

*These minutes were approved at the November 10, 2009 meeting.*

**Durham Zoning Board Agenda  
Tuesday October 13, 2009  
Durham Town Hall - Council Chambers  
7:00P.M.  
MINUTES**

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

**MEMBERS ABSENT:** Edmund Harvey; Chris Mulligan

**OTHERS PRESENT** Tom Johnson, Director of Zoning, Building Codes and Health

**I. Approval of Agenda**

Chair Gooze called the meeting to order at 7:00 pm.

*Jerry Gottsacker MOVED to approve the Agenda. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.*

**II. Public Hearings**

- A. **PUBLIC HEARING** on a petition submitted by MJS Engineering, PC, Newmarket, New Hampshire on behalf of David R. Lemieux, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIV, Section 175-74(A)(1) of the Zoning Ordinance to locate a deck within the shoreland setback, from Article XIV, Section 175-74(B)(1) of the Zoning Ordinance to locate a septic system within the shoreland setback and from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to create an accessory apartment that exceeds 25% of the total floor space of the dwelling in which it is located. The property involved is shown on Tax Map 20, Lot 3-5, is located at 571 Bay Road, and is in the Residence C Zoning District.

Chair Gooze opened the public hearing.

Mr. Lemieux's representative, Mike Sievert with MJS Engineering, spoke before the Board. He said the property contained 3.6 lot acres, had 250 ft of frontage on Bay Road and about 360 ft of frontage on the Bay. He said the parcel was about 800 ft deep, and was encumbered by several easements, including accesses for various properties to get down to a club house for use by all the properties in the Association.

He said the request was for 3 variances:

- from Section 175-74(B)(1) of the Zoning Ordinance to locate a septic system within the shoreland setback
- from Section 175-109(C)(2) of the Zoning Ordinance to create an accessory

apartment that exceeds 25% of the total floor space of the dwelling in which it is located

- From Section 175-74(A)(1) of the Zoning Ordinance to locate a deck within the shoreland setback

He said they wanted to do the septic system request first because it was pretty straightforward, and said a new system would be utilized regardless of whether the other variances were approved. He said they might not need the deck if it wasn't approved.

Mr. Sievert said they proposed to replace the leachfield in the same location it was in right now, within about 40% of the existing leach bed. He said it would be a clean solution system, where everything was essentially treated within the tank, and the leachfield then disburshed the treated water. He said there would be high quality effluent going into the leach bed. He said the idea was to remove just the failed portion of the system at the time it failed, replace the leachfield in that one half, and put the clean solution system where the tank now was. He then went through the five variance criteria.

He said there would be no decrease in the value of surrounding properties because it would be a state of the art system, utilizing the fill area and minimizing disturbance on the lot. He said there would be no change to the conditions that existed today, so the system would not negatively impact surrounding property values.

Mr. Sievert said granting the variance would not be contrary to the public interest because the higher level treatment system would mean that the effluent could be disposed of properly in the filled area, which was about 2 ½ times what was required. He said the new leachfield would have a smaller footprint and would be further back from the reference line than the existing condition. He provided details on this.

He said that regarding the hardship criterion, an area variance was needed to enable the applicant's proposed use of the property, given the special conditions of the property. He said the special conditions were that the soils were marginal at best, and he noted that other test pits conducted on the other side of the driveway indicated poor soils there, or the same as where the leachfield was now.

He said the receiving area comprised of fill was already established, and said with the proposed design they wouldn't have to remove the mound that already existed. He said they would just remove the depth needed to put in the new sand and leachfield in that same location.

Mr. Sievert said the septic system would be constructed in the same footprint, which would result in a larger distance from the reference line than existed today. He said putting the system in any other area on the property would require the same amount of fill, and said there was not better area for it on the property.

He said the benefits sought by the applicant could not be achieved by some other method that was reasonably feasible. He said the proposed location had an established receiving

area, and said all the fill slopes were established. He said it would be unreasonable to have to move the leachfield and construct a large fill area in another location just outside the 125 ft line.

He noted the large driveway, and said the system wouldn't fit to the right of it. He also said if it was put on the other side of the driveway this would result in additional disturbance, and the system would still be within the 250 shoreland setback, which would be a negative impact. He said putting the system there would also require a pump system which would involve a higher cost and more excavation.

