

These minutes were approved at the July 14, 2009 meeting.

**Durham Zoning Board of Adjustment
Tuesday May 12, 2009
Durham Town Hall - Council Chambers
MINUTES**

MEMBERS PRESENT: Chair Jay Gooze; Jerry Gottsacker; Ruth Davis; Carden Welsh; Edmund Harvey

MEMBERS ABSENT: Robbi Woodburn; Sean Starkey

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

I. Call to Order

II. Approval of Agenda

Mr. Harvey was appointed as a voting member for the evening.

Ms. Davis arrived at this time.

Carden Welsh MOVED to approve the Agenda as submitted. Ed Harvey SECONDED the motion, and it PASSED 4-0.

III. Election of Officers

Jerry Gottsacker MOVED to reappoint Jay Gooze as the ZBA Chair, Robbie Woodburn as the ZBA Vice Chair, and Jerry Gottsacker as the ZBA Secretary. Carden Welsh SECONDED the motion, and it PASSED unanimously 4-0.
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Ms. Davis arrived at the meeting.

IV. Public Hearings

- A. PUBLIC HEARING** on a petition submitted by Stephen & Lori Lamb, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-53, of the Zoning Ordinance to use the existing barn as an accessory function room for the Inn for a maximum of 100 people and an **APPLICATION FOR VARIANCE** from Article II, Section 175-7 and Article IX, Section 175-28(D) to add a third floor apartment in the inn to be used as owner's quarters, effectively adding an 11th sleeping room. The property involved is shown on Tax Map 14, Lot 34-1, is located at 90 Bennett Road, and is in the Rural Zoning District.

Mr. Lamb spoke before the Board. He said he and his wife were currently renovating the Inn, and he provided a letter of support from his neighbor Dick Lord. He explained that the first variance request, from Article XII, Section 175-53 of the Zoning Ordinance related to his plan to use the existing barn on the property as it was originally intended to be used, as a function hall of the Inn. He provided pictures of the building from the 1930's, and noted that the barn was located close to the Inn.

He said the barn would be renovated to meet all the required codes, and would be a better facility for function than a temporary tent on the property. He said it would result in less disruption to neighbors from noise impacts, and also said it would be safer for those attending a function.

Mr. Lamb went through the variance criteria. He said there would be no decrease in the value of surrounding properties if the variance was granted because the existing run- down barn would be renovated to meet the code requirements, which would enhance both the aesthetics and safety of the building. He said the use was also in keeping with its historic use as the function room/dance hall for the former Highland House.

He said granting the variance would not be contrary to the public interest since it would benefit the community by attracting business to Durham. He said functions at the Inn would bring people into the area, and said they would stay at other inns and hotels in Durham in addition to the Highland House. He said public support for the renovation of the Inn was evident, and he provided details on this.

Mr. Lamb noted that this was a use variance being requested, and said the Zoning restriction as applied to the property interfered with the reasonable use of the property, considering its unique setting. He said if the variance was denied, the building's value for them would be reduced to storage space. He noted that he and his wife from the beginning had anticipated using the barn as a function hall, which greatly enhanced their ability to rent rooms at the Inn.

He said no fair and substantial relationship existed between the general purposes of the Zoning Ordinance and the specific restriction on the property. He said the barn would provide an historic, permanent and aesthetically appealing structure for functions, and would not detract from the rural character of the area. He noted that the buildings on the site had been part of the local scenery since 1800.

Mr. Lamb said granting the variance would not injure the public or private rights of others. He said the function hall would be renovated to meet all building codes, would provide a level of safety for the public that a tent could not, and would also be more architecturally pleasing to neighbors. He said it would also provide an indoor space for functions, and would contain noise generated by groups that used the facility.

He said that by granting the variance, substantial justice would be done because this would allow the owners to use the existing barn for functions affiliated with the Inn. He said functional tents for individual events would not be needed, and said the function hall would

be a more visually appealing, quieter and safer alternative.

Mr. Lamb said granting the variance would not be contrary to the spirit and intent of the Ordinance, because he and his wife were maintaining the property's rural and historic character. He provided details on the history of the property, and said it had been a part of Durham's rural district's heritage for many years. He said this would not change.

Chair Gooze noted that the variance for the function hall would be addressed separately from the applicant's other variance request. He asked if the function hall had been used up to the 1980's.

Mr. Lamb said Ida Thompson had used the building as a function hall before the 1980's. He said at some point, the building was converted to a dormitory, and he noted that there were sports teams living there at times. He said there were a variety of uses of the building after the 1980's.

Chair Gooze asked about parking, and Mr. Lamb explained that there would be a shuttle for off site parking if needed, so people wouldn't have to drive if they were staying overnight at facilities other than the Inn. Chair Gooze asked if local streets would be utilized for parking.

Mr. Lamb said the only road within easy walking distance was Bennett Road, and said the intention was to not allow parking on it.

Mr. Welsh asked where people would park for weddings, and Mr. Lamb said there were a number of parking spaces on the site.

Laurie Lamb said they would have parking for about 20 cars, but would also need offsite parking. She explained that when they bought the property from UNH, it was noted that there was an air monitoring station behind the Inn. She said she and Mr. Lamb had come to an agreement with UNH that there wouldn't be more than a certain number of parking spaces at the Inn, in order to limit cars in the area because of the air monitoring taking place nearby. She said this was why offsite parking was needed.

Chair Gooze asked if the Planning Board had approved the application concerning the Inn.

Mr. Lamb said yes, and explained that after this, when the plans were submitted to Mr. Johnson, it was brought to his attention that the variance would be needed for the building.

Mr. Gottsacker received clarification that the offsite parking area would not be a UNH parking area.

Mr. Lamb said the offsite parking area would alleviate the parking issue, and also would help to ensure the safety of people who were having a good time at the function.

Mr. Johnson and Mr. Lamb noted the Police Department would keep an eye on the

parking on Bennett Road.

Mr. Welsh pointed out that there were six parking spots at Packers Falls. He asked if the barn would be heated, and Mr. Lamb said yes. He said it needed a complete upgrade, and said it would have all the necessary fire protection features.

Mr. Welsh asked if alcohol would be served and Mr. Lamb said that would depend on the function.

Mr. Welsh asked if the drive was challenged in terms of runoff.

Mr. Lamb said yes, and described how swales would be installed every 20 ft coming down the driveway. He said he had spoken with the Town Engineer on this, and the design had been approved. He said this and other issues concerning the property had been reviewed with the Planning Board.

Ms. Davis asked Mr. Lamb whether, if he didn't have the barn, he would still have functions at the Inn, using a tent.

Mr. Lamb said yes, tents would be used instead. But he noted that there seemed to be a lot of interest in preserving the barn structure. He also said all of the setbacks were maintained with this building.

Mr. Welsh asked Mr. Lamb how he had come up with the number 100 people.

Mr. Johnson said it was based on the square footage and occupant load. He said 100 was probably the maximum number.

Mr. Lamb said it had been an oversight on his part in not realizing that the function hall wasn't an accessory structure. But he said he had planned to use it as a function hall all along.

