

These minutes were approved at the January 13, 2009 meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, NOVEMBER 18, 2008
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.**

MEMBERS PRESENT: Jay Gooze; Jerry Gottsacker; Ruth Davis; Robbi Woodburn; Ed Harvey; Sean Starkey

MEMBERS ABSENT: Carden Welsh

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

I. Approval of Agenda

Jerry Gottsacker MOVED to approve the Agenda. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

II. Public Hearings:

- A. CONTINUED 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 assigned Mr. Harvey as a voting member for this Agenda item. He then opened the public hearing.

Ms. Bianchi spoke before the Board. She said that at the last meeting, the Board had said her application hadn't addressed how granting her a variance would affect the nearby wetland. She said she and Matt Purtney, her builder, had since worked on this. She said their proposal was to install gutters on the house, so that water drained off the porch in question, flowed away from the wetland and was redirected over the leachfield, and beyond. She said in this way, the wetland wouldn't be affected, and she provided additional details on this. It was noted that the wetland was 30 ft from the corner of the house.

Mr. Purtney said this approach would involve running some kind of drainage pipe under the driveway, would divert the runoff around the house, and would use the ground as a filter, which would improve upon the present situation. He said that presently, there were no gutters for the porch.

Ms. Woodburn received clarification that the gable end of the house faced the driveway, and that gutters would be put on the front and back of the house, and as part of this would catch the water that came off the porch. She asked where the runoff from the gutter in the front of the house would go, and whether it would run away from the wetland.

Mr. Purtney said he proposed to take the runoff from the front gutter and put it into the ground there, perhaps through some kind of French drain.

Chair Gooze noted that Ms. Bianchi's application indicated that there was a hardship because the bottom floor of the house had been turned into an apartment, so she needed more living space for herself.

Ms. Bianchi explained that when the bottom of the house was turned into an apartment so she could still afford to live in the house, this had cut her living area in half. She said the porch that was proposed would not be used as a bedroom, and said she simply wanted it to be a part of the house that she could use. She said a three-season porch seemed to be a good compromise.

She said she was making a good faith effort to do what needed to be done to protect the wetland. She said the only other approach she could think of would be taking the porch down and turning that area into a patio. But she said this would be worse for the wetland, because runoff from the patio would go right into it.

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

Chair Gooze discussed the fact that the existing porch had not been permitted, so the ZBA was dealing with this application as if the porch wasn't there. He also noted that a special exception had been granted to allow the house to be built within the wetland setback. He said now, the request was to build a three-season porch within the wetland buffer.

Mr. Gottsacker noted that a finger of the wetland stuck out so that it was close to the house, but that most of the wetland was more than 30 ft away. He also said the drop-off was pretty significant. He said he didn't have any problems with granting the variance.

Ms. Woodburn said she didn't have a problem with granting the variance either. She noted that the wetland buffer was 75 ft, which was a big portion of the property. But she said if the porch stayed within the footprint, and the drainage was put in, she was fine with it. She asked that the applicant submit a sketch for the record that showed the size of the porch and the details of the drainage scheme, explaining that the Board needed to have evidence of this.

Ms. Davis said she initially had thought the Board needed to treat this application as if the applicant was asking to build a porch that wasn't already there. But she said she had heard now that the existing home and addition were not guttered. She said given the fact that the house was 30 ft away from the wetland and that the slope was steep, there needed to be a gutter for the porch and house roofs. She said it seemed like what was proposed would be mitigation, to handle runoff better than it was handled right now. She said there must be a lot of sediment going into the wetland right now.

Mr. Harvey said that was how he saw the situation as well. He said the project would improve things, but he also noted that gutter maintenance would be important.

Chair Gooze said he was having some trouble with whether there was a hardship, and whether any

hardship was perhaps self-imposed. He said the applicant was saying space in the house was used to create an apartment, and now more space was needed. He also recalled that with another application before the Board where guttering was involved, there was discussion that they didn't last forever, and sometimes became worthless because of leaves, etc. He said there was therefore the question of whether the guttering would be enough to mitigate impacts to the wetlands.

Mr. Gottsacker said he thought the problem with the applicant's hardship argument was that she wasn't an expert at filling out the application, noting the special conditions of the property and that she was not able to achieve the same result by a more feasible method. He also said he thought what was proposed would be an improvement on current conditions on the site.

Ms. Woodburn agreed that there was a hardship, given that the 75 ft wetland setback took up everything.