Mr. Sievert said substantial justice would be done in granting the variance, because it would allow the applicant to construct a state of the art system to properly treat the wastewater on the site while protecting the environment to the highest extent possible. He said the new system would be much better than the current system, and noted that while the existing system was 65 ft from the shoreland, the new system would be 105 ft from it at its closest location. He said granting the variance would allow reuse of the existing fill, which would minimize disturbance on the lot.

Mr. Sievert said granting the variance would not be contrary to the spirit and intent of the Ordinance because the residential structure was an allowed use in the Residence C Zoning District. He said onsite wastewater treatment was required because there were no municipal services available, and the proposed location for the septic system was the best possible location. He said the location maximized the setbacks to the greatest extent possible given the existing conditions on the parcel, further extending the setback from the reference line and minimizing the lot disturbance.

Chair Gooze determined that this system would have to go in even if the other variances were not granted.

Ms. Woodburn noted that the existing system hadn't failed and was still operational, and she also noted that the new system was designed for 5 bedrooms.

Mr. Lemieux said the system was working fine now, but he said at some point it would need to be replaced. He said he had received approval from the State for the new system, which was contingent upon local approval.

Chair Gooze determined that there were 4 bedrooms now.

Mr. Lemieux said that with latest technology, the new system was designed for 5 bedrooms in that location. He also said he was trying to do all this at once rather than having to come back the ZBA again if the system failed.

Mr. Gottsacker asked what would happen if it took 5 years for the system to fail, and the technology changed.

Mr. Johnson said a plan would have to be resubmitted, noting that State approval went

for 4 years.

There was discussion on whether to address the variances one at a time or together. Chair Gooze said his sense from the Board was that they should address just the septic system variance request first.

It was noted that there were no members of the public who wished to speak for or against the septic system variance application.

***Robbi Woodburn MOVED to close the Public Hearing on the septic system variance request. Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Gooze said he thought this request met all of the variance criteria, and said the system was better than the existing system. Other Board members agreed.

***Jerry Gottsacker MOVED to approve the APPLICATION FOR VARIANCE from Article XIV, Section 175-74(B)(1) of the Zoning Ordinance to locate a septic system within the shoreland setback as shown on the plan submitted with the application, for the property shown on Tax Map 20, Lot 3-5, located at 571 Bay Road in the Residence C Zoning District. Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.***

Mr. Sievert next addressed the variance request from Section 175-109(C)(2) of the Zoning Ordinance to create an accessory apartment that exceeded 25% of the total floor space of the dwelling in which it was located. He said the applicant proposed to break the house into a single family house with an accessory apartment within the structure as it now existed. He noted the elevation views, and said what was proposed was to use the existing footprint without making a major modification.

He said unit 1 was proposed to be 2567 sf and unit 2 was proposed to be 1894 sf, and said the square footage for unit 2 was 42% of the total 4461 sf in floor area of the house. He said the reason for wanting to exceed the 25% limit was because of the location and configuration of the existing entrances and the layout of the existing floor plan. He provided details on this.

Chair Gooze noted that if duplexes were allowed there, it would be made into a duplex.

Mr. Sievert next went through the variance criteria. He said there would be no decrease in the value of surrounding properties because there would be no change to the exterior of the house. He also said there would not be an increase in the number of bedrooms because of the 3 unrelated rule. He said the accessory apartment was an allowed use, and said the issue was that the applicant couldn't meet the square footage requirements.

He explained that the house was set up now with four bedrooms, and said the accessory apartment, unit 2, would end up as a two bedroom unit. He said the floor plan showed that the living area of unit 2 would be on the first floor, the bedroom and bath would be

on the second floor, and the third floor would be a bedroom or office area.

Mr. Sievert said granting the variance would not be contrary to the public interest because the size of the apartment was wholly dependent on the structure configuration, multiple floor locations and interior layout. He said the apartment would only have two bedrooms to minimize the number of occupants. He said the requirements of Article XX specified a certain size for an accessory apartment in order to minimize the space and make it an integral part of the dwelling. He said because of the existing structure configuration, the maximum floor space could not be met without major structure modifications. He said the apartment was integral to the dwelling and would not require any change in structure configuration.

Ms. Woodburn determined that the two doors already existed.

Chair Gooze determined that there would be no garage for unit 2.

Mr. Sievert provided details on where the cars would park, and Mr. Welsh asked for further details on this.

Mr. Lemieux said the idea was to allow parking that where the paving was widest, in front of the 4 car garage. He said the entire front was fieldstone, and said he wanted to keep it that way.