Chair Gooze asked if any members of the public wished to speak for or against the application. There was no response. He noted the letter of support from abutter Richard Lord.

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

Chair Gooze asked if any Board members felt that the application did not meet any of the criteria, as presented by the applicant.

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

Jerry Gottsacker MOVED to approve the APPLICATION FOR VARIANCE from Article XII, Section 175-53, of the Zoning Ordinance to use the existing barn as an

accessory function room for the Inn for a maximum of 100 people, for the property shown on Tax Map 14, Lot 34-1, located at 90 Bennett Road in the Rural Zoning District.

Mr. Gottsacker said he thought it might not be wise to put the 100 figure in the motion.

Chair Gooze noted that this had been publicized, and said if the applicants wanted more than this, they would have to come back.

Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze re-opened the public hearing for the second variance request, involving use of the third floor apartment as an eleventh sleeping room.

Mr. Lamb said with the original variance, they had been allowed to have 10 rental rooms for the Inn. He said he and his wife had anticipated living in the owner's apartment they were going to build in the attic, which was very substantial, and didn't think that included the bedroom in the owner's apartment. He said it was recently clarified that this would be another bedroom, and that they would therefore have to come before the Board for a variance.

He said they had always expected to use it as the owner's apartment, and to live at the Inn. He said he was here now to see if it was ok to build this apartment. He noted that it had been framed in, and that Mr. Johnson and the Fire Department had looked at it.

Mr. Lamb reviewed how the variance criteria were met. He said if the variance was granted, there would be no decrease in the value of surrounding properties because no changes would be made to the existing house. He said the apartment would be located in the existing attic.

He said granting the variance would not be contrary to the public interest because having the owners on site would ensure full time supervision of the property.

Mr. Lamb noted that this was an area variance, and said denial of the variance would result in unnecessary hardship because it would be difficult to ensure the safety of guests, neighbors and property without living at the Inn. He said it would also allow himself and his wife to use the existing building to its full capacity. He said the benefits being sought through the variance were being able to live on the premises, providing 24 hour supervision of the Inn for safety of guests, neighbors and property, as well as the opportunity to run a financially viable inn.

He said by granting the variance, substantial justice would be done because it would enable them to fully supervise the property for the good of everyone, while also allowing them to maintain a viable business.

Mr. Lamb said granting the variance would not be contrary to the spirit and intent of the Ordinance because the owners' quarters would be contained in the existing attic, so no alteration to the exterior of the building would be needed. He said this would maintain the

property's rural historic character, and would also ensure that the property would be fully supervised.

Chair Gooze asked Mr. Lamb and his wife where they lived now.

Mr. Lamb said they lived at another house on Bennett Road, but planned to live only at the Inn in the future.

Mr. Welsh asked if it would be all right to modify the motion to say "...apartment in the inn to be used exclusively as owner's quarters."

There was discussion, and Mr. Lamb said he was fine with this.

Chair Gooze asked if there were any members of the public who wished to speak for or against the application. There was no response. He noted the letter from abutter Richard Lord, which spoke in favor of the variance application.

Carden Welsh MOVED to close the Public Hearing. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

After brief discussion, it was determined that Board members had no problems in terms of whether the variance criteria were met.

Carden Welsh MOVED to approve the APPLICATION FOR VARIANCE from Article II, Section 175-7 and Article IX, Section 175-28(D) to add a third floor apartment in the inn, effectively adding an 11th sleeping room for the property shown on Tax Map 14, Lot 34-1, located at 90 Bennett Road in the Rural Zoning District. Jerry Gottsacker SECONDED the motion.

Chair Gooze noted the requirement that the Inn be owner occupied, and therefore questioned whether the language "exclusively as owner's quarters" was needed.

Mr. Welsh said the reason for adding this was in case the property ever became a student rental building. He said he would like to be sure it would be owner occupied.

It was noted that the applicants had received a Conditional Use permit from the Planning Board for the Inn, which meant that whoever owned the property in the future would have to come back to that Board in the future, if the use changed.

There was discussion on this.

Chair Gooze re-opened the Public Hearing to ask Mr. Lamb if he had any problem with the proposed language "exclusively as owner's quarters".

Mr. Lamb said he didn't mind this, and said that was their intent. He noted that if he and his wife went on vacation, someone else would temporarily be living in the apartment to

watch over the Inn.

Chair Gooze closed the Public Hearing.

The amended motion read as follows:

Carden Welsh MOVED to approve the APPLICATION FOR VARIANCE from Article II, Section 175-7 and Article IX, Section 175-28(D) to add a third floor apartment in the inn to be used exclusively as owner's quarters, effectively adding an 11th sleeping room for the property shown on Tax Map 14, Lot 34-1, located at 90 Bennett Road in the Rural Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

- B. PUBLIC HEARING** on a petition submitted by St. George's Episcopal Church, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Article XXI, Section 175-112 for the construction of an improved and legal parking lot, new landscaping, a new handicap accessible entry, and a reconstructed and modestly enlarged connector between the function hall and the education wing. The property involved is shown on Tax Map 4, Lot 54-2, is located at 1 Park Court, and is in the Church Hill Zoning District.

Robert Battles, with Donahue, Tucker and Ciandella, noted that architect Bill Schoonmaker had submitted the variance application. He also said the plan had been done a few years back by James Vera Surveying, and the engineering on the plan was done by Eric Weinrub of Althus Engineering. He said these people were unable to attend the meeting, and said Father Bradley could attest to his authority to speak on behalf of the Church.

He said one variance being asked for was from XII, Section 175-54, the five ft setback requirement for the Church Hill District. He said a second variance requested was from Article XX, Section 175-111, the parking requirements.

There was discussion that the Agenda had incorrectly stated that Section 175-112 was involved, and it was also noted to Attorney Battles that the parking standards involved were actually found under Article XXI, Section 175-111.

Regarding the first variance request, Attorney Battles said the existing structure was 6,234 sf, and the proposal was to demolish an existing section of it between the Dallas Hall facility and the existing educational wing, and enlarge it to the east on the side of the parking area. He said as part of this, handicap accessibility would be provided, including a handicap accessible bathroom.

He said the educational wing was a pre-existing non-conforming use, and encroached over the five ft setback. He said they weren't proposing to change the location of the structure, but would maintain it at the 4.5 ft encroachment. But he explained that Code Administrator/Enforcement Officer Tom Johnson had said they should request a variance because the structure was being renovated.

Attorney Battles noted that just south of the area involved, there was a small 50 ft section of the building that would be taken down. He said it encroached slightly into the setback, and provided details on this. He said after this section was taken out, the plan was to expand that area out 130 ft in the direction of the parking lot. He said this was what the request for variance consisted of.

For purposes of clarification, he explained that the plan was also to reconfigure what was technically the rear entry to the sanctuary, but was actually the main entry because most people entered the building from the parking area, not from the street. He said this area was currently not handicap accessible, and said the addition would add 66 sf to the existing structure. He said the applicant would also take the section in front of the parking area, adjacent to the back section of the church, and put in 975 sf of green area as a buffer and landscaping area.

There was discussion about the use of the word “legal” in the application, and Attorney Battles said the better term was “more compliant”.

