

These minutes were approved at the March 10, 2009 meeting.

**DURHAM ZONING BOARD OF ADJUSTMENT
TUESDAY, JANUARY 13, 2009
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
MINUTES
7:00 P.M.**

MEMBERS PRESENT: Chair Jay Gooze; Jerry Gottsacker, Secretary; Ruth Davis; Carden Welsh; Robbi Woodburn, Vice Chair; Sean Starkey

MEMBERS ABSENT: Edmund Harvey

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

I. Approval of Agenda

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

II. Public Hearings

- A. PUBLIC HEARING** on a petition submitted by New Hampshire Soils Consultants Inc., Newmarket, New Hampshire, on behalf of Reuel & Natalie Webb Rev Trust, Manchester, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54, and Article XIV, Section 175-74(B) of the Zoning Ordinance to build a new septic system within the property and shoreland setbacks. The property involved is shown on Tax Map 20, Lot 16-4, is located at 265 Durham Point Road, and is in the Residence C Zoning District.

Susan Ferretra of NH Soils Consultants represented the applicants. She said a new septic system had been designed for the property, to accommodate a 4 bedroom year round home on the property. She said NHDES's Septic bureau had reviewed the plans and the permit was pending.

She said the first variance was regarding the 50 ft sideline setback. She said the proposed septic tank/pump chamber would be located 10 ft from the property line, which was the minimum NHDES setback. She said the force-main from the septic tank/pump chamber would run along the existing gravel road to a new leach field located within an existing easement in the Bay Corp common area.

She said the position 10 ft from the property line was chosen in order to locate the tank close to the house so there would be a short pipe run, and to maintain the required setback from Little Bay of 50 ft. She noted that the lot was narrow, and the 50 ft sideline setbacks

didn't allow enough area to place a tank if the NHDES 50 ft water setback was maintained.

She said this position would be out of the way of any future development of the lot, something that would have to meet Town and state requirements. She also said the plan would minimize the amount of driveway impacted, and would not require that any trees be cut down.

Ms. Ferretra said there would be no decrease in the value of surrounding properties as a result of granting the variance from the 50 ft sideline setback. She said the tank would be installed below grade, and the area would become a lawn. She said nothing except for the vent would be visible. She said the overall system would protect both the surrounding groundwater and the bay from pollution.

She said granting this variance would not be contrary to the public interest because the replacement system attempted to minimize the pollution hazard from the property, and therefore promoted public health and safety. She said the new system would be a substantial improvement over the present and historical situation.

Ms. Ferretra said denial of the 50 ft sideline setback variance would result in unnecessary hardship because due to the width of the lot, it was impossible to meet the 50 ft sideline setback with the required proportions of the septic tank/pump chamber. She said no replacement system could be designed without relief from this Ordinance provision. She said the position of the existing shed within the small area that met the setbacks also supported the location of the new tank.

She said substantial justice would be done in granting this variance because an upgraded and modern wastewater disposal system would be constructed on the lot, with a septic tank/pump chamber located in the most practical location. She said this would create minimum disturbance within the protected shoreland area.

Ms. Ferretra said granting the variance would not be contrary to the spirit and intent of the Ordinance because the new septic system would improve the groundwater quality adjacent to Little Bay, and would also protect the surface water from pollution. She said the septic tank/pump chamber was completely sealed, which would prevent sewage from entering the surrounding soil. She noted that the leachfield receiving the effluent was more than 160 ft from any surface water, which was a substantial improvement over the existing septic system.

She said the second variance being requested was regarding the Town's 125 ft shoreland setback. She said the new septic tank/pumping chamber was proposed to be located 52 ft from the reference line of Little Bay. She said the reason for locating it there was that it would be close to the house so there would be a short pipe run while maintaining the required state setback from Little Bay of 50 ft. She also said this position would be out of the way of any future development of the lot.

Ms. Ferretra said her discussion on how the 5 variance criteria were met for the 50 ft sideline setback applied to the variance from the 125 ft shoreland setback as well.

Chair Gooze asked if the existing metal water tank on the property was above ground.

Ms. Ferretra said the tank was below ground, and was fed from an existing well located out in the driveway area.

Mr. Snow said the camp on the property was built in 1954-55, and said the existing well and septic system were built at that time. He said the original well was located just off of the parking lot, and included a holding tank. He said a new well was installed several years ago, and was located further up in the woods. He said the area where the original well had been located was now just a place for electrical equipment and a pump.

Mr. Gottsacker asked why aerobic pretreatment was not included as part of the septic system design, noting that such systems were used on Cedar Point Road.

Ms. Ferretra said in this instance, the leachfield would be 60 ft from Little Bay, and she said there would be no effluent coming out of the tank itself. She said there was plenty of soil to treat the wastewater in this situation, and said putting in an aerobic pretreatment system was therefore not warranted.

Chair Gooze noted that if there wasn't the easement to allow the placement of the leachfield, it would be a different story.

There was discussion. Ms. Ferretra noted that the two leachfields on either side of the Snow property had already been constructed per the easement.

Chair Gooze asked what the lifespan was of the piping that would go near the existing metal water tank.

Ms. Ferretra said this piping was made of heavy plastic and would be buried in the ground below frost level. She said there shouldn't be an issue, and she provided details on this.