Chair confirmed that nothing would be added to this area.

There was discussion that the only change would be some additional interior wall, from the end of the refrigerator wall, in order to install the kitchen, and that there were no other exterior or interior changes proposed.

Mr. Lemieux said it made sense to set the two units up side by side.

Mr. Sievert said that regarding the hardship criterion, the special conditions of the property were the building itself, its layout and construction, with the separate towers and existing entrances there now. He said the goal was to minimize the structural and exterior changes needed, including access, and said there was no other way to configure the accessory apartment without major demolition or reconstruction, additions, etc. He also said if these changes were made, they would be within the 125 setback.

He said substantial justice would be done in granting the variance for the accessory apartment because there would be no benefit to the public by requiring the applicant to make major exterior renovations, increasing the requirement for ground disturbance within the protected shoreland or make major structural changes to the building to meet the maximum floor area requirement of 25%

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because the single family residential use with an integral accessory apartment

was an allowed use in that zone. He said the spirit and intent of the Ordinance was to minimize the size of the accessory apartment to maintain the use as a single family dwelling with a small apartment to minimize the number of people in the structure.

Mr. Sievert said the demographic for this location was a professional couple. He noted that the rent in this location would be substantially higher than it would be for younger people in the Central Business District. He said that was the intent with this property, and said it was a great opportunity to avoid additional problems by allowing dual use by a non-absentee owner.

Mr. Gottsacker asked if one side would be owner occupied, and was told yes. Most likely would be three unrelated for the whole property total. A family on one side, and two people in accessory unit was likely.

Mr. Welsh said this looked like a relatively new house, and Mr. Lemieux said it was built in 1984. There was discussion that the shoreland provisions were not in place at that time.

Chair Gooze asked if there were any members of the public who wished to speak for or against the accessory apartment variance request, and there was no response.

Mr. Sievert and Mr. Lemieux noted the letter signed by the abutters who were in favor of what was proposed.

***Carden Welsh MOVED to close the Public Hearing on the accessory apartment variance request. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Gooze asked if any Board members felt that this application didn't meet any of the five variance criteria.

Mr. Welsh said this area wasn't zoned for duplexes for some reason, and he asked what the thought was regarding not allowing duplexes in an area. He said this looked a lot like a duplex.

Chair Gooze said duplexes allowed 3 unrelated people on each side, so there could be a total of 6 unrelated people in a house that was a duplex. He said with the property in question, they were talking about having a family in one side of the house, with 2 unrelated people in the accessory apartment.

Mr. Welsh said in other words, this approach was more restrictive, and duplexes wouldn't be wanted in certain zones.

Chair Gooze said that was correct, and said they duplexes were eliminated in residential zones. He said he thought this served the purpose.

Ms. Woodburn said she had had questions about why the walls couldn't be moved around, but said she realized now that because of where the kitchen was and the entrances were, the proposed layout made total sense.

Chair Gooze said it could be that if someone came to the Board with a similar variance request but a different structure, and a different way of making an accessory apartment, his judgment on that application might not be the same as it was for this application. He said situation was individual, and said whatever he said on this application would not influence the next one like this.

Mr. Gottsacker said for him, it came down to a few feet of interior wall. He noted that there would be no reason the applicant couldn't rent out the space without putting the wall in, and said adding more interior wall simply provided some more privacy.

Chair Gooze said the applicant could rent the whole place out to a family of four, and two other people.

Mr. Welsh said he thought this application was a little bit different because the accessory apartment could be rented out to a family. He noted that he had a little accessory apartment over the garage on his property, which couldn't be rented to a family. He said theoretically with the applicant's property, there could be two families living there without breaking the three unrelated rule, yet there would be a lot more density in the house. He said he wondered if this was fine with everyone.

Chair Gooze said given the location, he didn't think it would be harmful even if there were two families.

Ms. Woodburn asked for clarification about being able to rent out to two families.

Mr. Johnson said Mr. Lemieux was a family of one, so could rent the main unit out to a family and live in unit 2. But he noted that if he then married, he couldn't live there because it would be a duplex.

There was discussion that if he had a family, he could only rent to unrelated people.

Mr. Gottsacker said he didn't think density was an issue because the property contained 3.6 acres. He said it would be a different story if what was proposed was on Madbury Road.