Chair Gooze noted the special exception that had previously been granted, and that it had barely passed. He said he realized that it was a separate ruling. He said he was still having trouble with the hardship criterion.

Mr. Gottsacker noted that if the applicant had hired an attorney, her present explanation as to why there was a hardship wouldn't be on the application.

Chair Gooze said the question was whether what was proposed would be good enough to protect the wetland. He agreed that a gutter system was a great idea.

Mr. Johnson said Section 175-30 of the Zoning Ordinance, concerning construction of an addition on a nonconforming building, allowed up to a 15% increase in the footprint, and a 30% increase in habitable floor area. He said it also said the number of dwelling units couldn't be increased. He noted that at the time the special exception was granted for the property, it was to be a single-family residence.

He said he hadn't used this Zoning provision to approve the present permit because there was now an accessory apartment in the building. He said even though it was still a single family home, it was technically two dwelling units. He said to perhaps resolve Chair Gooze's concern regarding the increase in volume, it should be considered that if there wasn't an accessory apartment, he could have granted a permit under Section 175-30. He noted that the setback issues would still have applied.

He also suggested regarding the drainage that instead of providing a plan for the ZBA file, the applicant could, as part of the building permit, show the gutter system. He also suggested an alternative design for drainage off the roof of the porch that would bring the water to the upland area, and he provided some details on this. He said he could work out the details of this kind of design with the applicant and Mr. Purtney.

Board members said they were comfortable with this. Ms. Woodburn said there should also be erosion control when the work on the porch was done, and until the gutters were in place.

Chair Gooze said he could let the self-imposed hardship issue go, based on what Mr. Johnson had said, and said he was now convinced that the variance could be granted. He said the substantial justice criterion was met. He also said the spirit and intent of the Ordinance criterion, which in this instance was to protect the wetland, was met. He said that based on what was proposed, protection of the wetland would be better after the new porch was constructed.

Ruth Davis MOVED to approve 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, with the condition that the existing house and the added three season porch will be guttered to the approval of the Code Enforcement Officer as discussed, to collect the roof runoff away from the wetlands. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

Ms. Bianchi said she would make sure to keep the gutters clean.

- B. PUBLIC HEARING** on a petition submitted by Elizabeth Burton, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIII, Section 175-59(A)(2) and Article XIV, Section 175-74(A)(1) of the Zoning Ordinance to build a retaining wall within the wetland and shoreland setbacks. The property involved is shown on Tax Map 6, Lot 7-2, is located at 48 Oyster River Road, and is in the Residence A Zoning District.

Chair Gooze said Mr. Starkey would be a voting member for this application. He opened the public hearing.

Elizabeth Burton spoke before the Board, and briefly explained what was proposed.

Chair Gooze noted a letter from Mr. Lowy that spoke in support of the variance request.

Tony Carr, the contractor for the retaining wall project, said runoff from rain and snowmelt was current creating an erosion problem. He explained that fill had been put in when the house was built 7 years ago, and that some of the land was eroding away, resulting in a shift in the cement that the farmer's porch rested on. He said it was currently sagging, and said there was a danger that it would fall off entirely. He said constructing the retaining wall would stop the erosion problem and keep damage to the house from occurring.

Ms. Woodburn asked how high the retaining wall would be, and Mr. Carr explained that the embankment was about 12-14 ft higher than level ground on the lower level. He said he would build a 6-7 ft retaining wall above the base level and tie it into the banking, and said it would not stretch beyond where the boulder retaining wall was to begin with. He provided additional details on this.

Ms. Woodburn received clarification that this would be a concrete wall with steel rod reinforcement, to insure that if the boulders decided to shift, they wouldn't push the wall out.

Chair Gooze asked if anything was needed from the State concerning this, and there was discussion.

Mr. Starkey asked if the boulders would remain in place, with what was proposed.

Mr. Carr said they would, and said the problem right now was the water sifting through them. ***Sean Starkey MOVED to close the public hearing. Robbi Woodburn seconded the motion, and it PASSED unanimously 5-0.***

Chair Gooze said he felt this work needed to be done, and said he didn't see any other way it could be done. He said if the work wasn't done, there would be more damage to the area. He said the application met all of the variance criteria.

Other Board members agreed.