Chair Gooze asked Attorney Battles if he felt these two variance requests were intertwined, and therefore should be handled together.

Attorney Battles said absolutely. He said the second variance request was in regard to the proposed reconfiguration of the parking area, which was currently not compliant. He said according to Section 175-111, there was currently a sufficient number of parking spaces, whether calculated according to the number of seats in the sanctuary, or the square footage of that area (1105).

He noted that there was some question about whether the entire square footage of the building had to be taken into consideration, but said that seemed unreasonable, because it would require that the Church had to have 158 parking spaces. He said it was important to keep in mind that at no time were all of the parts of the building utilized at the same time. He said based on his interpretation of the Zoning Ordinance, if the Church had 28 parking spaces, it was in compliance with the Ordinance.

Attorney Battles said in order to meet the requirement that there be 9 ft x 18 ft parking spaces, and to make the configuration on a one way basis more accessible, the applicant wanted to increase the existing aisle width from 14 ft, which was not compliant, to 18 ft, which was still not compliant with the 22 ft requirement, but was more compliant than the current 14 ft aisle width.

He said the only fixed seating in the building was the sanctuary, and said this area had been used in the calculation of the number of parking spaces that were required. He said he was noting this now because he didn't want there to be any question about this when the Church went before the Planning Board.

There was discussion on the requirements in the Zoning Ordinance concerning the number of parking spaces for a church.

Attorney Battles reviewed how the criteria were met for the variance requested from Article XII, Section 175-54 (Dimensional Standards - sideyard setbacks). He said the proposed use would not diminish the surrounding property values because no change was being made to the existing footprint, which was currently not compliant. He also noted that the Church would be building a fence between it and the property to the west, which would completely eliminate the view of the parking lot from the apartment building.

He said granting the variance would benefit the public interest because reconstruction of the parking lot would address long standing issues between the Church and its neighbors. He also noted that construction of the new entry and connector would provide handicap accessibility to the sanctuary and to the function hall from the parking lot side where none now existed.

He said not granting the variances would be an unnecessary hardship in trying to make some changes to the building, given the special conditions on the site. He also said granting the variance would do substantial justice because the work proposed would make the building more conforming, not less conforming.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said the encroachment was pre-existing, and amounted to six inches.

Attorney Battles next reviewed how the criteria were met for the variance requested from Article XXI, Section 175-111 - (Off-street Parking - General Requirements).

Attorney Battles first noted that there was a long standing problem with drainage on the site. He said in high rain events, the water backed up, which created flooding at the street intersection. He said the Public Works Department had discussed this with the Church, and had recommended a number of possible ways to resolve this.

He said the Church had been told that increasing the imperviousness on the site, by paving any of the area on the back portion of the property adjacent to the parsonage that currently had trees and grass would make the situation worse. He said the Church had therefore tried to limit the imperviousness to just what was necessary under the Ordinance. He said another suggestion was to install a rain garden, but said this hadn't been designed yet. He summarized that an increase in the Church's parking area would be a hardship for the entire neighborhood, not just the Church.

Attorney Battles said it would be substantial justice to allow the 18 ft aisle width, noting the Ordinance use to allow a 14 ft aisle width for a one way parking area. He said the 18 ft width would be more compliant than the current 14 ft width.

He said granting the variance for the parking would be within the spirit and intent of the Ordinance, because having 9 ft by 18 ft parking spaces, and an 18 ft aisle width would make the parking area more compliant with the Ordinance. He also said that having all traffic in the parking area go in a one way direction wasn't required by the Ordinance, but was a part of good planning. In answer to a question from Ms. Davis, he said there would be no change

in the amount of encroachment with the parking variance that was requested.

Mr. Gottsacker said he assumed that the existing parking area would not be re-paved.

Father Bradley explained that the entire parking area needed to be re-graded to address the drainage problems, and would be repaved.

Mr. Gottsacker asked if pervious asphalt had been considered for this, given the drainage issues on the site and in the area.

Father Bradley said this has been considered, but said it was felt that given the number of trees on the property, pervious pavement on that site would probably fail over time because of debris settling into it. He said traditional paving was recommended instead, but also with a rain garden, improved drainage, and the buffer area.

Mr. Welsh asked if there was a variance required for the fence.

There was discussion that the fence would be slightly under 6 ft., so a variance was not required.

Mr. Welsh asked if the drainage that had been described was definitely in the plan.

Attorney Battles said the drainage plan had not been completed, but said the Church would work with the Public Works Department to come up with a plan that was mutually beneficial.

Mr. Welsh asked if dropping down from 48 parking spaces to the proposed 37 spaces would be a problem for the Church.

Attorney Battles said he only thought this would be a problem on Easter. But he noted that there were three services on Easter, which pretty much alleviated that problem.

Father Bradley said some of the currently existing 46 spaces were not very usable. He said 37 usable spaces was more than enough for the Church's needs, and said multiple services on Sunday helped with this. He also said that when the drainage down the driveway was addressed, he expected that there could be some stacked parking there. He said there would probably be more usable spaces than there were now.

There was discussion on whether there was an issue regarding the number of parking spaces. Attorney Battles noted again that he had brought this up to put it in the record that it was not a problem.

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

Carden Welsh MOVED to close the Public Hearing. Ed Harvey SECONDED the

motion, and it PASSED unanimously 5-0.

The Board reviewed the variance criteria. Board members agreed that granting the variance would not diminish the value of surrounding properties.

Chair Gooze said the public interest and the spirit and intent of the Ordinance were now thought to be intertwined with the general welfare of the community. He said the question was whether a half of a foot of encroachment, and the parking as proposed would affect anything.

Mr. Gottsacker stated for the record that the parking issue the ZBA was addressing here was the aisle width.

The Board agreed that Article XXI, Section 175-113 referred to “fixed seating” for churches, so the number of parking spaces was not an issue for the Board to consider.

The Board agreed that not granting the variance would be an unnecessary hardship given the special conditions of the property, and that there was no other feasible way to do what the applicant wanted to do. They also agreed that there would be substantial justice in granting the variance, given that the drainage and accessibility issues would be solved.

Chair Gooze noted that there were no abutters present to speak against the application. He also said he liked the idea of the parking lot becoming more compliant.

Ms. Davis said she agreed that the variance criteria were met. She noted that a special condition was that if the applicant had to meet the aisle width, there would have to be paving into the grassy area in the back. She said this might be something to consider if there were no drainage issues there, but said there were in fact drainage issues.

Chair Gooze noted that maintaining the grassy area in the back protected the neighbors.

Mr. Gottsacker summarized that the variance application came down to being a setback issue and an aisle width issue.

Jerry Gottsacker MOVED to allow the Variance for a continuing 6 inch encroachment in the sideyard setback (Article XII, Section 175-54), at the St. George’s Episcopal Church property located at 1 Park Court in the Church Hill District, and also that we allow for the reduced aisle width of 18 ft. (Article XXI, Section 175-111). Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

C. PUBLIC HEARING on a petition submitted by Durham Unitarian Universalist Fellowship, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IX, Section 175-30(A, C & D(1)), Article XII, Section 175-54 and Article XXI, Section 175-113 for the expansion of an existing non-conforming building. The property involved is shown on Tax Map 4, Lot 17-0, is located at 20 Madbury Road, and is in the Professional Office Zoning District.