Mr. Johnson provided further clarification on what was possible on the property in terms of renting. He said it didn't have to be owner occupied, the whole house could be rented out to a family and the accessory apartment could be rented out to two unrelated people. He said Mr. Lemieux couldn't rent the accessory apartment out to a family, because then it would be a duplex, with two families on a single family property.

There was further discussion on this.

Mr. Welsh said he thought the situation was curious, but said he would vote for the application because it met all the variance criteria.

Mr. Gottsacker said he was fine with it, and said it met all the criteria.

Ms. Davis said she agreed given the location and the way the structure was laid out.

Both Chair Gooze and Ms. Woodburn agreed as well.

Mr. Gottsacker said he wouldn't be surprised if the house had been built with this in mind.

***Ruth Davis MOVED to approve the APPLICATION FOR VARIANCE from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to create an accessory apartment that exceeds 25% of the total floor space of the dwelling in which it is located, as shown on the attached plans, for the property shown on Tax Map 20, Lot 3-5, located at 571 Bay Road in the Residence C Zoning District. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.***

Mr. Sievert next spoke about the variance requested from Section 175-74(A)(1) of the Zoning Ordinance to locate a deck within the shoreland setback. He said there was already an existing deck between the two units, and said the deck that was proposed would be put in a corner area.

Mr. Gottsacker said it appeared that given the variance that had just been granted for the accessory apartment, the existing deck would serve unit 2 because of the entrance there and no entrance from unit 1.

Mr. Sievert explained that the new deck would not come out further than the front of the house. He said the reason it was needed was that the wall would cut off the access from unit 1. He said the new deck would serve the main unit of the house. He also noted that a window would be changed into a sliding glass door. He then reviewed how the variance criteria were met.

He said there would be no decrease in the value of surrounding properties if the variance was granted. He said the proposed deck would be smaller than the existing deck and would service the main unit. He said it would fit into the existing structure because it was indented, matched the existing architecture, and would not encroach any closer to the shoreline than the structure or the existing deck. He said the 62 ft distance would be held all the way out, and he provided details on this.

Ms. Woodburn asked if a state shoreline permit was needed for this.

Mr. Lemieux said he had spoken with Larry Morse of NH Soil Consultants, who had assured him that the State allowed going 12 ft closer to the reference line so the permit



from the State wasn't needed.

Mr. Sievert said granting the variance for the deck would not be contrary to the public interest because the deck would not encroach any further on the reference line than the front of the structure and the existing deck. He also noted that the area beneath the deck was lawn and would remain pervious, either as lawn or stone.

He said the deck would not create an impervious area and would be constructed to allow runoff to fall through to the ground. He said no additional runoff would be generated, and noted that the area under the deck and towards the shoreline gradually sloped for approximately 40+/- ft before the top of the bank. He also noted that it would be an open deck.

Mr. Sievert said the hardship criteria were met. He said the area variance was needed to enable the applicant's proposed use of the property, given the special conditions of the property. He said the house was constructed such that the deck could be built into a corner of the structure that was cut back, so the front of the deck was an extension of the structure, and did not extend outward toward the reference line.

He said this configuration would allow the deck to be added without encroaching further on the reference line than the existing front of the structure. He also said the architectural look of the house would be maintained.

Mr. Sievert said the benefits sought by the applicant could not be achieved by some other method reasonably feasible for the applicant to pursue. He said what was proposed was the natural location for the deck given the shape of the exterior of the structure and also the configuration of the interior separation of the main and accessory units.

He said that given the configuration of the two entry doors, the main unit was cut off from accessing the existing deck. He said the proposed location for the deck was the best possible location given the interior access and the aesthetics of the existing structure.

Mr. Sievert said substantial justice would be done in granting the variance because the addition of the deck would allow both the main residence and the accessory unit to have deck access. He said given the fact that the deck would not create an impervious surface, did not protrude further past the front line of the structure and fit into an indented corner of the existing structure, it didn't violate the purpose of the Shoreland Protection Overlay district. He said the benefit to the public would therefore be upheld and substantial justice would be done. He reviewed the purpose of the SPO district. He said the only excavation would be for the holes for the sonotubes that would provide the foundation for the deck.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said the residential single family structure and accessory apartment was an allowed use in the zone, and said it was not unreasonable for a residential structure to have an exterior deck associated with it.

