

These minutes were approved at the November 18, 2008 meeting.

**BOARD OF ADJUSTMENT
TUESDAY, OCTOBER 14, 2008
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Jay Gooze; Jerry Gottsacker; Ruth Davis; Carden Welsh;
Robbi Woodburn; Edmund Harvey; Sean Starkey

MEMBERS ABSENT:

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

I. Approval of Agenda

Chair Gooze noted two requested additions to the Agenda, one of which was a request for rehearing from Attorney Schulte on behalf of the Bates, regarding the Board's decision on the Sidmore application the previous month.

He said there was also a request from Attorney Tanguay on behalf of the Sidmores, having to do with whether or not the variances had actually been required. He proposed adding these two items to the Agenda and doing them at the front of the meeting because Mr. Gottsacker was not feeling well, and would go home after these items were addressed by the Board.

Chair Gooze appointed Mr. Starkey and Mr. Harvey as voting members.

Robbi Woodburn MOVED to approve the amended Agenda as proposed. Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.

II. Requests for Re-hearings

A. Request for Re-hearing concerning the September 9th ZBA decision concerning the Sidmore property

Chair Gooze said Mr. Harvey would be a voting member on this Agenda item, because Mr. Welsh had not been present at the September 9th meeting.

He summarized the points made in Attorney Schulte's letter, as well as some of the issues the Board had addressed and decided on prior to addressing the landscaping plan. He said the only question at the most recent Sidmore hearing he would have had was regarding the extension of the basement,

and said this had been discussed in detail by the Board. He said they had then been left with only having to deal with the landscaping situation, and said there was a very good discussion on this.

He said the other point in Attorney Schulte's letter was a question as to whether the Sidmore application had met the hardship criterion, in terms of whether it was feasible to provide egress in another way. Chair Gooze said he thought the Board had made the decision that the Sidmores' design was the safest, best way to provide egress, by providing a larger, door opening rather than the smaller egress windows.

Ms. Woodburn said she didn't see that anything new had been presented, and other Board members agreed.

Jerry Gottsacker MOVED to deny the Request for Rehearing from the Bates. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

B. Request for Rehearing

It was noted that the October 9, 2008 letter from Attorney Tanguay restated the original Request for Rehearing from the Sidmores dated July 24, 2008 that was based on the fact that the Sidmores didn't feel the variances were necessary in the first place.

After discussion by the Board, Chair Gooze summarized that the Board had had a long discussion on this, and had agreed that the variances were in fact required.

Jerry Gottsacker MOVED to deny the Request for Rehearing from the Sidmores. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Gottsacker left the meeting at 7:15 pm.

III. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Alger Rollins, Andover, Massachusetts, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-65(F) of the Zoning Ordinance regarding the design requirements for a septic system within the wetlands setback for a proposed two-lot subdivision. The property involved is shown on Tax Map 20, Lot 12-5, is located on Durham Point Road, and is in the Residence C Zoning District.

Chair Gooze appointed Mr. Starkey as a voting member for this application.

Mr. Rollins spoke before the Board, and noted that he and his siblings had been before the Board 6-7 months ago for some variances that were granted, and which had allowed them to proceed with the subdivision of their family property by splitting it down the middle and making two large lots. He said they had since proceeded with that process.

He said that at the time the variances were granted, they were subject to completion of a second conservation easement for the property. He said they knew at the time that they would be required to get

State approval for the subdivision, because the property was on the bay. He noted that they had been granted a variance concerning the septic design for the new lot, and said at the time, the Town didn't require a backup septic design for the existing older home and septic system on the original lot. But he said the State did require such a backup system, and he said what the family hadn't understood was that the State also required that the Town approve this backup system.

He noted that in recent years, the setbacks for wetlands had changed, so the family had bumped into a design problem they didn't think they had. He said the existing system was located right behind the older house on the property, and noted that there was a relatively new system for the newer house on the lot.

He said that regarding a backup system for the older house, they had run out of options other than utilizing the system designed for the new home, which would then become a combined system to support both houses. He said this had become the backup design. He said they'd been able to fit the leachfield in and meet the Town's 125 ft wetland setback, but said the tanks and the piping leading to the leachfield didn't meet the setback. He also noted that trying to design this backup system would require a variance even if they weren't doing a subdivision. He said the hardship was the geometry of the site, and said what was proposed was the best design that was possible there.