Jerry Gottsacker MOVED to approve an APPLICATION FOR VARIANCES from Article XIII, Section 175-59(A)(2) and Article XIV, Section 175-74(A)(1) of the Zoning Ordinance to build a retaining wall within the wetland and shoreland setbacks for the property located at 48 Oyster River Road, in the Residence A Zoning District, to include the supplementary dimensions provided at the meeting. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

- C. **PUBLIC HEARING** on a petition submitted by Peter Murphy, Newburyport, Massachusetts, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-53, Article XIII, Section 175-62 and Article XIV, Section 175-74(A)(3) of the Zoning Ordinance to build a new 4-unit, 3-story residential building with an accessory maintenance office in the basement within the wetland and shoreland setbacks. The property involved is shown on Tax Map 2, Lot 12-8, is located at 22 Rosemary Lane, and is in the Central Business Zoning District.

Chair Gooze assigned Mr. Harvey as a voting member for this Agenda item, and he opened the public hearing.

Mike Sievert of MJS Engineering represented the applicant before the Board. He said four variances were being requested, two of which were use variances: one to allow a multi-unit building that did not include office/retail on the first floor, and the other to allow the accessory use of the basement for maintenance, storage, and property management.

He said the area variances were being requested because of shoreland and wetland setbacks that were not met. He explained that the required shoreland setback from Pettee Brook was 25 ft, and that the wetland setback was 75 ft. Mr. Sievert noted that a fifth variance had originally been proposed, concerning expansion of a nonconforming use, but said this had since been eliminated.

He said the applicant proposed to remove the existing structure and garage on the 4300 sf site and build a 4 unit, 3 story townhouse style building. He said there would be 4 bedrooms per unit, for a total of 16 bedrooms. He said there were currently 2 paved parking spaces on the site of standard dimensions, and said there were also 4-5 unofficial spaces across the front of the property. He said the site was served by sewer and water.

Mr. Sievert said the applicant was proposing that portions of the residential units be located on the first floor, and said one use variance was being proposed because multiunit development was not allowed by right in the Central Business district unless there was office/retail on the first floor. Mr. Sievert then

went through how the requirements for the use variances were met. He said there would be no decrease in the value of surrounding properties, noting the UNH owned properties and rental properties that surrounded the applicant's property. He also said having an all residential use of the property, with on-site property management, would allow the kind of management that would prevent a decrease in the value of surrounding properties.

He said granting the variance would not be against the public interest, because students would be drawn to live where the Town wanted them to be, within walking distance of UNH, which would benefit residents living in the outer limits of Town.

He said that regarding the hardship criterion, this was a unique property on the outskirts of the Central Business district in that it wasn't a visible location for commercial development. He said this was why an all residential development was proposed for the site. He said the property was located on a one-way street, and said the next closest business not owned by the University was about 300 ft away. He noted that the Mathis Court area was a similar area to this one, with a one-way street, but he said the properties there were somewhat more visible.

Mr. Sievert said it was felt that this situation was somewhat unique. He said no fair and substantial relationship existed between the general purposes of the Zoning Ordinance and the specific restriction of requiring office/retail on the first floor. He said the use proposed would do a better job of promoting public and health and safety, and said it would not injure the public and private rights of others.

He said that in terms of the accessory use that was proposed on the property, the uniqueness wasn't so much the issue. But he said it was felt that having the office and property management facilities on the site would allow Mr. Murphy to have better control over the property. He noted a property nearby where this kind of thing worked out very well.

Mr. Sievert said substantial justice would be done in granting the variance, in that a new, updated building would be provided in the Central Business district. He said it was a hard sell to put retail/office in this area, given its remoteness from the core of the district, and said the Town would be better off if residential development was allowed there. He also said some additional distance from Pettee Brook would be gained behind the building.

Mr. Harvey asked what the parking plan was for the facility.

Mr. Sievert said the applicant had settled on a plan that there would be no parking provided on the site, and he said the two existing official spaces would be removed.

Mr. Johnson noted that parking was not required in the Central Business district, provided that the property owner paid an impact fee.

Chair Gooze asked if this project had gone before the Planning Board yet. He said he was concerned about management of the property, noting that at present, there were trash and other issues there. He said he wanted to be sure that if the use of the site were going to be expanded, these things would be addressed.

Mr. Gottsacker asked how property management in the new building would be different from the management of the current property on the site.