He said the addition of the deck in the proposed location would not result in stormwater runoff, siltation or sedimentation; would not create the potential for pollution of the surface water; would not have a negative impact to wildlife, fisheries habitats of their travelways; and would not have a negative impact on the natural beauty or scenic quality of the shoreland. He noted that the photos showed some of the tree cover, and said there would be no tree removal, no change in grading, and no change to the front setback.

Mr. Welsh asked what the floor of the existing deck was, and Mr. Sievert said it was pressure treated decking with spaces between. He said the new deck would be the same, to allow water to flow through. He said the area underneath would be either grass or stone.

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

***Carden Welsh MOVED to close the Public Hearing on the variance request for the deck. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Gooze asked if any Board members had a problem with this application in terms of it possibly hurting the shoreland area. He said he thought the proposed configuration for the deck was great.

Mr. Welsh noted a previous series of variance requests for a property, where first the porch was granted and then a roof was put on the porch, then it was screened in, etc...

Chair Gooze said the situation with that property was different because what was proposed was about 5 ft or less from the bay. He said in this situation, there was a long area to percolate.

There was discussion that if this applicant came back and asked for a screened in porch with a roof, the Board would have to consider impervious issues.

Chair Gooze noted that he didn't think it was fair to base a decision on this application on what might be done down the line.

He asked if any Board members thought the variance criteria were not met. There was no response.

***Chair Gooze MOVED to approve the APPLICATION FOR VARIANCE from Article XIV, Section 175-74(A)(1) of the Zoning Ordinance to locate a deck within the shoreland setback as per the plan submitted this evening, for the property shown on Tax Map 20, Lot 3-5, located at 571 Bay Road in the Residence C Zoning District. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.***

Break from 8:06-8:14 pm

### III. Board Correspondence and/or Discussion

- A. **Request for Rehearing** on an August 11, 2009 denial of a petition submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire for an **APPLICATION FOR VARIANCES** from Article IX, Section 175-28(D), Article XII, Section 175-53 and Section 175-54 of the Zoning Ordinance to build two additional 3-unit apartment buildings on a non-conforming lot where there is currently a 5-unit building. The property involved is shown on Tax Map 18, Lot 3-2, is located at 257 Newmarket Road, and is in the Rural Zoning District.

Chair Gooze noted that the Board had been provided with some photos of the property. He also said that while he had not been present at the meeting, he had watched the meeting on DVD twice so felt comfortable in making a decision on the request for rehearing, along with Ms. Davis, Mr. Gottsacker, Mr. Welsh and Mr. Starkey.

He said it looked to him that in his Request for Rehearing, Mr. Pasay had asked for all the criteria to be reviewed.

He noted that a rehearing was granted if the Board thought there was new evidence presented that would cause them to open up a new hearing, or if they thought they had made some kind of legal error in what they had decided.

Mr. Welsh said he hadn't found new evidence that was germane to the decision, but was happy to listen to what others had to say.

Mr. Gottsacker said he had driven the property before the August meeting, and he also noted that he had voted against denying the variance request. He said what had now been provided with the photos was not new information for him, but said it might be, for people who hadn't seen the property.

Ms. Davis said she had voted against denying the variance because she had been out to both this property and the abutting property in the past. She said this, as well as the history of the property as being quiet had influenced her decision. She said she didn't see anything that was obviously new evidence, and didn't think there was anything illegal about the Board's decision. She said she didn't think what Mr. Pasay had written in the Request for Rehearing was new, although it was more fleshed out.

Chair Gooze said he saw nothing here that was new, and didn't think a legal error had been made.

Mr. Starkey noted that he had voted to deny the original application. He said he didn't see that any legal error had been made in the Board's decision, but said information had now been brought forward that gave him pause. He noted that his concern with the

application had been that what was proposed was in the Rural Zoning District.

He said Mr. Pasay had noted in his request that he currently restricted occupancy to 14 students, for a building that could legally house 28-30, and that he was willing to restrict that occupancy to 14 students going forward. He said if the Board could allow this, along with having the newer units which would add on an additional 24 students, this would give him the same allowed occupancy he currently had. Mr. Starkey said this information had given him pause concerning his own previous thought process about the application.

Mr. Gottsacker read from the ZBA Handbook regarding requests for rehearing and new evidence.

Chair Gooze said what Mr. Starkey had said was interesting, and said he hadn't looked at it that way.

Mr. Starkey said he hadn't either previously, and said it didn't come up in the original discussion. He said he felt he didn't have that information originally, and in getting it now, it had given him pause concerning his previous vote.

