

This set of minutes was APPROVED at the September 9, 2008 meeting

**ZONING BOARD OF ADJUSTMENT
TUESDAY, August 12, 2008
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Jay Gooze; Jerry Gottsacker; Ruth Davis; Sean Starkey; Ed Harvey; Robbi Woodburn (arrived after the public hearing)

MEMBERS ABSENT: Carden Welsh

OTHERS PRESENT: Victoria Parmele, Minutes taker

I. Approval of Agenda

Chair Gooze explained that the Sidmore application should be reopened and then continued to the September 9, 2008 ZBA meeting, with proper notification. He said the Board would also deliberate on this application at that time. He also said at the request of the Sidmores' attorney, the Board would not act upon their Request for Rehearing at the present meeting.

Alternate members Ed Harvey and Sean Starkey were appointed as voting members in place of Robbi Woodburn and Carden Welsh.

Sean Starkey MOVED to accept the changes recommended to the Agenda, and to accept the agenda as amended. The motion was SECONDED by Ruth Davis, and PASSED unanimously 5-0.

II. Public Hearings:

- B. PUBLIC HEARING** on a petition submitted by William H. Lenharth, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 and Article XX, Section 175-109(D) of the Zoning Ordinance to build a third accessory structure on a lot within the sideyard and frontyard setbacks. The property involved is shown on Tax Map 6, Lot 12-8, is located at 55 Newmarket Road, and is in the Residence B Zoning District.

Jane Lenharth said she and her husband would like to build a garage/barn on their property, and needed three variances for this, one concerning the frontyard setback, one concerning the sideyard setback and the other concerning the fact that there were too many accessory structures on the property.

She noted that the property was located within the Town's Historic overlay district. She noted that there had been a structure located approximately where they wanted to put the garage/barn, and said they would like to build something a little smaller than this. But she said it would still be too close to the property next to them, and too close to the road, so the variances were needed.

She also said there were two other outbuildings on the property, which were of historic significance, and noted that one of them was on the historic register, and the other was a shed that had been there for a long time. She said they would like them to stay on the property.

Chair Gooze asked Ms. Lenharth if she and her husband had met with the Durham HDC, and she said she had, but there wasn't a quorum, so a vote couldn't be taken. But she said they had generally been positive about what was planned for the property.

Mr. Starkey asked what the dimensions of the old barn were, and Ms. Lenharth said she didn't know, but had been told it was much larger than what they were proposing now. She noted that the garage/barn would not be attached to the house.

The Board determined that the upstairs would be used for storage, and that a person would be able to stand up straight in the center of the upstairs area, but not around the edges.

Ms. Davis spoke about an abutting property, owned by Mr. Butler, and there was discussion as to whether granting this variance might impact his use of the property. It was noted that Mr. Butler had said he didn't have any problems with the variance application.

Chair Gooze asked if there were any members of the public who wished to speak in favor or against the application. There was no response.

Jerry Gottsacker MOVED to close the public hearing. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

The Board agreed to handle all three variance requests together.

Chair Gooze asked if ZBA members had problems with this application meeting any of the variance criteria. He said the only issue he had had concerning it was whether, if the abutter went to sell his property, this variance would stop him from being able to sell it. But he noted that Mr. Butler hadn't objected to the variance. He also said that looking at the property, the piece of land in between seemed to be a good buffer.

There was no disagreement from other Board members concerning this. There was discussion that the work that was proposed would be at the front of the lot, with Mr. Starkey noting that it would be difficult to develop the back portion of the lot. He also

said it was hard to see the accessory structures on the property. He said he thought the application met all five variance criteria.

Ms. Davis agreed.

Sean Starkey MOVED to approve the APPLICATION for VARIANCE from Article XII, Section 175-54 and Article XX, Section 175-109(D) of the Zoning Ordinance to build a third accessory structure on a lot within the sideyard and frontyard setbacks, for the property located at 55 Newmarket Road, in the Residence B Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

A. CONTINUED DELIBERATION 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 and shoreland 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.