Mike Sievert of MJS Engineering represented the applicant, and said the purpose of the project, which involved replacing the existing garage with a new structure in order to provide a new assembly space, accessible entrance and expanded exterior deck, was to accommodate the growing congregation at the Church.

He said the property was surrounded by student housing and commercial uses, and said the existing building there was for church uses and professional offices. He said the building violated the front setback on Woodman Road, and also slightly violated the 75 ft wetland buffer. He explained that the proposed expansion would cause the setbacks to be further violated, which was why the variances were being requested.

Mr. Sievert said the proposal was to remove the existing garage to the east side of the octagonal portion of the building, and also to remove the breezeway between the existing building and the garage. He said the new building footprint expansion would occur on the same location, and also said a deck would be added onto the existing deck in the back.

He provided details on proposed parking, in the event that accessibility was needed to the lower level of the building. He said a ramp sidewalk would perhaps provide pedestrian access down to the lower level, and he provided details on this. He said the design on this wasn't finalized yet, and might or might not be needed. He noted that if the parking area was created, it could possibly be a pervious surface.

Mr. Sievert explained in some detail the need for a variance from Article IX, Section 175-30(A, C & D(1), regarding nonconformance. He said all three provisions related to the same thing; the further expansion of a nonconforming building. He said the existing building took up most of the buildable area on the lot right now, and actually went outside of it on the Woodman Road side.

He said for purposes of reviewing how the variance criteria were met with this application, the exceedance of setbacks as indicated by Article IX, Section 175-30(A, C & D(1) and Article XII, Section-175-54 would be grouped together as one variance request.

Mr. Sievert said granting the variance would not decrease the value of surrounding properties, noting that the use was already established, and wouldn't change. He also said the expansion would add value to the property.

He said granting the variance would not be contrary to the public interest. He said they were adding space to a property that was already used by the church, and were also making it more accessible. He said they were leaving the buffer there, and said any of the roof runoff and runoff from the ramp could potentially be dealt with prior to release to the wetland, as part of getting a conditional use permit from the Planning Board.

He said buffer at its lowest point would be cut down to 40 ft, and noted that the property to the south was paved and came within 12 ft of the wetland. He said he felt the Church's encroachment would be far less than anything existing there now, and noted that the wooded buffer would remain.

Regarding the hardship criterion, Mr. Sievert said the special conditions of the property were the size of the lot, the limited amount of buildable area available there, and the fact that the existing building took up all of the buildable area already. He said the setbacks weren't exceeded to a great extent, and said if the expansion was done to the southeast, this would encroach more into the wetland buffer.

He said there was no other possible way to do the expansion. He said in order to get the same benefits from a larger facility, the Church would have to move.

Mr. Sievert said substantial justice would be done in granting the variance because the established church community would be able to expand at its current facility without incurring additional costs of relocating to a new facility. .

He said granting the variance would not be against the spirit and intent of the Zoning Ordinance. He said the use already existed on this property and had for fifty years without negatively impacting the abutters. He said this use would not change, and said the expansion would allow the Church to handle its needs.

He said the intent of the property setbacks was to separate buildings, and provide pedestrian access to and from the building. He said the setback on Madbury Road was met, and he noted that there was pedestrian access on Woodman Road. He said he didn't feel that what was proposed would encroach on any neighbors. He also said there was only a minor encroachment of the wetland setback, and noted that the wooded area would remain.

Mr. Sievert said the second variance requested was from Article XXI, Section 175-113 - Required Parking. He said this was another area variance request because they couldn't fit the parking on the site. He said the applicant was asking for a variance from the required 31 parking spaces. He explained that the current parking lot on the property had 10 parking spaces, and said these would be maintained for the professional office space in the building.

Mr. Gottsacker asked how the deck would extend out, and Mr. Sievert provided details on this.

Nick Isaak, one of the architects for the project, spoke before the Board. He said the existing church space could fit 40-50 people, and said the goal was to be able to accommodate 75-100 people for a church service, and to use the existing church space as more of a support space. It was determined that the existing space for the assembly area was 610 sf, and said what was proposed was 1,000 sf.

Mr. Gottsacker said asking for a variance from having to have 21 additional spaces sounded like a lot.

Mr. Sievert said he would go through the criteria for this variance request. He said there would be no decrease in the value of surrounding properties in granting the variance. He said the applicant felt there would be a decrease in the value of surrounding properties if the 21 spaces were added, explaining that this would mean they would have to remove trees, move

closer to the wetlands, encroach on setbacks, etc.

He said what was there now was already adequate for parking, noting that the Church was used primarily on Sunday. He said there was an agreement with the Police Department that people could park on Woodman Road on Sunday, and also said there was parking available in nearby parking lots. He also said hopefully some people would either walk or bike to the Church.

Mr. Sievert said granting the variance would not be contrary to the public interest because there was already adequate parking nearby. He said not providing additional parking onsite minimized the negative impact to the environment and adjacent wetland.

He said denial of the variance would result in unnecessary hardship given the special conditions of the property. He explained that the property configuration along with setbacks did not allow the applicant to provide the required parking, and he provided details on this. He also noted that the parking was only required one day per week for a few hours, and said there would be an exorbitant financial and environmental cost if the parking had to be provided. He said the only reasonably feasible solution was to allow parking offsite, where it existed today. He also noted that providing parking within the frontyard setback along Madbury Road wouldn't be a good idea.

Mr. Sievert said substantial justice would be done in granting the variance because it would allow the expansion of the existing church community in its current location. He said there would be minimal use of the property, and he provided details on this.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because the parking was there for the daily business use, and they didn't want to put the additional parking in the front yard setback, or within the wetland setback in back.

Mr. Gottsacker said he had been concerned about the idea of granting a variance for 21 parking spaces, but said he had realized that with the Professional Office District, the assumption was that businesses would be open 5 days a week, with a constant flow of customers. But he said that would not be the case with the Church, and he also noted that the Store 24 Parking Lot and the Pettee Brook parking lot were nearby.

Mr. Sievert said the Catholic Church, which had no parking, used Cowell Drive, the Post Office lot, the Store 24 lot, and the Pettee Brook lot for parking. He said there didn't appear to be a conflict concerning this.

Mr. Gottsacker agreed that a lot of people walked to the Church.

Mr. Welsh said it looked like there were more than 10 spaces on the property already.

Mr. Sievert said there were more spaces if one considered stacked vehicles, but he said the non-legal spaces hadn't been counted. He said he suspected that another 5-6 cars could fit on the site, and he provided details on this.

Chair Gooze asked Mr. Johnson whether in that district, if the property in question wasn't used as a Church, something else could go there legally without the parking that wouldn't subsequently have to come before any local boards. He asked if the variance could be tied to the church use.

Mr. Johnson said the variance would be tied into the church use. He said if there were a change of use, a site plan would be needed, and the parking issue would have to be addressed. There was discussion on this.