Ms. Davis received clarification that the ZBA had seen some of the properties in the area that had this same kind of easement. She asked if these properties were the original camps that were built, or were four season homes.

Mr. Snow provided details on this.

Mr. Welsh asked why the septic system had been sized to accommodate a 4 bedroom year round home.

Ms. Ferretra explained that the easements were sized for the purpose of accommodating that size house, if this was desired in the future.

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

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

Chair Gooze noted that this was an area variance. He asked if any Board members had problems with any of the variance criteria.

He said with his questions, he had wanted to be sure there was no concern about the septic pipe leaking since it was so close to a water supply. He asked whether the tank should be excavated. He then re-opened the hearing to discuss the tank issue with the applicants.

Ms. Woodburn said the water line was under pressure, and said it therefore wasn't likely that something would get into the pipe because the water pressure was pushing out. She said suction wasn't occurring in the pipe.

Chair closed the public hearing. He said he was fine with the variance application, and said he had just wanted to be sure that the Board didn't approve something that would be dangerous for the property owners.

Ms. Woodburn said she didn't think this was a Zoning issue, although it was an issue for Mr. Johnson to be aware of.

Mr. Johnson said it was an issue for NHDES, and said they would look at this.

Chair Gooze suggested that if the variances were approved, this should be contingent on approval by NH DES, noting that the proposed system was still under review.

Mr. Gottsacker said he didn't see the need for this, since the applicants couldn't install the septic system without State approval. He also said he thought the next system to fail would be the water system, and a new system would be installed at that time.

Chair Gooze determined from Board members that the variance requests both met the 5 criteria. He also said he didn't have a problem with not putting conditions on the approval, if other Board members didn't feel this was necessary.

Ruth Davis MOVED to approve the Application for Variances from Article XII, Section 175-54, and Article XIV, Section 175-74(B) of the Zoning Ordinance to build a new septic system within the property and shoreland setbacks, for the property located at 265 Durham Point Road, in the Residence C Zoning District., as shown on the ZBA Application Plan prepared by NH Soils Consultants, dated December 2008. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

III. Board Correspondence and/or Discussion

A. Discussion of Letter Regarding Palmer Court Case

Chair Gooze said there were two letters, one dated December 30th and one dated December 31st that essentially said the same thing. He said the applicants were asking the ZBA to allow them to withdraw their application for Appeal of Administrative Decision.

He explained the original administrative decision made by Mr. Johnson, and said the Court had ruled that because the applicant's original application didn't go in 10 years ago, the matter should be remanded back to the ZBA to hear the application on its merits. He said the ZBA was being asked to allow the ZBA application to be withdrawn and to be pursued instead at the Town Council.

There was discussion by the Board about whether the applicants were actually asking for a withdrawal.

Chair Gooze read the letter, which stated that they wanted to pursue alternate means. He said this was the formal request for withdrawal.

Mr. Gottsacker said he didn't understand the idea of going to the Town Council for a building permit.

Chair Gooze said the RSA spelled out this process, when a property owner wanted to build on a Class VI road. He said it was not clear if the applicants would be coming back to the Board.

Mr. Starkey asked if the applicants would have the right to reapply to the ZBA in the future, in withdrawing their ZBA application now, and if the Council turned them down.

Ms. Woodburn said the ZBA was a board of appeal, so they would be able to appeal the Council's decision there.

There was discussion.

Chair Gooze said he wanted the Board to make a formal regarding the withdrawal request.

He allowed a member of the public to speak.

Warren Daniel, Palmer Drive, said the property was not located on a Class VI road, and said it was termed a wooded private road.

Jerry Gottsacker MOVED to approve the Request for withdrawal of the Palmer Appeal of Administrative Decision. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

IV. Approval of Minutes

November 18, 2008 Minutes

Jerry Gottsacker MOVED to approve the November 18, 2008 Minutes with the changes as approved. Ruth Davis SECONDED the motion, and it PASSED 4-0-1, with Carden Welsh recusing himself because of his absence from the meeting.

Page 7, 7th line should read “..that Rosemary Lane was practically a driveway...”
Page 11, 3rd paragraph from the bottom should read “...appointed Mr. Starkey and Mr. Harvey as voting members on this application,..”

December 9, 2008

Page 7, 6th paragraph from bottom, should read “..if they decided they could approve the application, ..”
Page 14, 7th paragraph, should read “..and that Town approvals would be required.”
Page 15, 5th full paragraph, should read “....would like to see less incursion into the wetland buffer, although the incursion proposed was small.”

Carden Welsh MOVED to approve the December 9, 2008 Minutes. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

V. Other Business

A.

Chair Gooze noted an upcoming symposium on the Lamprey River would be held on Friday in the MUB.

He noted that an appeal by the Sidmores had been put on hold, while everyone was waiting to see what happened with the Bates equitable waiver appeal. He spoke about the fact that the courts were currently very crowded.

There was discussion that while there was still an outstanding permit for the restoration work, the Sidmore's house had been occupied for some time.

B. Next Regular Meeting of the Board: **February 10, 2009

VI. Adjournment

Carden Welsh MOVED to adjourn the meeting. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

Adjournment at 8:05 pm.

Victoria Parmele, Minutes taker