There was discussion that there was a fairly long distance for the septic system piping to travel, and that it was along this distance that the wetland setback was exceeded.

Ms. Woodburn noted that this design was for a backup system, which might never be needed.

Mr. Welsh asked if the two existing houses were on the same lot, and was told they were.

Mr. Rollins said the engineering design for the backup system had received preliminary approval from NHDES, but he said the Town approvals were needed before the State would grant final approval.

Chair Gooze said it looked like there was no other place for all the components of the septic system to go. He said if the State thought this design was ok, he also thought it was ok to put it where it was proposed. He then asked if there were any members of the public who wished to speak for or against the application, and there was no response. He asked if Board members wished to hear from the septic designer, and it was agreed this wasn't necessary.

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

Ms. Woodburn said the applicants had no choice other than to put the backup septic system where it was proposed.

Mr. Starkey agreed, and noted that the State had found the design acceptable.

Mr. Welsh said it was really only the piping for the septic system that was violating the setback.

Ms. Davis went through the variance criteria as they applied to this application. She said the piping would be within 56 ft of the wetland instead of 125 ft, but said she didn't see any evidence that this would decrease the value of surrounding properties. She also said that regarding the public interest criterion, she didn't think the Board had heard that there would be any specific adverse effects of putting the piping in, and said unless there was some broad failure of the piping, negative impacts were not likely.

She said that regarding the hardship criterion, there were in fact special conditions of the property that made this design necessary, including the shape of the lot. She said she didn't see that there were other reasonably feasible methods to achieve the results that were desired.

Ms. Davis said she did think that substantial justice would be done in granting the variance. She also said she didn't feel granting it would be contrary to the spirit and intent of the Ordinance. She said the intent was to protect wetlands, and said there would probably be more of an adverse impact to the wetlands if the system was not installed, and instead there was a failed system. She noted that the existing system was already within 125 ft of the wetlands.

Carden Welsh MOVED to grant the VARIANCE from Article XIII, Section 175-65(F) of the Zoning Ordinance regarding the design requirements for a septic system within the wetlands setback for a proposed two-lot subdivision, per the plans submitted, for the property shown on Tax Map 20, Lot 12-5, located on Durham Point Road in the Residence C Zoning District.
Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

- B. **PUBLIC HEARING** on a petition submitted by Janet Bianchi, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A)(2)(d) of the Zoning Ordinance to replace a deck within the wetlands setback. The property involved is shown on Tax Map 15, Lot 15-7, is located at 2 Sunnyside Road, and is in the Residence C Zoning District.

Chair Gooze appointed Mr. Harvey as a voting member for this application.

The applicant, Janet Bianchi explained to the Board that she would like to take down an existing screened porch that her builder had determined was not structurally sound, and replace it with a three season room of the same dimensions that would be structurally sound and up to code. She noted that the porch had been put in without a building permit, and said she had not been in charge of things at that time. She said the roof extended over the screened in porch, and said she had realized with the torrential rains in recent years that the roof was leaking, and needed to be replaced.

There was discussion that when the screened porch was put in, without a permit, it was located within the wetlands setback. There was also discussion with the applicant regarding the fact that the Board would like to look at this application as though the porch had not been built yet, and that she was asking for a variance for a three-season porch. Ms. Woodburn said because this was a non-permitted structure, it was as if it was not there, and said the Board would like Ms. Bianchi to provide arguments as if a new structure was being proposed.

Chair Gooze explained to Ms. Bianchi that the Board needed to hear how the variance criteria were met. He suggested that she might consider coming back with a different presentation, because her existing

application hadn't answered the variance questions. He said the arguments needed to be crafted in a way that was more helpful to the Board.

There was further discussion on this.

Mr. Johnson suggested that the application could be continued instead of being withdrawn.

Chair Gooze suggested that Ms. Bianchi could speak with Mr. Johnson about how to address the variance criteria. He said he couldn't promise that the application would therefore be approved by the Board, but said there would be a greater chance of this than if the Board went with what it presently had in front of it.