Mr. Welsh said he had a lot of concerns based on the wetlands. He said even though there was already parking 12 feet away, this didn't mean there shouldn't be concern about impacting the wetlands. He asked what would be under the deck, and Mr. Sievert said it would be a wooden deck, and would be pervious.

Mr. Isaak provided details on the deck.

Mr. Welsh asked why people with disabilities couldn't come into the Church from up above.

Mr. Isaak said they could, but said this would require an elevator. He said the stair design would work better considering the rest of the design for the expansion.

Mr. Welsh said he thought the applicant should consider removing the potential basement access from the variance request, which was not necessary now for the variance.

Mr. Sievert said he thought the applicant might be ok with this. He also said one option would be to require that the area be pervious. He noted that the applicant would need to get a conditional use permit from the Planning Board because of the wetland.

Chair Gooze said this was something for the Planning Board to consider. But he said he agreed with Mr. Welsh that taking the potential basement access out of the variance request might make sense.

Mr. Welsh noted that the applicant didn't have plans ready yet to address drainage issues.

Mr. Sievert said it had been a choice between an elevator and a ramp, and said the ramp was a cheaper option. He said the applicant was fine with removing the basement access from the variance request, and could get feedback from the Planning Board on this issue.

Ms. Davis received clarification that the closest point of the new building footprint to the wetland, if the potential basement access was removed from the plan, would be 54 ft.

Mr. Welsh asked what the plan was to control runoff.

Mr. Sievert said rainwater would be collected in gutters or a drip edge area. He said in order not to increase the runoff from the site, they would have to do a rain garden or small detention area. He noted again that a conditional use permit was required because of the

wetland, so these things would be considered at that level of local review.

Chair Gooze asked what kind of wetland area it was.

Mr. Sievert said according to NH Soil Consultants, it was a disturbed area that was seasonally wet.

Mr. Johnson noted that the property was about 8 ft above the wetland, so drainage from the site would flow toward the wetland.

There was further discussion that the Planning Board would be able to address the drainage issue as part of the conditional use process.

Mr. Johnson noted that according to Section 175-60 B 8, the applicant could do up to 200 sf of raised deck, in the wetland conservation district area. There was discussion.

Chair Gooze asked if any members of the public wished to speak in favor of the application.

Larry Vogel, Durham, said the Church was fortunate that it was growing, and that some of the new members were young families. He said the expansion was therefore needed, and said church members wanted it be a very attractive, green structure. He said the design proposed was the only way they could expand the building and also stay in downtown Durham so that people could walk to church, and they could attract more UNH students. He said church members felt that once the expansion was done, this would enhance the property values of neighbors.

Chair Gooze asked others in the audience who supported the variance requests to raise their hands, and he counted four hands.

Mr. Welsh asked what was meant by a green building in this context.

Mr. Vogel said they would make every effort to make sure the expansion would minimize its carbon footprint. He said there would be a lot of windows, changes to the existing fixtures, etc. He said there would be a lot of landscaping, and said the goal was to make something that would enhance the neighborhood.

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

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

Chair Gooze said he felt that the wetland area was the only hang-up, and said otherwise, he thought the variance criteria were met.

Mr. Welsh said he was a little concerned about drainage issues that would be created by the bigger footprint within the wetland setback area, but said the applicant would have to come

up with a plan to alleviate that. But he said he would like the applicant to leave the yellow area on the plan (the potential basement access area) out of the variance request for now because there was no specific plan for it. He said he didn't feel it was onerous to ask Church members to come back to the ZBA concerning this area, and said it would be good for the Board to be able to see an actual plan before considering this.

Mr. Gottsacker agreed.

Ms. Davis said the wetland was the point of concern, but she said it wasn't like this was going to be a housing complex, where there would be a lot of activity on the area sloping down to the wetland. She said she didn't see a problem with the proposed disturbance, and said she also assumed that there would be an engineering design that would address the drainage issue.

She said she didn't feel it was necessary to postpone approving the ramp, and suggested that the ZBA could say that the ramp would have to be designed with runoff in mind. She said she thought the wetland could be protected, and said this was a nice proposal, which met the variance criteria.

There was discussion that the ZBA could include in its motion a request that the Planning Board pay particular attention to the drainage issue given the steep slope of the property relative to the wetland.

Carden Welsh MOVED to approve an Application submitted by the Durham Unitarian Universalist Church for Variances from Article IX, Section 175-30(A, C & D(1)), Article XII, Section 175-54, and Article XXI, Section 175-113 for the expansion of an existing non-conforming building as requested, excluding the portion of the variance requested covering the potential basement access area, and with the request that the Planning Board pay particular attention to the drainage, given the steep slope into the wetlands. The property involved is located at 20 Madbury Road, in the Professional Office Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

- D. PUBLIC HEARING** on a petition submitted by Ionian Properties LLC, Dover, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Sections 175-41(F)(1&2) and 175-53 and from Article XIII, Section 175-62 for the redevelopment of the parcel with a new 4-story, mixed use, commercial/residential building. The property involved is shown on Tax Map 2, Lot 12-11, is located at 10 Pettee Brook Lane, and is in the Central Business Zoning District.

Mr. Sievert said the applicant was requesting a use variance as well as two area variances. He described the site at present, which currently had a commercial office on the ground floor and a student housing rental property. He noted the proximity of the municipal parking lot on Pettee Brook Lane. He said the building on the lot was within 53 ft of Pettee Brook, and said there was about 10,000 sf of impervious area there today.

He said the proposed development would involve a boundary line adjustment with the

Town, and said this process was in the works. He explained that the Town used an adjacent parcel minimally for parking at present, and had used it for snow storage in the past. He also noted that a sewer line crossed that parcel, and that there was a drain line from the parking lot to Pettee Brook. He said in addition, there was a pedestrian bridge on the east corner of the lot that the Town would like to retain.

Mr. Sievert said the proposal was to build a 4-story, mixed-use building, and said the final design for the building would be similar to what the Board saw right now. He said there was proposed parking under the building, with access from Pettee Brook Lane into it. He said the level up from that would be the commercial space as well as two residential spaces. He said the third and fourth levels would be residential.

He said the benefits and reason for the land transfer with the Town would become more apparent. He said the impervious area now was within 25 ft of the Brook. He said a large part of this would be reduced by acquiring the parcel from the Town and removing most of the paving. He explained that this area would be needed for drainage, stormwater treatment, and erosion control.

Mr. Sievert said there was the potential for the building to be extended back into the now Town-owned area on the upper floors, but not on the footprint, so it wouldn't be impervious area. He said the applicant would be requesting up to 20 ft for this. He said the buffer would be improved by making it more pervious. He said even if the extension off the back was included, the new building would be at least 40 ft from the wetland.

He said the reason for the building extension was that it would mean the allowable density would increase from 14 apartments to 16-17 apartments. He also said a reason for raising this up was the access needed by the Town to get onto the property, for utilities, snow storage, etc.

Chair Gooze asked what would replace the impervious pavement.

