

These minutes were approved at the February 16, 2010 meeting.

**Durham Zoning Board
Tuesday December 8, 2009
Durham Town Hall - Council Chambers
MINUTES
7:00P.M**

MEMBERS PRESENT: Chair Jay Gooze; Vice Chair Robbi Woodburn; Secretary Jerry Gottsacker; Ruth Davis; Sean Starkey ; Chris Mulligan

MEMBERS ABSENT: Carden Welsh; Edmund Harvey

OTHERS PRESENT Tom Johnson, Director of Zoning, Building Codes and Health; Victoria Parmele, Minutes taker

I. Approval of Agenda

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

II. Public Hearings

- A. PUBLIC HEARING** on a petition submitted by Jeremy Broughton, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to create an accessory apartment which is more than 25% of the total floor space of the dwelling in which it is located. The property involved is shown on Tax Map 1, Lot 11-3, is located at 1 Pendexter Road, and is in the Residence B Zoning District.

Chair Gooze appointed Mr. Mulligan as a voting member for this agenda item.

Mr. Broughton spoke before the Board, and said he was seeking a variance to allow the accessory apartment in his home to be officially recognized. He explained that the apartment had been constructed by the previous owner about 15 years ago, and it had come to his attention that it was never officially permitted. He said he didn't plan to change anything, but said the variance was needed because it was nonconforming in that the apartment square footage was greater than 25% of the floor space of the dwelling.

Chair Gooze explained to Mr. Broughton that he needed to specifically address how the variance criteria were met with this application. He said this would be an administrative appeal application if Mr. Broughton was appealing Mr. Johnson's decision that the apartment was illegal. But he said such an application was not made, and said as far as the ZBA was concerned, the apartment didn't exist. He reiterated that Mr. Broughton needed to tell the Board why the variance was needed, and said typically this was done

by speaking about the variance criteria.

Mr. Broughton said he had been and continued to be taxed on the accessory apartment, and said in order to reverse that, there would need to be some level of deconstruction to remove the apartment and have the property reassessed, with the assumption that this would change the tax liability. He said he would prefer to have the apartment recognized, and continue on with the existing layout and situation of the house. He said removal of the apartment would be a financial burden at this time, and said this would also result in a decrease in tax revenue for the Town.

Mr. Mulligan determined that the house was built in 1956, and that the apartment had been built while the previous owner had owned the property. He asked if there had been any addition made to the house to allow for the apartment, or if it was strictly an interior renovation.

Mr. Johnson said the previous owner had applied for a building permit in 1998 and it was denied because it didn't meet the zoning criteria for an accessory apartment. He said the apartment had previously been constructed illegally. He said a letter was sent by Rich Hunsberger in September of 1998 telling the owner he needed to get a variance, but he never did.

There was discussion about the fact that Mr. Johnson thought the addition was built before this letter was written. Mr. Johnson noted that the fee mentioned was double what it would ordinarily be, due to work being completed without a permit.

Chair Gooze determined from speaking with Mr. Broughton that he had owned the property for seven years. He then asked Mr. Broughton if he had ever asked the Town to determine if it was a legal apartment or not.

Mr. Broughton said no, and said this had come to his attention recently, when he saw the accessory apartment listed on the tax card but it was not officially recognized. He said they had wondered if they were paying taxes on something that was not officially recognized.

Chair Gooze noted that assessing information and zoning information could sometimes be different. He then asked if Board members had any questions in regard to the variance criteria. He said this was an area variance being requested, and said concerning the hardship criterion, the question was whether there were special conditions of this property, and if the benefits sought by the applicant could not be achieved by other means that were reasonably feasible.

In regard to whether there would be a decrease in property values if the variance was granted, Mr. Broughton said the proposed change was administrative and there would be no construction, so the tax assessment would not change.

Regarding the public interest criterion, Mr. Broughton said he couldn't imagine that

granting the variance would affect health and safety. He also said the apartment was integrated well into the architecture of his home, explaining that it looked like the existing car port had been framed in to create the apartment. He said the appearance of the dwelling hadn't changed much since that construction. He said he didn't feel that granting the variance would affect the aesthetics of the neighborhood, and said property values would not be affected.

Regarding the substantial justice criterion, Mr. Broughton said the apartment was listed on the tax card, and said being able to legally utilize it as a rental seemed justified because taxes were being paid on it.

In regard to the hardship criterion, Mr. Broughton said if the discrepancy between the tax card and what was officially recognized was addressed, this would require the removal of the apartment, which would have costs associated with it. He also said this would change the aesthetics of the property as well as its assessed value, which could potentially affect other property values.

