

These minutes were approved at the May 12, 2009 meeting.

**DURHAM ZONING BOARD OF ADJUSTMENT
TUESDAY, MARCH 10, 2009
TOWN COUNCIL CHAMBERS, DURHAM TOWN HALL
MINUTES
7:00 P.M.**

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

MEMBERS ABSENT: Ruth Davis

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

I. Approval of Agenda

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

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

II. Public Hearings

- A. PUBLIC HEARING** on a petition submitted by Dorothy W. Oliver, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIV, Section 175-74(A) and Article XII Section 175-54 of the Zoning Ordinance to replace the existing septic system within the shoreland and sideyard setbacks. The property involved is shown on Tax Map 12, Lot 1-19, is located at 22 Cedar Point Road, and is in the Residence C Zoning District.

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

Ms. Oliver said this upgrade would replace the septic systems installed in 1982 as well as a dry well. She noted that in 1988, two cottages had been combined into one house on the property, and that there therefore had been two septic tanks. She said a clean solution system designed by Wastewater Alternatives would be installed, and she provided some details on the system.

Ms. Woodburn received clarification from Ms. Oliver that the two existing septic tanks would remain, and that the wastewater would pass through them and then into the alternative system tank.

Ms. Woodburn said it looked like the dry well would be eliminated.

Ms. Oliver said it would be, and also said the other leachfield would be abandoned, noting that it was right near the water's edge.

Chair Gooze said it seemed that there was no other place on the property to put the new septic system.

Ms. Woodburn said the plan didn't show the setbacks, and there was discussion that there wasn't really any place to put the septic system that wouldn't be within the shoreland or sideyard setbacks. Ms. Woodburn noted that two feet of fill was proposed for the leachfield, and she spoke about the problems this could cause for the two oak trees nearby.

Ms. Oliver said the septic designer had told her that this would not be a problem.

Ms. Woodburn questioned this, and there was further discussion. She said she would assume from looking at the plan that those trees wouldn't be alive for very long because of the fill being put in, not even taking into consideration that the tree roots would be ripped up.

There was discussion that NHDES approval for the new septic system was still pending.

Chair Gooze suggested that if the system was moved, perhaps one of the trees could be saved. There was discussion.

Ms. Oliver stated again that she had been assured by the septic designer that the trees wouldn't be damaged.

Chair Gooze asked Ms. Oliver whether, if she knew the trees wouldn't survive, she would consider moving the septic system to the east in order to save one of the trees.

Ms. Oliver said she valued both of the trees, and was trusting that the septic designer had done enough septic systems to be able make sure that the trees would be ok.

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

Chair Gooze said that given what he had seen on the plan, he believed that the two aspects of the hardship criterion were met.

There was discussion about the spirit and intent of the Ordinance. Ms. Woodburn said moving the septic system and therefore saving one tree would help protect the shoreland area, and she provided details on this. She also noted that based on the shoreland provisions in the Ordinance, a property owner had to ask for permission to remove vegetation.

Mr. Gottsacker suggested that there could be a condition of approval that the applicant would need to consult a landscape architect.

There was discussion by the Board about whether this should be required.

Chair Gooze said a question was whether, if this was required and an arborist/landscape

architect then agreed with what Ms. Woodburn had said, the Board would look at this application differently.

There was further discussion. Ms. Woodburn noted that smaller septic systems than the one proposed were available, and had been used on Cedar Point Road. She asked if a smaller system could be used on Ms. Oliver's property.

Chair Gooze re-opened the public hearing in order to ask Ms. Oliver some questions.

Ms. Oliver said this was the septic system recommended for her property, and she noted that her house had four bedrooms. She spoke in some detail about the difficulty of putting the septic system any place else on the property.

Chair Gooze closed the public hearing.

He said there were no issues concerning a possible decrease in the value of surrounding properties, and concerning substantial justice, and said the criteria to look at were the spirit and intent of the Ordinance and the public interest. He said he felt this was the best place to put the septic system, and said he believed the application met all of the variance criteria.

Mr. Gottsacker said if it turned out that both of the oaks died, they could be replaced with two young oak trees, and eventually the canopy would grow back.

Ms. Woodburn said she would be comfortable with this, and said she would want them to be on the south side of the house near where the existing oaks were located.

There was discussion about whether to make this a condition of approval.

Mr. Gottsacker said the applicant wanted to save the trees, and said if they died, she would want to replace them.

Ms. Oliver agreed that she would want to plant new trees quickly if she saw the existing oak trees were dying. She said there was a tradeoff involved, stating that the present septic system wasn't good and that she felt bad about this. She said she also worried about the dry well on the property.

Ms. Woodburn agreed that the new septic system was needed, and that there was a tradeoff.

Chair Gooze said he agreed with what Mr. Gottsacker had said.

Jerry Gottsacker MOVED to approve an APPLICATION FOR VARIANCES from Article XIV, Section 175-74(A) and Article XII Section 175-54 of the Zoning Ordinance to replace the existing septic system within the shoreland and sideyard setbacks, for the property shown on Tax Map 12, Lot 1-19, located at 22 Cedar Point Road, in the Residence C Zoning District, according to the plans submitted with the application, and conditioned upon NHDES approval. Carden Welsh SECONDED the

motion, and it PASSED 4-0-1, with Robbi Woodburn abstaining.

III. Approval of Minutes – January 13, 2009

Page 1, under MEMBERS PRESENT, indicate “Vice Chair Robbi Woodburn”, and “Secretary Jerry Gottsacker”

Page 2, 2nd full paragraph, should read “She said nothing except for the vent...”

Same page, last paragraph, should read “..maintaining the required State setback...”

Page 5, 2nd paragraph, last sentence should read “He said the ZBA was being asked to allow the ZBA application to be withdrawn and to be pursued instead at the Town Council.”

Also, last paragraph before motion, should read “..said it was termed a wooded private road.”

Robbi Woodburn MOVED to approve the January 13, 2009 Minutes as amended. Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0. (Mr. Starkey was a voting member.)

IV. Other Business

A.

Chair Gooze noted correspondence received regarding the recent Bates/Sidmore hearing. He said he had attended that hearing, and noted that the judge had been involved with the case previously so was very aware of what was going on. Chair Gooze said the judge had said there was nothing new in the appeal, so the ZBA ruling had held up. He provided details on this, and said the judge had agreed whole heartedly with the Board’s decision.

Chair Gooze said the Planning Board would be having a quarterly planning session in April and he said ZBA members were welcome to discuss with the Planning Board any Zoning issues they might have. He said he would be away in April.

It was noted that the terms of Chair Gooze and Ms. Woodburn were up in 2009, and that both of them planned to reapply to be on the ZBA as regular members. Chair Gooze said one more alternate was still needed for the Board.

B. Next Regular Meeting of the Board: **April 14, 2009

V. Adjournment

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

Adjournment at 7:33 pm

Victoria Parmele, Minutes taker