The applicant's builder, of MKF Building and Remodeling, said he thought they had provided the information needed to get to this point. He noted that time was of the essence in terms getting the work done on the house because of weather concerns.

Ms. Bianchi agreed to continue the hearing on the application.

Chair Gooze stressed that the Board couldn't guarantee that the application would be approved when the applicant came back. But he said getting a different presentation would allow it make a rational decision on the application.

Robbi Woodburn MOVED to continue the PUBLIC HEARING on a petition submitted by Janet Bianchi, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XIII, Section 175-59(A)(2)(d) of the Zoning Ordinance to replace a deck within the wetlands setback, for the property located at 2 Sunnyside Road, in the Residence C Zoning District. Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.

- C. PUBLIC HEARING** on a petition submitted by Eva H. Reed, Woods Hole, Massachusetts, for an **APPLICATION FOR VARIANCES** from Article VII, Section 175-54, Article IX, Section 175-30(D)(3)(d) and Article XIV, Section 175-74(B) of the Zoning Ordinance to reconstruct a septic system within the sideyard and shoreland setbacks. The property involved is shown on Tax Map 12, Lot 1-17, is located at 24 Cedar Point Road, and is in the Residence C Zoning District.

Chair Gooze appointed Mr. Harvey as a voting member for this item.

Susan Ferretra from NH Soils Consultants represented Eva Reed, and she explained the variances that were being requested in order to be able to put in a new septic system on the property. She said the existing septic system was under a lot of stress, and described the proposed system, which she said would include an aerobic pre-treatment tank. She said that the proposed design placed the system in the most appropriate location, and tried to maximize the distance from the abutter. She said the new system would benefit surrounding properties on Cedar Point Road, by taking away the pollution hazard, so was in the public interest.

She said the system would not be visible on Cedar Point Road or the water, so there were no aesthetics issues. She said the abutter to the east had the same system as the one that was proposed for the Reed property, and also said the abutter to the west would be getting a new septic system.

She said if the variance wasn't granted, there would be a hardship because there would be no place to put the system needed to accommodate the existing home. She said the system proposed was one of the best available in terms of the technology used. She said it would provide sufficient capacity for three bedrooms, and was more than the existing house needed. She noted that the proposed leachfield was about a third larger than what was required.

Mr. Welsh asked if there was a better system on the market that could be used there, and Ms. Ferretra said the proposed system was about as good as there was for a residential property. She said it was an appropriate system for an environmentally sensitive area, and said the resulting effluent would surpass what came out of a sewage treatment plant. She noted that NHDES had already approved the system, and said a wetlands permit was pending.

Ms. Davis noted that the septic system proposed would be located within the 75 ft radius of the well on the property.

Ms. Ferretra said a waiver had been requested concerning this. But she said the treated water from the septic system wouldn't be pumped toward the well.

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

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

Chair Gooze said the applicant had addressed how the variance criteria were met. He said the application certainly met the hardship criterion, and also said granting the variance wouldn't negatively impact property values. He said in terms of the public interest and spirit and intent of the Ordinance, the proposed system would protect these as much as was possible.

Mr. Welsh said that in terms of the public interest, at some point the question needed to be asked how much sewage effluent could be put within 50 ft of Great Bay. But he said the system proposed was a better system than what was there now.

Robbi Woodburn MOVED to grant the VARIANCES from Article VII, Section 175-54, Article IX, Section 175-30(D)(3)(d) and Article XIV, Section 175-74(B) of the Zoning Ordinance to reconstruct a septic system within the sideyard and shoreland setbacks as detailed on these plans, for the property shown on Tax Map 12, Lot 1-17, located at 24 Cedar Point Road in the Residence C Zoning District. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

- D. **PUBLIC HEARING** on a petition submitted by David T. Sawyer, Durham, New Hampshire, on behalf of Albert Sawyer, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-53 and from Article XIII, Section 175-65(F) of the Zoning Ordinance to

construct a single family home within the MUDOR Zone and to place a septic system within the wetland setback. **PUBLIC HEARING** on a petition for an **APPLICATION FOR SPECIAL EXCEPTION** as per Article XII, Section 175-56(B) to vary the minimum frontage required. The property involved is shown on Tax Map 9, Lot 18-0, is located at 6 Spinney Lane, and is in the Multi-Unit Dwelling/Office Research Zoning District.