Mr. Sievert said it would either be grass or a pervious hard surface. He said there would be a slight increase in the impervious area for the project, from approximately 10,000 sf to about 11,000 sf. But he said a benefit was that a lot of the pavement near the brook would be removed.

Chair Gooze asked if there was a variance request related to the increase in imperviousness, and Mr. Sievert said yes, indirectly. He provided some details on this.

Mr. Johnson explained that 100% impervious coverage was allowed within the CBD. But he said it was a concern because of the wetland.

Mr. Sievert noted that a Conditional Use permit would need to be obtained from the Planning Board because of the wetland issue. He then asked if he could go through the use variance first, explaining that it might impact one of the area variances if the Board

didn't grant it.

Chair Gooze asked Mr. Sievert to go through the use variance, and the Board could then decide where to go from there.

Mr. Sievert said the use variance was required because the applicant wanted to have two accessible residential dwelling units on the second floor of the building, as part of the mixed use building. He showed how the accessibility would occur on the site.

He reviewed the criteria for the variance requested from Article XII, Section 175-53, Table of Land Uses, Part VII A.. He said there would be no decrease in the value of surrounding properties if the variance were granted. He said the property was completely surrounded by UNH and Town owned properties, which were a mix of administrative offices, residential units and surface parking facilities. He said the proposal would improve upon the existing use of the lot while providing an improved building that would increase the taxable value of the property.

Mr. Sievert said granting the variance would not be contrary to the public interest because the proposed building would draw student housing into the Downtown and campus area, thus reducing the student housing needs at the outer limits of Town. He also said the inclusion of accessible residential units on the second floor would meet the general standards of the Fair Housing Act.

He said denial of the variance would result in unnecessary hardship because the zoning restriction as applied to the property interfered with the reasonable use of the property, considering its unique setting in the environment. He said the existing contours of the property offered a unique opportunity to provide at grade entrances from both frontages. He said the redevelopment proposal built upon this opportunity by providing a covered first floor parking area within the building, along with the other uses.

Mr. Sievert said a fair and substantial relationship couldn't be made between the general purpose of the Zoning Ordinance and the specific restriction on the property. He said the proposed mixed use commercial/residential building would protect the public health, safety, convenience, and general welfare of residents by drawing residents into the downtown from the outlying residential neighborhoods while achieving the Town's economic development goals of providing quality residential units downtown, which would support the pedestrian downtown environment.

He said the proposed 4-story mixed-use building would not injure the public or private rights of others.

Mr. Sievert said substantial justice would be done by granting the variance because it would allow for a new updated code compliant building on the property, and would provide accessible housing units via an at grade access from Rosemary Lane.

He said granting the variance would not be contrary to the spirit and intent of the

Ordinance because the mixed commercial/residential use of the property would meet key aspects of the purpose of the Central Business District, by allowing fuller utilization of the property. He said it would provide desirable residential accommodation, including the accessible units, while accounting for the property's unique location within the district.

The Board agreed that it would vote on the use variance first.

Mr. Welsh determined that there would be 3 bedrooms for each of the two proposed residential apartments on the second floor. He said these seemed large and awfully nice for student apartments.

Mr. Johnson that this was typical of fully accessible units, which had to be this big for various reasons. Mr. Sievert provided details on the fact these apartments would be fully accessible.

Mr. Welsh asked if the units were aimed at students.

Mr. Sievert said they were, but said someone other than students could rent them as well.

Mr. Welsh asked if some of the parking spaces in the parking area underneath the building would be reserved for accessibility.

Mr. Sievert said parking for accessibility would be available on the site, but not there. He showed the location for the accessible parking, and noted that it wouldn't necessarily be for students, but would be available to students who were renting, and would be very much available for the commercial tenants.

In answer to a question from Mr. Welsh, Mr. Sievert said the parking didn't come automatically with the rental of an accessible unit.

Mr. Welsh asked if a parking variance would be needed, and Mr. Sievert said no, explaining along with Mr. Johnson that in reviewing the plan, the Planning Board could allow a reduction in parking, and as part of this would require a one time payment to the Town in lieu of parking.

There was discussion about the fact that the Zoning Ordinance had changed so that the variance for a reduction in parking was no longer required in the Central Business District.

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

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

Chair Gooze said he thought what the applicant had proposed was an appropriate use for

this property, and said he couldn't argue with anything that had been put forward. He said he believed the application met all the variance criteria, and also said it would be good for the Town if these accessible units were provided. He said he had no problem with granting the variance.

Mr. Gottsacker agreed.

Chair Gooze MOVED to approve an Application submitted by Ionian Properties, LLC for Variance from Article XII, Section 175-53, Table of Land Uses, Part VII A of the Zoning Ordinance to permit the location of two accessible residential units on the second floor of the proposed 4-story mixed-use commercial/ residential building, because it meets all five variance criteria per the Board's discussion. The property is located at 10 Pettee Brook Lane, in the Central Business Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

The Board next addressed the area variances that were proposed.

Mr. Sievert first spoke about the variance requested from Article XII, Section 175-41 (F) (1 & 2). He said these provisions didn't allow parking or new vehicular access between the front of the building and the front property line. He said in this case, there were two fronts because there was a corner lot, so both had to be counted.

He said the issue was on Rosemary Lane, where the parking in the front was needed, in order to be able to provide accessibility. He explained that this was the issue that had tied in with the use variance, and said it fit well with it.

Chair Gooze asked why 175-41(F)(2) was needed, concerning vehicular access between the front building wall and the front property line of the building.

Mr. Johnson said it was a corner lot, where the front of the building was on Rosemary Lane, but the building also fronted on Pettee Brook Lane.

Mr. Sievert said the applicant was saying that Pettee Brook Lane was the more important road, but this was a corner lot. He said his question to Mr. Johnson had been why 2 was needed. He said he read it as saying an access couldn't pass between the front building and the front property line. But he said to be safe, it was being requested.

He said if the variance was granted, there would be no decrease in the value of surrounding properties because the property was completely surrounded by UNH and Town owned properties, which were a mix of offices, residential units and surface parking facilities. He said the proposal would improve upon the existing use of this property by providing a code-conforming building.

He also said the redevelopment proposal sought to minimize the proximity of the impervious footprint adjacent to nearby wetlands, compared to the existing conditions.

Chair Gooze asked if it was part of the proposal that there would be accessible parking at the lower level.

Mr. Sievert said yes, that was where it was proposed. He said it would be fully accessible, with a van accessible aisle, and a fully accessible sidewalk. He noted that the building would overhang there, which would better in terms of maintenance.

Mr. Sievert said granting the variance would not be contrary to the public interest because the proposed building would draw student housing into the Downtown, and reduce the student housing needs at the outer limits of the Town.

He said denial of the variance application would result in unnecessary hardship, given the special conditions of the property. He said the land contours of the property offered it a unique opportunity to provide at grade entrances from both street frontages., and would support the accessible units and the accessible parking spaces for these units.

He said an alternative parking approach would result in a significant decrease in the building footprint while creating more open paved areas. He also said the significant drop-off in elevation from Rosemary Lane would require significant amounts of fill to be brought in. He said the other alternative might be to install an elevator, which would be a cost burden, and would also detract from the available space for occupancy.