The applicant, Peter Murphy spoke before the Board. He said the former owners seemed to have had a pretty good grasp concerning property management, but said he proposed to do this on a bigger scale. He said this project was a big investment for him, and noted that he was also trying to acquire another rental property nearby. He said he would be in Durham all of the time, overseeing leasing and management of his properties.

He said he wanted to be a good neighbor, and he spoke about the approach of using a private security firm to patrol student housing properties, which he would use when he wasn't on site. He noted that he had spoken with the Durham Landlords Association about this, and said he wanted to have as much hands on presence as possible at the property.

Mr. Harvey spoke in detail about the fact that this was a pretty tight spot where the property was located, and he spoke about his own experience with traffic issues there. He asked the applicant how he planned to mitigate a situation where friends of residents of the building would pile on the parking in that area.

Mr. Sievert said an option was to push the building back toward the brook a bit more, in order to maintain the existing two parking spaces.

Chair Gooze noted that this parking was not required by the Zoning Ordinance, and he said this would be an issue for the Planning Board to look at.

Mr. Johnson said that concerning the issue of controlling traffic in the area, it was important to remember that Rosemary Lane was practically a private driveway for the UNH Police Department.

Mr. Harvey said the reality on the street was that there was no sidewalk, things were very close, and it was a real possibility that a pedestrian could be hit.

Mr. Sievert noted that Rosemary Lane was 19 ft wide. He said the applicant would like to include a drop-off area on the property so a car could get partly off the street, which would allow 16 ft of travel way.

Chair Gooze said he was sure the Planning Board would look at the traffic issues, and whether this project was too big for that street.

Mr. Sievert said the use variances requested met the spirit and intent of the Zoning Ordinance because the proposed project met key aspects of the purpose of the Central business District, since it would allow fuller utilization of the property, and would provide a desirable residential accommodation while accounting for the property's unique location within the district.

He next went through how the two requests for area variances met the criteria. He said a portion of the existing building was already within the 25 ft shoreland, and said the entire lot was within the 75 ft wetland setback. He said granting the variance would not be against the public interest because the

applicant was trying to get rid of having parked cars on an unpaved area of the site, which had caused the soils there to become compacted. He said it was also proposed to pull the building back as far as possible from the wetland and Pettee Brook, to reduce sediment loading.

Chair Gooze asked if fill would have to be brought in, and Mr. Sievert explained that the basement floor in the back would be at grade, and said hardly any excavation would be needed.

He said it would be a hardship if the variances were not granted because there were no other options for developing the site because of the existing setbacks. He said the property was bordered at the back by Pettee Brook, and had an average depth of only 55 ft, from Rosemary Lane, which created the special conditions of the property. He also said the benefits sought could not be achieved by some other reasonably feasible method, and stated that no redevelopment of the property would be possible without an area variance.

Mr. Sievert said there would be substantial justice in granting the variances because it would allow for a new updated code compliant building on an existing residential property, and would create less non-conformance in terms of encroachment within the shoreland and wetland setbacks.

He said granting the variances would not be contrary to the spirit and intent of the Ordinance because the project would not impact the flood storage capacity of wetlands, and would not impact stream flow and groundwater recharge. He said the existing buffers would be improved, and said potential pollution of Pettee Brook by erosion and sedimentation from storm runoff would be reduced by creating lawn and landscaped areas, where currently none existed on the site. He also said there would be temporary controls to protect water quality during construction.

Chair Gooze asked what was proposed for roof runoff, and Mr. Sievert said they would try to collect it and put it into a basin that would infiltrate it slightly and slowly let it out at the edge of the house. He also said removing the vehicles that currently parked on the property would eliminate sediments, greases and oils from the site. He said the impervious area would increase from 51% to 60%, explaining that the paved parking area would be going away while the roof area was increasing.

Chair Gooze spoke about the possible runoff problems with these types of infill development buildings, and said the project would have to meet the specs of the Town Engineer.

Mr. Sievert said it was hoped that the increase in runoff would be small enough that it could be captured. He said the quality of the runoff could certainly be increased, but he said it was the quantity of the runoff that would have to be worked on. He said they would like to do some landscaping there as well.

There was discussion between Ms. Woodburn and Mr. Sievert about using pervious blocks or something similar for any walkways and pull-off parking areas. He said they would definitely do this, and Ms. Woodburn said this would make a big difference on the site. She said the proposed building looked huge on the site in the drawing, but noted that this wasn't reflected in a big increase in imperviousness.