Chair Gooze said this was a good point, and said it gave him great pause as well.

Mr. Gottsacker asked where the number of 28-20 units came from, and there was discussion that it would be based on the sf of the building, etc. He said he wanted to make sure there was a legal basis for this.

Mr. Johnson noted that a variance was granted when the apartment building was created. He said if a rehearing was granted now, he would research and document the accuracy of these numbers.

Mr. Starkey and Chair Gooze said they would like to know this information, and other Board members agreed.

Mr. Gottsacker said granting the rehearing would allow the opportunity to do research and do the calculations, and others agreed. There was further discussion.

Chair Gooze noted that even if Mr. Johnson determined that there could only be 15 people there, there would still be a new hearing, in fairness to the applicant.

***Sean Starkey MOVED to grant the Request for Rehearing on an August 11, 2009 denial of a petition submitted by Stan Pasay, Pasay Properties LLC, Newfields, New Hampshire for an APPLICATION FOR VARIANCES from Article IX, Section 175-28(D), Article XII, Section 175-53 and Section 175-54 of the Zoning Ordinance to build two additional 3-unit apartment buildings on a non-conforming lot where there is currently a 5-unit building. The property involved is shown on Tax Map 18, Lot 3-2, is located at 257 Newmarket Road, and is in the Rural Zoning District. Ruth Davis***

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

There was discussion that the new hearing would be held at the November ZBA meeting, and that Ms. Woodburn would be able to participate.

**IV. Approval of Minutes –**

August 11, 2009

Page 4, 9<sup>th</sup> paragraph, should read “Ms. Davis asked if there was anything about...”

Page 5, 3<sup>rd</sup> full paragraph, should read “Pasay”

Page 7, need space between the 8<sup>th</sup> and 9<sup>th</sup> full paragraphs

Page 10, last paragraph, should read “...didn’t think those who had approved the..”

Page 11, just before the motion, should say : “Ms. Davis asked if they should go though the variance criteria before the vote, and Mr. Gottsacker said it was in the Minutes.”

Chair Gooze said Mr. Starkey would be a voting member for the motion, along with himself, Mr. Gottsacker, Mr. Welsh and Ms. Davis.

***Sean Starkey MOVED to approve the August 11, 2009 Minutes as amended. Chair Gooze SECONDED the motion, and it PASSED unanimously 5-0.***

September 8, 2009

Page 1, Before Approval of the Agenda, it should note that Mr. Mulligan was introduced to the Board.

Also page 1, 2<sup>nd</sup> paragraph from bottom, should read “Ms. Davis spoke and pointed out that..” Also, the bottom paragraph should read “He said there was a pump house...”

Page 2, 1<sup>st</sup> full paragraph, should be space.

Page 4, top paragraph, should read “..that they probably would have to move...”

Same page, 7<sup>th</sup> paragraph should read “..no feasible alternative on the applicant’s property that was within the setbacks.”

Page 5, should indicate after the 3<sup>rd</sup> full paragraph that Chair Gooze closed the public hearing.

Page 6, need space between 1<sup>st</sup> and 2<sup>nd</sup> paragraphs on the page.

Page 7, under Other Business, should say the NH Office of Energy and Planning fall conference would take place on October 17<sup>th</sup>.

***Carden Welsh MOVED to approve the September 6, 2009 Minutes as amended. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.***

**V. Other Business**

**A.**

There was discussion about the letter from the Town Attorney that he would be representing the ZBA regarding Mr. Hiller’s suit that was going to Superior Court

regarding the Seacoast Repertory Theatre variance application.

Mr. Johnson said he would be meeting with Seacoast Repertory Theatre representatives and the abutters in order to try to mediate complaints and concerns. He noted that Seacoast Rep was still planning to go before the Planning Board with a site plan application, and said the meeting would take place in order to identify what the concerns were, so the Planning Board would know them. He said it was possible that if all the concerns were addressed, the lawsuit could be dropped.

Chair Gooze said tomorrow night the Municipal Law Lecture Series would be in Exeter, and said it would cover the new law starting January 1<sup>st</sup> regarding the hardship criteria. He said it was essentially going back to Simplex, and he provided details on this.

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

## **VI. Adjournment**

*Carden Welsh MOVED to adjourn the meeting. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.*

Adjournment at 8:43 pm

Victoria Parmele, Minutes taker

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Jerry Gottsacker, Secretary