Chair Gooze said Mr. Starkey would be a voting member for this application.

The applicant, David Sawyer, said he was speaking on behalf of his father and himself, and said his father wanted to sell him a piece of his land. He said the plan was to put in a single-family home there, measuring 40 ft by 56 ft, which would contain 4 bedrooms. He said the home would actually be smaller than those dimensions indicated (32 ft by 46 ft), because there would be an el shaped porch. He said 4 adults including himself would live there. He explained that it was an odd shaped lot, and noted that it had been surveyed. He said the property was currently an orchard, which was run down and had some antique apple trees on it.

He reviewed the variances being requested, and also said a special exception was requested regarding the road frontage. He said the wetlands were wet about 4 months out of the year, and said they drained into his father's pond. He also noted concerning the special exception requested that his father didn't want to use the frontage that was available.

Mr. Sawyer provided details on the proposed design for the house and septic system, and noted among other things that the septic system effluent would drain away from the well. He said Eckman Engineering and Jamie Long of NH Soils Consultants felt that this would be a safe situation, and he noted that town water and sewer were not available to the site.

He said what was proposed would be a good use of the land, and wouldn't involve a lot of changes to the area. He said the driveway that was proposed would not impact the Hoenes property, and he noted that he had given the family assurances that they could use the drive if they ever wanted to. He said the Hoenes as well as another neighbor, Dick Gsottschneider, knew his plans and supported them.

The draft subdivision plan was passed around to Board members, and there was discussion.

Mr. Johnson noted that the applicant was on the agenda for the Planning Board meeting the following evening. He said the Board might say the driveway for the existing house needed to be abandoned because of a sight distance issue, in which case Mr. Sawyer's father would use the new driveway that was proposed. There was discussion on this with Mr. Sawyer.

Chair Gooze summarized that the variance requests would allow a 75 ft wetland setback instead of 150 ft, and also would allow a residential subdivision of land in the MUDOR district, where this was not now permitted.

Mr. Welsh asked who the neighbor to the northwest was, and was told it was the University.

Mr. Sawyer provided details on University properties as well as others in the area, including the Hoene residence.

Ms. Woodburn suggested that Mr. Sawyer could perhaps avoid having to go for a special exception if he assigned a portion of the frontage to the rear lot, and then allowed a right of way over the front property to the rear property, on the side he preferred.

Mr. Sawyer said there had been discussion on this, but it was decided this wouldn't work for a number of reasons. He explained that for personal reasons, his father did not want to break up that land in front, and also said a driveway there would be difficult to approve.

Ms. Woodburn said the lot could still be created that way in order to provide the frontage that was required, and the driveway could stay where it was proposed.

Mr. Sawyer agreed that he could do that, noting that the land would have to be resurveyed, and that it would probably have to be made legal that he wouldn't use it in any way. He said it was a good idea.

Ms. Davis asked how the owners of the properties close to the reservoir got to their homes, and Mr. Sawyer provided details on this. He noted that there were a lot of single family homes in this area, and said the fact that the zone had now been changed to MUDOR put him in an awkward position since single-family homes were no longer a permitted use.

Jamie Long of NH Soil Consultants spoke in some detail about the fact that although the 125 ft wetland setback wasn't met, the State's 50 ft. setback was met, as well as a 75 ft setback. He also said there was a 5000 sf area available for the system, so they any type of system that was desired could be put in, and there was no size restriction, other than the limitations imposed by the setback requirements.

There was discussion on the septic requirements in the Zoning Ordinance, and it was noted that 4 test pits were required for a subdivision, along with some other requirements that were stricter than would be the case if this was simply a lot of record where a new septic system was proposed.

Mr. Long noted that there were 4 passing test pits on each of the lots, which proved that there was sufficient area to put a new system if the first system failed. He also noted that the way the wetlands ran along the western property line, it pushed everything toward the eastern property line.