Regarding the retention of roof drainage on the site, Ms. Woodburn asked if there would be grading or a retention structure on the site.

Mr. Sievert said there could perhaps be an underground structure that could store some water.

Ms. Woodburn asked if this structure could perhaps be placed under the building, and there as discussion. After further discussion, she said that based on what had been described regarding the stormwater management that would be done, she felt more comfortable concerning the impervious surface ratios Mr. Sievert had spoken of.

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

The Board first deliberated on the Use Variances that were requested.

Chair Gooze said he didn't think there would be a decrease in property values as a result of the uses proposed. Concerning the public interest and the spirit and intent of the Ordinance criteria, which he noted related to health, welfare, etc, he said there was no question that the Town wanted more student rentals downtown if the right place could be found for them.

Mr. Gottsacker said the parking and location issues were tied together. He said the parking issue was not one for the ZBA to address, and he also noted that he was a big fan of not providing any parking to encourage walking. In addition, he said the parking issue could be dealt with in the apartment leases.

Regarding the Zoning requirement that there be office/retail on the first floor, he said the public interest criterion tied in with this, but he said such a use probably wouldn't work at this location because there was no traffic. He said there was therefore an argument to be made that not putting retail there would actually serve the public interest. He said he would hate to see empty storefronts there.

Chair Gooze said he thought the use variance requests met the public interest and spirit and intent of the Ordinance criteria pretty easily. He said the purpose of retail and office on the first floor was to keep control of what was going on in the building, but said he thought this control would be provided already, given the proximity of the UNH Police Department. He also said the applicant would provide on site property management, something that was absolutely necessary. But he said if the ZBA did allow these uses, he hoped the Board could direct the Planning Board to pay particular attention to the importance of property management. He said given this caveat, he felt the variance criteria were met.

Concerning the hardship criterion, Chair Gooze agreed that this was a unique location. But he said it was a pretty big project, so safeguards would be needed.

Mr. Harvey said he realized there was a need for student housing downtown, but said 32 students would live at the site in question, a much greater number than lived there now. He said there was a safety issue at that location already, because of traffic coming and going on Rosemary Lane. He said the turn nearby was a quick one, and said his concern was whether people paid enough attention. He said he didn't think parking should be required on site, but said there were safety issues, and thus a public interest issue.

Mr. Gottsacker said this was a Planning Board issue. He agreed that the kinds of problems Mr. Harvey had described could occur, but said good property management would make the difference between a situation that was out of control and one that was not.

Ms. Woodburn noted that if the ZBA didn't allow the use variances, and the applicant built an office use on the first floor instead, there would still be a higher number of residents living on the property than were there right now. She also stated that the Planning Board would be discussing traffic safety and other issues.

Ms. Davis said she agreed.

Jay Gooze MOVED to approve a variance from Article XII, Section 175-53, Table of Land Uses, Part III.A and Article XII, Section 175-53 Table of Land Uses, Part III.B of the Zoning Ordinance to permit the construction of a Multi-unit Residential Building in the CB District with an accessory property maintenance storage/workshop/office respectively, which will allow residential on the first floor rather than office and retail, and the Board requests that the Planning Board pay particular attention to the property management/security plan for the building. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

The Board next deliberated on the Area Variances that were requested.

Chair Gooze first said he agreed that the hardship criteria were met.

Concerning the public interest criterion, Mr. Gottsacker said the overlay of the new building on the site did bring it as far away from Pettee Brook as possible. He also said that with the rainwater mitigation that had been described, what was proposed had to be better in terms of impacts to the site.

Chair Gooze said that in its motion, he thought the Board needed to provide some direction to the Planning Board regarding rainwater runoff, and perviousness of hard surfaces.

There was discussion, and Ms. Woodburn said she agreed.

Chair Gooze re-opened the public hearing.

In answer to a question from Ms. Davis concerning the possible use of the area near the brook by residents of the apartment building, Mr. Sievert said there could perhaps potentially be a walkout area near the river. He also said the wetland area wasn't especially wet, noting that it was not comprised of very poorly drained soils. He said right now, people could walk down to the edge of the brook, except in the spring.

Ms. Davis suggested that as part of the management of the property, this area could be patrolled.

Chair Gooze closed the public hearing. He said it was essential that there would be property management, and said he hoped the Planning Board would require this. He said he was comfortable that substantial justice would be done in granting the variance, and that an adequate job would be

done of protecting the wetland.