Mr. Sievert said granting the variance would result in substantial justice because it would allow for the location of accessible parking spaces at the closest proximity possible to the proposed residential units, the commercial space and the downtown area.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because the redevelopment project would provide for necessary accessible residential units and accessible commercial spaces in a manner that was consistent with the spirit and intent of the Ordinance.

There was discussion that the other area variance, involving the wetland buffer issue, needed to be considered as part of this.

Chair Gooze asked where the bump-out came into this.

Mr. Sievert said the applicant wouldn't be building within the 25 ft setback from Pettee Brook, and that it wouldn't be disturbed. He said there was currently 3,900 sf encroaching on the wetland buffer area, and said the redevelopment would remove the existing pavement and use some pervious pavement back there. He said this area would be used for stormwater.

He said the encroachment into the wetland buffer after the redevelopment of the site would be 3,850 sf, but said it would be further away. He noted that there would be an increase in runoff as a result of the development, and he explained that this runoff would have to be collected and treated.

Mr. Sievert said the applicant was requesting that they wouldn't exceed 20 ft of additional building on the back. He said two advantages were that the imperviousness wouldn't be extended into the area, plus it gave the Town continued access to this area for snow storage, etc. he said 20 ft x 50 ft came to 2,000-3,000 sf of space for the whole building.

He reviewed how the variance criteria were met. He said there would be no decrease in the value of surrounding properties because in addition to improving upon the existing mixed commercial/residential use of the property, the proposal sought to minimize the proximity of impervious footprint adjacent to nearby wetlands, as compared to the existing conditions.

Mr. Sievert said granting the variance would not be contrary to the public interest because it would improve the separation between the proposed building and the edge of the wetland as compared to the existing separation, thereby resulting in a lesser non-conformance of these setbacks. He said it would also improve the quality of stormwater runoff generated from this property through the implementation of a \surface storm water treatment and temporary storage system, which would be designed and approved in accordance with the CUP criteria.

Mr. Sievert said denial of the variance would be an unnecessary hardship. He said the variance was needed to enable the applicant's proposed use of the property, given its special conditions.

Chair Gooze asked for details on the special conditions.

Mr. Sievert said if the applicants couldn't go into the wetland buffer zone at least where the existing building was, he would lose the ability to do the accessible units, and the parking. He noted that the existing footprint was already developed there.

Chair Gooze asked what the special conditions were concerning the bump-out area.

Mr. Sievert said that was a bit harder to say. He said they were not bringing that down to the ground, and replacing the pavement with more building. He said the number was flexible.

Ms. Davis asked whether if there wasn't an upland buffer issue, the applicants would be [planning to build all 4 levels of the building out 20 feet more.

Mr. Sievert said yes, and provided details on this.

Ms. Davis asked if the plan they were looking at included the bump-out, and Mr. Sievert said no

Mr. Gottsacker said with the bump-out, the applicants appeared to gain two apartments.

Mr. Sievert said that was correct, and said an alternative was that two rear apartments could gain more space.

Mr. Gottsacker said if there wasn't the wetland issue, there could actually be three apartments there.

Mr. Sievert said that was correct. He explained the uncertainties in terms of what the Town would need the area it currently owned for in the future, and how this impacted what the applicants wanted to do with the site. He said this was why the applicants weren't proposing what Ms. Davis had described, - all four levels, and out 20 more feet.

Mr. Sievert said approximately one half of the property was encumbered by the 75 ft wetland buffer, and said there was no other feasible way to provide a mixed use commercial residential building as described and still comply with the height limitations, other than allowing a reduced partial continued encroachment on the wetland buffer. He said there was no other way to redevelop the property without an area variance.

He said gaining the bump-out would allow an increase in density, and would enhance the benefit to the environment by removing the pavement, replanting the area and using it as a buffer.

He said substantial justice would be done by granting the variance because it would allow for a new updated code compliant building while creating a lesser non-conformance relative to the encroachment within the wetland buffer.

Mr. Sievert said granting the variance would not be contrary to the spirit and intent of the Ordinance because the proposed development would result in an improved depth of upland buffer from the edge of wetland. He said construction would incorporate temporary controls at the limit of work to protect water quality. He said there would be a storm water treatment system that would improve the quality of runoff leaving the property. He said the project would have no impact on the flood storage capacity of the wetlands, or on stream flow and groundwater recharge.

Chair Gooze asked why it was thought that the bump-out would not impact the wetlands. He questioned how any raised area encroaching into the buffer would not impact a wetland.

Mr. Sievert said the whole area was paved right now, and said the benefit was that the applicant could remove all of this pavement area, and put it into some green area. He noted that an area was needed for stormwater management, and said this area could be utilized for that purpose. He also said the setback of the brook from the impervious area would be increased, and said all of these things would have water quantity and quality benefits.

He said the extension of the building out there wouldn't take away from this because there would still be an area underneath, either grass, stone, or something else that was

pervious, which would filter, contain the water, or treat it and release it into the ground.

He noted the 20 ft sewer easement in this area as well, which meant that the whole 20 ft area couldn't have a structure on it anyway, since the Town might need to access the sewer line. He also noted a drainage pipe into Pettee Brook, which the applicant would improve upon. He explained that the stormwater from the site would be treated prior to getting there, as opposed to the current situation. He said water hitting the building would either be guttered, or collected in a drip edge.

Ms. Davis asked if underneath the bump-out, there would be a recharge basin.

Mr. Sievert said yes, and said it would be utilized for stormwater treatment, whether as part of a below ground or above ground system.

Ms. Davis noted that if there was something like a parking garage there instead, the recharge wouldn't be possible, and said the bump-out design in that sense was a big benefit because it could be used for stormwater management.

Mr. Sievert said this was somewhat dependent on the overall increase in impervious area, and what could be collected, treated and released at a rate no greater than what occurred today. He also said it wasn't known whether there was the capacity to treat the runoff from the impervious surface increase on the property prior to releasing it to the brook, and said the bump-out area was variable for that reason as well.

He said this was another reason why there was some flexibility needed concerning the footprint at this point, based on the lot size and the site plan requirements. He provided details on this. He said the proposal was the maximum footprint, with the extension up above (he noted that the bump-out wasn't actually the footprint). He said he would have to come back to the ZBA if this was exceeded.

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

Carden Welsh MOVED to close the Public Hearing. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said the only issue for him was whether the bump-out met the variance criteria. He said the arguments for the variance request concerning the wetlands buffer made sense other than for the bump-out area, and said the Town would gain as a result of this, and would not lose anything.

He noted that for an area variance, one could consider financial impact, such as whether a scale down version of a project would have such an impact. He said he thought the financial impact in this instance would be small, and didn't see that the hardship criterion was met. He also said he was concerned about whether the spirit and intent of the Ordinance would be met concerning the bump-out. He said the question was whether would be done if there was building space over, and not in a wetland buffer.

Mr. Gottsacker said an owner could get a lot of rent from two additional apartments. But he said he didn't really see the benefit of getting the building up off the ground. He said the ground was still covered. He also noted that there were a lot of things in flux with the Town, and said if it turned out that it was critical to get the bump-out, the applicant could always come back to get a variance for it. He said other than that, he didn't have problems with what was proposed with this variance application.

