had been granted. He said it might have been within the purview of the Code Enforcement Officer to allow this emergency egress, as part of this.

It was agreed that these were things that could be brought up at the public hearing.

#### **IV. Approval of Minutes –**

March 11, 2008

Page 3, 2<sup>nd</sup> full paragraph, should read "...who wished to speak in favor of the application."

Page 4, 3<sup>rd</sup> paragraph from bottom, should read “He noted that this application was a variance issue, and that this was not a discussion on the merits of the TIF district. He then asked if there were any members of the public who wished to speak against the application.”

***Ted McNitt MOVED to approve the March 11, 2008 Minutes as amended. Mike Sievert SECONDED the motion, and it PASSED unanimously 5-0.***

## **V. Other Business**

### **A. Vote on Amendments to the Zoning Board Rules of Procedures**

***Robbi Woodburn MOVED to approve the Amendments to the Zoning Board Rules of Procedures. Mike Sievert SECONDED the motion, and it PASSED unanimously 5-0.***

### **B. Next Regular Meeting of the Board: \*\*May 13, 2008**

Chair Gooze said he had attended the hearing concerning the Palmer case. He provided details on this, and said if the Court ruled against the Town, this would come back to the ZBA.

He then thanked Mr. McNitt for his service to the Town on the ZBA over the past several years, and thanked Mr. Sievert for his service as well.

Mr. McNitt said his many years of serving on Town boards in Durham had provided him with the opportunity to work with many public spirited, interested and educated citizens.

Mr. Gottsacker said he had learned a lot from Mr. McNitt because of his many years of experience, and had also learned from Mr. Sievert because of his professional background.

Chair Gooze said he would check with the Town Attorney concerning the Sidmore application, and said that perhaps there might be a nonpublic meeting to look at this case because it was so complicated. He noted that there were court cases pending on both sides. He said he wanted to make sure the ZBA was staying focused, and dealing with the right things.

There was discussion that the Board could use assistance with this, in order to get some clarification concerning the issues involved.

## **VI. Adjournment**

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

Adjournment at 9:27 pm

Victoria Parmele, Minute taker

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Jerry Gottsacker, Secretary