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

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

Chair Gooze said the first thing the Board should deal with was the use variance to allow a single family house in the MUDOR district.

Mr. Johnson said if the ZBA was inclined to approve the two variances and the special exception, they could move forward tomorrow at the Planning Board meeting. But if the ZBA was not inclined to approve the single-family home use, Mr. Sawyer had the option of coming back and applying for a duplex or multi-unit building, which were permitted uses in the MUDOR district, and he would then need a conditional use permit from the Planning Board. He said if the Board was concerned about the septic system impacting wetlands, the single-family home use was less of a problem than the other uses.

Chair Gooze asked if what the limit would be on the number of people, if the single-family home use was approved by the ZBA.

Mr. Johnson said the MUDOR district wasn't subject to the 3 unrelated rule, but he said a single family house would be subject to the 300 sf per resident requirement. He said if the Board imposed the restriction that this would only be approved as a single family residence and not a duplex or a multi-unit building, and the applicant was willing to agree with this, that was a rationale for approving the variance concerning the wetland setback.

He said the applicant's plan was to have 4 bedrooms, one shared kitchen, and two bathrooms, and said that in the future, if the property was sold, the new owner would be limited to the variance criteria for the septic approval, and wouldn't be able to tear the building down and build a multi-unit or duplex without going before the various boards.

There was discussion on how and in what order to address the various requests from the applicant.

Chair Gooze reopened the public hearing to get additional information from Mr. Sawyer..

Mr. Sawyer said he realize it was difficult to know what the property will be like down the road. But he said he would be willing his property to his brother Tom, with the legal understanding that it needed to remain in the family.

Chair Gooze closed the hearing.

The Board agreed to address the 3 issues individually.

Use Variance

Mr. Welsh asked if this could be called spot zoning.

Chair Gooze said he had called Attorney Mitchell concerning this, and received clarification that in a sense it was spot zoning, but that this was what a use variance was for, if the criteria justified it. He said Attorney Mitchell said it shouldn't be done routinely, and that the criteria needed to be applied very strictly.

Ms. Woodburn noted an important criterion was the uses that were already going on around the proposed use. She then went through the criteria for a use variance.

Board members agreed that the Zoning restriction as applied to the property interfered with the reasonable use of the property, considering the unique setting of the property in its environment. It was noted that this was Mr. Sawyer's father's property, and that there were residential uses on two sides.

Chair Gooze said he was concerned about what could happen to the property in the future.

There was discussion that this would be based on the septic system, which would be designed for 4 bedrooms. Ms. Woodburn suggested that in allowing the septic system to be located within the wetland setback, the Board could say the use could be restricted to being a single family residence.

Chair Gooze said he liked that idea.

There was discussion on whether the application met the criterion that no fair and substantial relationship existed between the general purposes of the Zoning Ordinance and the specific restriction on the property. It was noted that the general purpose of the Zoning Ordinance for the MUDOR district was actually antithetical to the character of the Sawyer property. After further discussion, Board members agreed that this criterion was met.

Ms. Woodburn said she didn't think granting the variance would injure the public and private rights of others. She said it was the Sawyers' own land that was being subdivided; it was surrounded on two sides by other residential properties; there was a residential flavor to the area; and there had been no objections from the abutters. Other Board members agreed. Ms. Woodburn noted that the Simplex case had set the tone for this argument.

Chair Gooze said the typical issue concerning spot zoning was that one wouldn't want a commercial use in the middle of residential uses. He said this situation was the opposite, but also noted that the MUDOR district came into effect after there were already residences in the area.

Mr. Welsh said it was somewhat of a unique situation because the MUDOR district had been imposed on this area.

Concerning the other criteria for granting a use variance besides the hardship criterion, Board members agreed that there would be no decrease in the value of surrounding properties as a result of granting this variance. Chair Gooze said he didn't think granting the variance would be contrary to the public interest, and also said it would not be contrary to the spirit and intent of the Ordinance.

Ms. Woodburn said substantial justice would be done in granting the variance because it would allow the Sawyers to keep their land and use it.