Ms. Davis said she liked the idea of locating the building where it was currently proposed in the plan, and said she didn't think it should be moved back further toward the brook.

Mr. Johnson asked if perhaps the ZBA wanted to allow some leeway, if the Planning Board wanted to shift the building a bit. There was further discussion.

Jay Gooze MOVED to approve an Application for Variances from Article XIV, Section 175-74. A.3 and Article XIII, Section 175-62 of the Zoning Ordinance to permit the construction of a Multi-unit Residential Building within the 25 ft shoreland setback of buildings from Pettee Brook and within the 75 foot upland buffer strip from the edge of wetlands respectively, according to the plans provided this evening with the exception of minor changes by the Planning Board, and requests that the Planning Board pay particular attention to rainwater runoff from the building, and that any hard surfaces be of pervious material. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

- D. PUBLIC HEARING** on a petition submitted by Park Court Properties, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-62 of the Zoning Ordinance to permit the construction/placement of portions of multi-unit buildings and certain portions of the access driveway/parking areas within the 75' wetland setback. The property involved is shown on Tax Map 13, Lot 5-0, is located at 262 Mast Road, and is in the Multi-Unit Dwelling/Office Research Zoning District.

Ms. Woodburn recused herself for this application.

Chair Gooze appointed Mr. Starkey and Mr. Harvey as a voting members for this application, and opened the public hearing.

Attorney Roger Burlingame said he represented the applicant, and said he was present to ask that a variance be granted concerning the construction of a multiunit residential project. He said some of the foundations of some of the buildings extended into the wetland buffer adjacent to wetlands that were located on the property as well as adjacent to it. He also said the variance was being requested to allow the construction of a portion of the entrance driveway and some of the parking in the wetland buffer. He noted that the applicant was not seeking approval to put anything into the wetland itself.

Greg Mikolaities, President of Appledore Engineering, said this was a very environmentally friendly development that was proposed, and he provided some details on this. He said the plan was to demolish the existing house and take the existing driveway out. He said as a result of a trade of property with UNH, a new driveway would be put in, which as compared to the previous driveway, would be located outside the wetland area on the site. He said there would be pervious sidewalks in the new development, and said there would be green roofs for 80% of the buildings. He said this would mean that there would be virtually no runoff from the site. He also noted that the width of the road had been reduced to 18 ft to reduce the amount of disturbance.

Mr. Mikolaities said a lot of thought had been put into the design concept. He said the current plan was

to have six buildings, which would be situated on the landscape in a way that worked with the existing topography, and maintained the existing buffering wherever possible. He said a detailed grading plan had been developed for the project. He said the plan was to restore the wetland buffers and to enhance the existing degraded wetland on the site. He said the application minimized the parking requirements, so that only one parking space would be allowed per unit.

Adele Fiorello, a wetland scientist for NH Soils Consultants, said it was understood that the Town had a protective ordinance regarding wetlands. She noted that the design team had met with the Conservation Commission and the Planning Board about the project design. She spoke about the fact that there were off site wetlands at the rear of the property that needed to be considered, as well as the wetland on the site. She noted that the applicant had avoided some wetland impacts by moving the access road.

She said the wetland located in the center of the site was currently a mowed lawn. She described it in some detail, and said while this wetland area was small, it connected to an offsite wetland, and the water eventually fed into College Brook. She said that from a watershed perspective as well, it was therefore important to work with the wetland on the property.

She said the development of the property would not impact the wetland area on the site. She said what was planned, including no more mowing, would allow it to grow into more of a natural herbaceous wetland. She said there was the opportunity for wetland species to come back there and create a wetland that was more productive than what was there now.

Ms. Fiorello also said the wetland buffer would be enhanced in order to provide further wetland protection. She said landscape architect Robbi Woodburn had developed a comprehensive landscape plan that included a wooded buffer where the existing house and driveway currently were. She said this buffer would include shrubs and trees to provide wildlife habitat, and she noted that the existing trees would be preserved as much as possible. She also said the low impact design approach for the buildings would minimize impacts to the wetlands, and she provided some details on this.

Chair Gooze asked whether, until the naturalized wetland came back, residents living at the development might make the lawn area into a soccer field.

Ms. Fiorello said the area would grow beyond a lawn pretty quickly, and said once the vegetation was high enough, there shouldn't be a problem. She also noted that the area would be wet at times.