Jerry Gottsacker MOVED to open a limited public hearing concerning landscaping only, and to continue the hearing to the September 8, 2008 meeting, with proper notification. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

C. PUBLIC HEARING on a petition submitted by Mimi Bravar, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to build an addition within the sideyard setback. The property involved is shown on Tax Map 17, Lot 34-4, is located at 16 Kelsey Drive, and is in the Rural Zoning District.

Ms. Bravar explained that she was a professional musician who regularly commuted from NY to Durham, and had recently decided to move to Durham to live closer to her family. She said she needed a suitable music room in the house she had bought, but had misread the deed, and had assumed that there were no problems with the setbacks. But she said when the property was surveyed, she had discovered that the planned addition would be 8 ft within the setback.

She noted that the nearest point of the abutter's house was 255 ft from her house, and that even with the addition, the abutter's house would still be 247 ft away.

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

Robert Couchner, said he was a neighbor of Ms. Bravar, on the other side. He said this was a very benign request, and that he had no concerns that granting the variance would impact him. He said the proposed addition seemed very reasonable.

Chair Gooze noted an email the Board had received from Mr. Samuel, the abutter on the other side, which stated that he had no specific objections to this variance request.

Jerry Gottsacker MOVED to close the public hearing. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said he had no problems with this application meeting the 5 variance criteria. He noted that there was another spot where the addition could be located, but that there was a fishpond there right now. He said he therefore felt that the proposed location for the addition was reasonable.

Ruth Davis MOVED to approve the APPLICATION FOR VARIANCE from Article XII, Section 175-54 of the Zoning Ordinance to allow a 9 ft incursion in the sideyard setback for a building, as per the plans submitted, for the property located at 16 Kelsey Drive, in the Rural Zoning District. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

- D. **PUBLIC HEARING** on a petition submitted by Fall Line Properties, Portsmouth, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54, Article XIII, Sections 175-59(A)(2) & 175-65 and Article XIV, Section 175-74(A&B) of the Zoning Ordinance to replace a septic system within the sideyard, wetland and shoreland setbacks. The property involved is shown on Tax Map 11, Lot 28-2, is located at 68 Piscataqua Road, and is in the Residence C Zoning District.

The applicant's representative, Michael Sievert, noted that a variance was being requested regarding the frontyard setback, in addition to the other three setbacks listed on the Agenda.

The Board agreed to hear all four variance requests together.

Mr. Sievert noted that he had to make a change to the plans the Board had previously received concerning this application, and he provided new plans for each Board member. He explained that the orientation of the septic system design had been changed because of a code issue, and he provided details on this. But he said the current plan was even better than the previous one

He explained that the property had been established as a single family residence with an accessory apartment, and that 8 unrelated people could live there. He said there was no use variance involved, and that this was an area variance being requested, based on the new septic system He described how the various setbacks were encroached upon with this proposed structure, and that there was really no other place

to locate the septic system. He said he had tucked it as far away as possible from the shoreland and wetland areas, and noted that the current septic system was failing, with the outfall pretty much going into the bay. He said the State had given the property owner 90 days to put a new system in.

Mr. Sievert went through the five variance criteria and how they were met. He said there would be no decrease in the value of surrounding properties, because the current failing system would be replaced with a state of the art septic system which was so efficient that essentially clean effluent was pumped into the dispersal area. He said this was the reason the entire system could be so small. He also noted that the house next door was approximately 1000 ft away.

He said granting the variance would not be contrary to the public interest, because the failed system would be replaced by this state of the art system. He also noted that this was a grandfathered lot, and said the special conditions of this lot, including the reduce lot size and excessive setbacks in the newer regulations, left no room to reconstruct the septic system and meet the required setbacks.

He said substantial justice would be done in granting this variance, providing details on this. He also said granting the variance would not be contrary to the spirit and intent of the Ordinance because the residential structure was an allowed use in the zone, onsite wastewater treatment was required because there were no municipal services available, and the proposed location for the septic system was the best possible location. He said this location maximized the setbacks, given the existing conditions on the parcel.