Wetland Setback

It was noted that the septic system that was proposed would meet a 75 ft setback, and Chair Gooze said the system that was proposed was large enough for a 4 bedroom single family house.

Mr. Starkey agreed that the house should be limited to 4 bedrooms.

There was detailed discussion that the MUDOR district did not limit the applicant in terms of the number of people who could live in the house, other than in terms of the habitable floor area. Chair Gooze asked whether perhaps the Board could impose a condition that limited the allowable habitable floor area.

Mr. Johnson said there would be about 1500 sf of floor area, which would allow 4-5 occupants.

Chair Gooze said he would want that limit as a condition. He opened the public hearing again to ask Mr. Sawyer about a possible limitation like this.

Mr. Sawyer said he was comfortable with a 4 bedroom, 40 x 60 one story house, with almost half the floor space as a porch. He said there would be one person per bedroom.

Chair Gooze closed the public hearing. He asked Mr. Johnson what the maximum square footage was that would be needed for this.

Mr. Johnson said it would be 1200 sf (300 sf x 4 people), and there was discussion about this. He said he was concerned about the idea of locking the applicant in to minimum dimensions, noting that Mr. Sawyer might find that there needed to be 5 tenants in order to make things work financially.

Chair Gooze said his concern was whether it mattered that it might wind up being 8 students in the house.

Mr. Johnson said it could be a multi-unit building, and Ms. Woodburn noted that this was allowed in the MUDOR zone. She said the whole point here was to protect the wetlands. She said the Board appeared to be inclined to allow the variance, with certain restrictions.

Mr. Johnson recommended allowing 5 bedrooms, to allow the applicant some flexibility, and Board members agreed with this idea.

Chair Gooze agreed that it was important to remember that multi-unit development was allowed in the MUDOR district.

Special exception for driveway

There was discussion about whether the special exception would be needed if some of the parcel was separated out.

Chair Gooze asked Mr. Johnson for clarification regarding the driveway issue, which the Planning Board would be considering as part of reviewing the subdivision application. He said the Planning Board might have some views concerning the idea of relocating the driveway.

It was noted that the Hoenes didn't have any problems with what the applicant was proposing, and that there had recently been a Zoning change to allow the Hoene's property to allow a stable there that included commercial horse breeding.

The Board went through the special exception criteria, as spelled out in Section 175- 56B “Lot Frontage” of the Zoning Ordinance. Chair Gooze summarized that based on the way the lots were configured, and the ownership, the application met the criteria for a special exception as spelled out in Section 175-56 B.

Mr. Welsh asked whether there would be a size limitation on the house.

Ms. Woodburn said the Board didn’t want to restrict the applicant too much in that way, and said the restriction on the septic design was because the property was located within the wetland setback.

Mr. Starkey noted that because the applicant was in the MUDOR district, he could actually come in and ask for a 4 unit building to be built here, and would be within his rights.

Mr. Welsh said Mr. Sawyer wasn’t asking for this. He said the applicant needed a waiver because of the wetland setback, and suggested that as part of the waiver, the Board could say the building needed to be a certain size. He said if it was a 5-bedroom house and was massive, there could be 15 people in there. He said he thought the Board could impose a limitation without being unduly restrictive.

Chair Gooze noted that even if a multi-unit building were proposed, the special exception would still be needed. But he asked if there was in fact a size the Board wanted to ask for, given the wetland setback issue.

Ms. Woodburn suggested limiting the size to what the applicant had asked for (40 ft x 56 ft).

Mr. Johnson suggested adding a certain percentage onto what the applicant was asking for, to provide some flexibility in order to meet the code requirements.

The Board agreed to allow an additional 10%.

Robbi Woodburn MOVED to approve the petition for VARIANCE submitted by David T. Sawyer, Durham, New Hampshire, on behalf of Albert Sawyer, Durham, New Hampshire, from Article XII, Section 175-53 and from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a single family home within the MUDOR Zone and to place a septic system within the wetland setback; and to approve the petition for SPECIAL EXCEPTION as per Article XII, Section 175-56(B) to vary the minimum frontage required; for the property located at 6 Spinney Lane, in the MUDOR Zone, with the following conditions: 1) that the septic design will be for no more than 5 bedrooms, as shown on the plan; 2) that the footprint that will be allowed is for a one story building, which can be no more than 110% of 40 ft x 56 ft; and 3) that the special exception will be approved for frontage as per the plan submitted. Sean Starkey SECONDED the motion.