Mr. Broughton said he had spoken with Mr. Johnson about the spirit and intent of the Zoning provision in question, and said he was told that it was meant to prevent duplexes from being made out of single family residences. He said although the accessory apartment was greater than 25% of the square footage of the house, the home was relatively small in the first place, so the apartment was only 500 square feet, including everything. He said it wasn't suitable for more than 1-2 people anyway because of the size and layout, and was really a one person dwelling. He noted that he lived in the house, and had one renter in the accessory apartment.

Ms. Davis asked if there were other homes in the neighborhood that had accessory apartments.

Mr. Broughton said one of the abutters was a multi-unit apartment building, and said he would speculate that there were other homes in the area that had renters in them.

Mr. Gottsacker said there were a lot of accessory apartments in his own neighborhood, and said several contained more square footage than the accessory apartment in question.

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

David Dunham, said he was the co-owner of the property, and had been there for seven years. He said he was present to support Mr. Broughton. He said this was a serious matter, and said he hoped everyone understood where they were coming from and where they wanted to be.

Chair Gooze asked if there were any members of the public who wished to speak against the variance request, or had a neutral position to take.

Robin Mower, Faculty Road, noted that this neighborhood had been subject to possible re-zoning in recent years to allow non-single family housing. She also said the Town had heard a lot from the neighbors who had had trouble with a specific house that had illegal occupancy. She said given that situation, and because there was a great deal of concern in general in Town regarding illegal occupancy and absentee landlords, she wondered if the ZBA would consider asking for verification of residence of the owners of this house, and their intent to live in the building.

Ms. Mower also suggested that the ZBA should ask whether there was any likelihood that this would be rented out for more student rental, which could have some influence on one of the variance criteria, in terms of the impact on the neighborhood. She noted that the owner had just said that if his property value was affected, this could affect his neighbors.

She said she recognized that it would be a hardship if the accessory apartment were torn down, but said she believed the intent of the Ordinance was to preserve the nature of single family residences in a small neighborhood where the houses weren't particularly large.

Mr. Gottsacker said his understanding was that the Residence B Zoning district allowed accessory apartments and rental of such apartments by right, and Mr. Johnson said that was correct.

Barbara Wright, 6 Pendexter Road, said Mr. Broughton was a nice person, but she said what was involved here was the impact of this decision on surrounding properties and property values. She said there was already another nonconforming rental property in the neighborhood where someone rented to more than three students. She said there were six houses on this road, and said if two properties were turned into rentals, this would destroy the quiet cul de sac they lived on.

She noted that there had already been problems with renting the property in question in the past, and said the question was what would happen to it when Mr. Broughton sold it. She said she was concerned that there could be more than 3 unrelated people living in the house, considering the house itself and the accessory apartment.

Chair Gooze said there could still only be three unrelated people in the house.

Ms. Wright said there were also safety issues involved, noting that people use to race down the street and park in the snow bank at the house at the end of the street, where Mr. Broughton's house was located. She said if it was a rental property, her concern was that this would be more likely to happen.

She then spoke about the fact that a year ago, the Town Council had proposed to turn the single family residences in the neighborhood into non-complying properties by extending the ORLI District. She said she was concerned that this idea would be revisited if two of the six properties on the road were housing people from more than one family. She said she and her neighbors had bought their properties counting on the fact that it would be a

residential neighborhood.

Ms. Wright said she didn't see how exterior aesthetics would necessarily be changed by changing the walls on the inside. She said Mr. Broughton had been a good neighbor, but said granting this variance would apply to the structure, and she said a future owner might not be as responsible as Mr. Broughton had been.

Robert Burnett-Kurie, 4 Pendexter Road, said what it boiled down to was human nature. He said if there were good people living there, it wouldn't matter if it was a rental, and said this couldn't be legislated. He said in this instance, Mr. Broughton had been a very good citizen, but he noted that the previous people living there had caused trouble.

He said if Mr. Broughton didn't create the problem, he thought there should be some relief of his burden, where he couldn't sell his house because it had an illegal apartment.. He said the property was not obtrusive, and said one could hardly see the apartment.

Chair Gooze emphasized that it was legal to have an apartment in that zone, and said what the Board needed to address was the greater than 25% issue.

Mr. Burnett-Kurie said the question then was how much larger the apartment was than what was allowed. He said it didn't look like it was more than 25%.

Mr. Broughton reiterated that accessory apartments were legal in this district, but his apartment was larger than what was allowed under the Zoning Ordinance.

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

Chair Gooze stressed that the Board was deliberating on this application as though the apartment never existed, and the applicant was saying he would like an apartment that was larger than the 25% that was allowed. He said the Board needed to go through the variance criteria based on what was presented.

Ms. Davis asked what the implications were if the Board decided not to grant the variance.

Chair Gooze said he believed the applicants would have to sell the property as a single family home without the apartment.