Sean Starkey MOVED to close the public hearing. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze noted that this was a grandfathered use, and that there was a failed septic system there right now. He said there appeared to be no other place where a new septic system could be located. He said a much better system was being proposed, and said if it failed, this was a location where it would do the least amount of harm.

Mr. Starkey said the applicant appeared to have done as much as possible to minimize the incursion in the setbacks, given the area that was available.

Board members agreed that the application met all five variance criteria.

Jerry Gottsacker MOVED to grant the APPLICATION FOR VARIANCES from Article XII, Section 175-54, Article XIII, Sections 175-59(A)(2) & 175-65 and Article XIV, Section 175-74(A&B) of the Zoning Ordinance to replace a septic system within the sideyard, frontyard, wetland and shoreland setbacks as described in the plan labeled Revised EDA location, dated 8/6/08 for the property located at 68 Piscataqua Road, in the Residence C Zoning District. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Gottsacker noted that a copy of the updated version of the plans would be needed for the Town files.

III. Board Correspondence and/or Discussion

- A. REQUEST FOR REHEARING** on a July 8, 2008 approval 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 and shoreland 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

Chair Gooze MOVED that at the request of the applicant's attorney, the ZBA is not acting upon this request at this time. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

Ms. Woodburn arrived at the meeting.

IV. Approval of Minutes – June 10, 2008 July 8, 2008

June 10, 2008 Minutes

Page 2, 4th paragraph from bottom, should read “..this particular application.”

Page 4, top paragraph, should read “..the fact that the application wasn't..”

Page 5, 1st and 2nd paragraphs should be separated by a space.

Please make date format consistent throughout – for example, spell out September 11, 2007 on page 8

Page 9, italicized text, under (a), should have semicolon at the end of sentence

Also do this on page 12, top of the page

The motion on page 14 should say “..PASSED unanimously 5-0.

Page 16, 3rd paragraph from bottom, should have quotation mark at end of sentence

Page 18, 3rd paragraph, should read “..bearing walls, and would not represent a substantial investment to correct.”

Jerry Gottsacker MOVED to approve the June 10, 2008 Minutes as corrected. Ruth Davis SECONDED the motion, and it PASSED 3-0-1, with Robbie Woodburn abstaining because of her absence from the meeting.

July 8, 2008 Minutes

Please make date formatting consistent throughout, for example September 11, 2007 Schulte should be spelled correctly throughout (pages 6,7 and 8 – current spelling there is “Shulte”

Page 2, 3rd paragraph, should read “..means of egress, would not be a reasonably feasible alternative for fire safety, cost and engineering reasons.”

Page 11, 2nd paragraph, should read “..the applicants had initially expected that they..”

Page 12, 4th paragraph from bottom, should read “..structure within the sideyard setback.”

Page 13, 4th paragraph from bottom, should read “..discussed, and didn’t have to do with this.”

Robbi Woodburn MOVED to approve the July 8, 2008 Minutes as amended. Ruth Davis SECONDED the motion, and PASSED unanimously 4-0.

V. Other Business

Erica Washburn introduced herself to the Board, explaining that she was doing her PhD in land use decision making, and as part of this, was interviewing board members of the various boards in several towns in the seacoast area.

Chair Gooze noted that Board would have the landscaping information for the Sidmore application by the September ZBA meeting. He said the Sidmores’ attorney had said he expected to have something reviewed and approved by NHDES by that time.

He spoke briefly about the Palmer case, concerning an application the ZBA had previously decided not to hear. He provided details on this, and noted that the judge had ruled that since Mr. Palmer hadn’t put in an application previously, he had the right to do so now. He said this meant the judge had essentially remanded the case back to the ZBA, to decide whether the lot was buildable or not.

He also noted that the equitable waiver decision concerning the Sidmore property had gone to court. He said he could not attend the court session on that, and Ms. Davis, who had also voted to deny the waiver, said she would attend the court session.

VI. Adjournment

Ruth Davis MOVED to adjourn the meeting. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0. (Ed Harvey was a voting member for this vote)

The meeting ADJOURNED at 9:00 PM

Victoria Parmele, Minutes taker