Attorney Burlingame noted letters of support from the Conservation Commission and the Planning Board, and he asked that these be read into the public record. He said Ms. Fiorello's comments had shed some light on how the variance criteria were met. He said that in terms of a possible decrease in the value of surrounding properties as a result of granting the variance, the wetland was mostly mowed lawn. He said the placement of some of the foundations of the building, and some of the driveway into the wetland buffer zone would have absolutely no impact on the value of surrounding properties.

He said the property contained a single-family residence that was a preexisting nonconforming use, and said with this project, that building would be removed and replaced with a conforming use. He said this was supportive of the spirit and intent of the Ordinance. He said it was also in the public

interest to utilize properties for their designed use, and noted that this use was allowed as a conditional use in the MUDOR district.

He said the wetland on the property was not currently productive, and said making it more productive, improving the buffers, and removing the nonconforming uses and replacing them with conforming ones should satisfy the spirit and intent criterion and the substantial justice criterion.

Attorney Burlingame said that concerning the hardship criterion, the Board's job was to determine if what was proposed was a reasonable use of the property, and whether there was another reasonably feasible alternative to do the project. He said there was no other method reasonably feasible for the applicant to pursue other than to obtain an area variance.

Chair Gooze noted the letter from the Planning Board, which supported the applicant's project. He then read out loud the letter from the Conservation Commission, and said it was important to note them in the public record, and that these letters were a part of what the Board would base its decision on.

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

Mr. Starkey said he thought the application met all the variance criteria. He said the design had been carefully thought out, and would allow for the re-growth of the wetland. He said his only concern was whether there might be some disturbance during construction.

Mr. Gottsacker said he felt the variance application met all of the criteria.

Chair Gooze said he thought the application met all of the criteria. He said he had read the letter from the Conservation Commission because it addressed some issues that he otherwise would have had some difficulties with. He said his vote on this application was dependent upon the fact that the recommendations concerning these issues would be followed.

Ms. Davis said the special conditions of the property were the wetlands in and around it, and said she felt the hardship criterion was met. She said she thought all five variance criteria were met, and that the variance should be granted. She said she liked the fact that the wetland would be protected, and that as part of this, the house, which was in the wetland buffer, would be removed. She also said that returning the wetland to a more natural state would be a good thing.

Mr. Harvey said he agreed, and he said his only concern was that disturbance should be minimized during construction. He said the project seemed to be well planned out, and said the issues of concern had been addressed. He said protection of the wetlands was a top priority.

Chair Gooze re-opened the public hearing to allow Bill Doucette of Doucette Survey to speak.

Mr. Doucette said given the time frame for construction of the project, the lawn would have enough time to naturalize back into a wetland, so there wouldn't be concerns about playing soccer there. Chair Gooze closed the hearing.

Jerry Gottsacker MOVED to approve an APPLICATION FOR VARIANCE from Article XIII, Section 175-62 of the Zoning Ordinance to permit the construction/placement of portions of multi-unit buildings and certain portions of the access driveway/parking areas within the 75' wetland setback, for the property located at 262 Mast Road, in the Multi-Unit Dwelling/Office Research Zoning District. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

Ms. Woodburn returned to the table.

III. Approval of Minutes – October 14, 2008

It was noted that Mr. Gottsacker had been absent for the majority of this meeting. Chair Gooze appointed Mr. Starkey and Mr. Harvey as voting members.

Page 3, motion on the page should read “..Carden Welsh SECONDED the motion...”

Page 5, at the beginning of Agenda Item II C, should say “Chair Gooze appointed Mr. Harvey as a voting member.”

Sean Starkey MOVED to approve the October 14, 2008 Minutes as amended. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

IV. Other Business

There was brief discussion on the State’s recent updates to the Comprehensive Shoreland Protection Act. Ms. Davis noted information available on the water quality of streams in Durham, and said she would provide this information to other Board members.

There was discussion that the Bates’ cases might be merged.

Chair Gooze noted the recent Right to Know law presentation, and there was brief discussion about this by Board members.

Mr. Gottsacker summarized several new requirements for local towns, which had been a topic at the recent fall conference put on by the New Hampshire Office of Energy and Planning.

Mr. Johnson noted that updated copies of the Zoning Ordinance were available, including a table of the recent amendments, and when they had passed.

V. Adjournment

Sean Starkey MOVED to adjourn the meeting. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

Adjournment at 9:55 pm.

Victoria Parmele, Minutes taker