Chair Gooze asked Board members if they had a problem with anything other than the bump-out, with this variance request. He said in allowing the applicant to have the accessible units, he didn't see how the Board couldn't also allow him to have accessible parking. He also said he was in favor of approving the wetlands variance, but without the 20 ft x 50 ft bump-out, which he said he felt didn't meet the public interest and spirit and intent of the Ordinance variance criteria.

Mr. Gottsacker said he thought that although it might meet these criteria, the Board hadn't heard the reasons from the Town on this.

Ms. Davis noted the letter from Duane Hyde.

Chair Gooze re-opened the Public Hearing so the letter could be read, and said he would give the applicant a chance for rebuttal.

Mr. Gottsacker read the letter from Mr. Hyde, which asked that the ZBA take into consideration the need for adequate property management of the redeveloped property.

Chair Gooze noted that this issue didn't really relate to the ZBA's role.

There was discussion that this was more of a Planning Board issue, and Mr. Johnson said he would forward the letter to Town Planner Jim Campbell.

Mr. Sievert said the Planning Board had been requiring this anyway.

Chair Gooze closed the Public Hearing again.

Chair Gooze asked if any ZBA members disagreed with the request for variance, other than the bump-out issue.

Mr. Welsh said he felt the variance application met the criteria without the bump-out. He said he didn't think the bump-out aspect of the variance request was in the public interest, and also didn't think it met the spirit and intent of the Ordinance.

He said he didn't think one could say that Durham included the wetland protection provisions in the Zoning Ordinance to keep people off the ground near wetlands. He said there had been issues about this with porches, etc, and said this was another way to get closer to wetlands without technically violating the Ordinance. He said he felt the spirit

and intent of the Ordinance was to try to avoid this kind of thing.

He said it was good that 3,900 sf of pavement would be torn up to offset the other 3,900 sf of impervious surface that would be created. But he said if a roof was put over some of it, the Town wasn't really getting 3,900 sf.

Ms. Davis said that was how she felt about this as well.

Mr. Harvey said he had heard in the applicant's argument that the lower space would provide some benefits. But he said he wasn't sure this would even things out in terms of wetland impacts.

There was further discussion on the bump-out, and the fact that it wasn't yet clear what would happen with the Town owned property underneath it.

Mr. Gottsacker said it might be in the public interest to have the bump-out, but said the Board hadn't heard this yet.

Mr. Harvey said he thought it made sense to pull the bump-out out of the variance request, and said the applicant could come back later.

Ms. Davis said the application hadn't been presented as though the bump-out was needed in order to make the project financially viable, although it had been presented that it would be financially beneficial..

Board members agreed that the public interest and spirit and intent of the Ordinance criteria were not met concerning the bump-out. Chair Gooze also said he didn't feel that the second part of the hardship criterion was met.

Mr. Johnson suggested that it would be simpler if the bump-out issue was removed from the application, especially since it was an issue that hadn't been resolved yet with the Town.

There was discussion on how to proceed.

Mr. Gottsacker said if the bump-out was included in the variance, the Board would be voting on a variance for an owner, the Town, which wasn't present. He said the Town hadn't requested the variance.

There was detailed discussion on this, and on Mr. Johnson's suggestion that the bump-out be removed from the variance application.

Mr. Welsh said he wouldn't want to approve the building variances unless the pavement was torn out, and said the bump-out related to that issue.

Chair Gooze said he would prefer that the Board grant the variance without the bump-out.

Mr. Gottsacker said the variance in regard to the bump-out would be irrelevant if the Town didn't sell the land.

Mr. Johnson said the only variance the Board was dealing with was the parking on Rosemary Drive. He said once the applicant got to the Planning Board, if the drainage issues couldn't be solved and the applicant didn't take ownership of the property, the building would have to be scaled back. He provided details on this.

Mr. Gottsacker said for a number of reasons, including the fact that the right applicant was not before the ZBA, the bump-out was out of the question.

Mr. Johnson said the Board would be voting on the wetland incursion on the property, the parking and the residential use.

Chair Gooze asked if the Board could rule on this application when the applicant didn't yet own the property that the Town owned.

Mr. Gottsacker said he thought the Board could do this. He said if it turned out that the property transaction didn't occur, it was a moot point, and the applicant couldn't build the building. But he said if the Board did approve the bump-out and the Town sold the applicant the property, the project could go forward.

There was further discussion.

Parking

Carden Welsh MOVED to approve an Application submitted by Ionian Properties, LLC for Variance from Article Section 175-41 (F) (1&2) to permit parking (F.1) and associated vehicular access (F.2) between the front building wall and front property line on Rosemary Lane, as per the proposed plan. The property is located at 10 Pettee Brook Lane, in the Central Business Zoning District. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

Wetland Buffer

Carden Welsh MOVED to approve an Application submitted by Ionian Properties, LLC for Variance from Article XIII, Section 175-62 to permit construction of a mixed-use residential/commercial building within the 75 foot upland buffer strip from the edge of wetlands, according to the submitted plan to acquire the adjoining Town owned land, with the exception of the proposed 20 ft by 55 ft bump-out within the buffer zone. The property is located at 10 Pettee Brook Lane, in the Central Business Zoning District. Ruth Davis SECONDED the motion.

Chair Gooze restated that he didn't think the bump-out part of the variance request met the public interest criterion, the spirit and intent of the Ordinance criterion, and the

second part of the hardship criterion.

Mr. Welsh said he joined with Chair Gooze on this.

The motion PASSED unanimously 5-0.

IV. Approval of Minutes – March 10, 2009

Jerry Gottsacker MOVED to approve the March 10, 2009 Minutes as submitted. Ed Harvey SECONDED the motion, and it PASSED 4-0-1, with Ruth Davis abstaining because of her absence from the meeting.

V. Other Business

- A. Chair Gooze provided details on the fact that he had recently attended the NH Office of Energy and Planning conference. He said at one of the sessions, he had learned that there was a bill before the Legislature to get rid of the distinction between a use variance and an area variance. He said he was initially against this idea because he was concerned that this would do away with the issue of the uniqueness of a property. But he said he was now ok with it. He said the Board would have to wait and see what happened with the Bill.

Chair Gooze said the ZBA had won the Bates case, and there was no appeal on this. He also said he was waiting to hear if the Sidmore's equitable waiver appeal and another case, which were pending, would be withdrawn.

Mr. Johnson said he would be attending a meeting at the Sidmore property with the Sidmores, NHDES, Town Engineer Dave Cedarholm and the contractor who would be doing the restoration work there.

Chair Gooze said the ZBA's Rules and Regulations should be changed to read: "... alternates are encouraged to attend all board meetings, and would be permitted to participate in discussions and vote only when designated by the Chair person to fill the vacancy...." He explained that the reason for this was the concern that since the alternate was not a voting member, discussion was inappropriate. He provided details on this.

There was discussion.

V. Adjournment

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

Victoria Parmele, Minutes taker

Adjournment at 11:16 pm