There was further detailed discussion on the second condition, regarding whether the Board wanted to limit the applicant to having a one-story building. Mr. Johnson said having the one story restriction as a condition in the approval would mean a future owner would have to come back if a larger building was desired.

There was further detailed discussion by the Board about whether the condition would allow the applicant enough room. Chair Gooze re-opened the public hearing to ask the applicant about this.

Mr. Sawyer said he wanted each of the 4 bedrooms to be 12 ft x 14 ft, and said a 4 ft hallway between them was proposed. He also noted that the porch would perhaps be used for sleeping in the summer, and that he might want to heat it in the future.

Mr. Starkey and Ms. Woodburn said it seemed that there would be enough room for the Mr. Sawyer.

Chair Gooze closed the public hearing.

After further discussion, the Board agreed to reword condition #2 to allow a footprint for a one-story building that could be no more than 2600 sf.

The final motion was as follows:

Robbi Woodburn MOVED to approve the petition for VARIANCE submitted by David T. Sawyer, Durham, New Hampshire, on behalf of Albert Sawyer, Durham, New Hampshire, from Article XII, Section 175-53 and from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a single family home within the MUDOR Zone and to place a septic system within the wetland setback; and to approve the petition for SPECIAL EXCEPTION as per Article XII, Section 175-56(B) to vary the minimum frontage required; for the property located at 6 Spinney Lane, in the MUDOR Zone, with the following conditions: 1) that the septic design will be for no more than 5 bedrooms, as shown on the plan; 2) that the footprint that will be allowed is for a one story building, which can be no more than 2600 sf; and 3) that the special exception will be approved for frontage as per the plan submitted. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

IV. Approval of Minutes – September 9, 2008

Page 2, 4th paragraph from the bottom, should read “Ms. Woodburn explained that this was to insure that erosion control was provided for in the drawing, in case the site needed to be stabilized.”

Page 6, 5th paragraph, should read, “..during months when the conditions were not too slippery.”

6th paragraph should read “..Chair Gooze concluded that this issue didn’t have...”

Page 7, 3rd paragraph, should read “..the plants at the property line would be higher and could potentially obstruct the Bates’ water view.”

7th paragraph, should read “Mr. Harvey..”

Robbi Woodburn MOVED to accept Minutes the September 9, 2008 Minutes as amended. Ed Harvey SECONDED the motion, and it PASSED unanimously 4-0.

V. Other Business

Chair Gooze said the court case regarding the Equitable Waiver request from the Sidmores that the Board had not approved had been postponed until January. He said there would probably be other court cases concerning the Sidmore property.

He then spoke about the upcoming Office of Energy and Planning Conference, as well as a scheduled presentation in Newmarket regarding the changes to the State's Shoreland Protection Act.

Mr. Johnson noted that although he hadn't been at the previous ZBA meeting, he had watched the DVD and saw that the Board had discussed some problems with the enforcement of some ZBA decisions.

Chair Gooze spoke about how responsive Mr. Johnson was in terms of enforcement of ZBA decisions, but said it was important for residents to keep an eye out to make sure Mr. Johnson knew about problems with particular properties.

Mr. Starkey said he had noticed that front yards of student housing properties were cleaned up much more quickly now, after a day when there had been a party.

Mr. Johnson asked if there were any specific problems the Board wanted him to check on.

Ms. Davis asked what the proper procedure was to report a violation, and Mr. Johnson said residents could either call or email him. He said if the problem was in the middle of the night and involved a disturbance, residents should call the police.

- B. Next Regular Meeting of the Board: **November 18, 2008 (Third Tuesday of the month due to the Veteran's Day Holiday)

VI. Adjournment

Carden Welsh MOVED to adjourn the meeting. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0. (Mr. Harvey was a voting member)

Adjournment at 9:45 pm.

Victoria Parmele, Minutes taker