Mr. Johnson said the kitchen of the apartment could be removed and the house could be converted to a 3-4 bedroom ranch house, and said 3 unrelated people would be able to live there. He also noted that before the property was sold, the illegal construction issue would have to be addressed. He said a new owner could decide how to configure it, and said perhaps an apartment could be put in later that conformed to the 25% rule. He said Mr. Broughton also had the option of doing interior remodeling to meet the 25% increase in square footage limit.

Regarding the property value variance criterion, Chair Gooze said there could be 3 unrelated people living at the house regardless of what the Board decided. He said there was no reason to assume that this would be a party house. He asked if there were any Board members who thought property values would be affected.

Mr. Gottsacker said since the apartment rental was allowed by right in this district, he thought granting the variance would have a neutral impact on property values.

Chair Gooze said the applicants were not asking to be allowed to have more people in the house, so he didn't think the variance request would affect property values.

Mr. Gottsacker said if this were simply an addition to a single family home without an accessory apartment, the permit would be issued and no variance would be required. He said what they were really talking about was 190 sf.

Chair Gooze said he didn't think square footage counted regarding this criterion. He said he didn't think granting the variance would affect property values, and other Board members agreed.

Regarding the public interest criterion and spirit and intent of the Ordinance criterion, Chair Gooze said accessory apartments were allowed in the Residence B district.

Ms. Woodburn said 25% was the limiting factor to keep the numbers down. She said the question was whether the additional 190 ft would allow for more people in the apartment, and she said it wouldn't because the house would still be limited to no more than 3 unrelated people.

Mr. Gottsacker said assuming the accessory apartment didn't exist, it would be reasonable to assume that someone might come in for a variance because the square footage allowed was so small.

Ms. Woodburn said it would be based on the uniqueness of this particular building because it was small.

Chair Gooze said he was have trouble seeing how the hardship criterion was met with this application, stating that he didn't see anything unique about the property. He said it was important to remember that this application was coming to the Board as if the apartment hadn't yet been put in. He noted another application regarding the 25% rule that Ms. Davis had referred to, but said in that instance, there was no other way to do what the applicant wanted to do.

He said in this instance, there were lots of ways to put in an apartment that was no more than 25% of the square footage of the house and to get a renter for it. He said he had real problems with this part of the application, and also said it was a bad precedent to say that because it was already there, it was ok.

Mr. Gottsacker said moving the interior wall was a reasonably feasible method.

Chair Gooze agreed.

Mr. Mulligan said reasonably feasible had to be so without being an undue financial burden, but Chair Gooze said not based on what was there already illegally.

Mr. Mulligan said perhaps the special condition of the property was that this was converted from an existing family room and car port. He said that was a reasonable evolution.

Chair Gooze said that carpool could be made 10 ft less.

Ms. Woodburn said the footprint showed that the part of the apartment contiguous to the footprint of the house was 368 sf, and the bump-out on the back was 12 ft by 16 ft, and was the overage. She said the zoning could be met reasonably if the bump-out bedroom portion wasn't a part of the apartment.

Chair Gooze said what the applicant was really saying was that he would like to have a larger apartment, and said the question was what was different about this layout as compared to any other house.

Ms. Woodburn said a question was whether or not 368 sf was a reasonable size for a living unit that was allowed by the Zoning Ordinance.

Mr. Johnson said 300 sf was the minimum square footage allowed, and said 200 sf was required per person. He said for 2 people, 400 sf was required.

Mr. Mulligan considered how it would be if the addition already existed, and someone came to the Board with a plan to put an apartment into the existing structure.

Chair Gooze said a lot of people had garages that they converted to rooms. He asked where the difference was between this property and other properties.

Ms. Davis asked how the Board could reconcile that the applicant had been paying taxes based on the fact that the accessory apartment existed.

Chair Gooze noted that this kind of situation had happened before, and Mr. Gottsacker said it was unfair, but was the way it was.

Ms. Woodburn said there were two criteria for an area variance. She said in this instance, the footprint of the house was very small, and 25% resulted in a very small addition.

Chair Gooze asked if every property this size could therefore get a bigger apartment, and Ms. Woodburn said a property owner had the right to ask the ZBA for this.

Chair Gooze asked again what was different about this than someone else asking for the same thing.

Mr. Gottsacker said there was an inherent error in the Ordinance when it said there could be only a 25% expansion for a property this small, because the apartment would be so small as to be unlivable. He said the Ordinance didn't take this into account, and said the further down in square footage one went, the more unfair the Ordinance became.

Chair Gooze said someone who lived on his street had an accessory apartment that was no more than 350 sf, and he said the renter lived there without any problem at all.

Ms. Woodburn said she thought it could be argued that the first hardship criterion was met, but said it was a little harder to say the second hardship criterion was met. She said all one had to do was to not consider the bump-out portion of the bedroom to be part of the apartment in order to be in compliance. She said it hadn't been specifically phrased by the applicant that he was asking for more square footage, and said he was asking for a legal apartment.

Chair Gooze said the applicant was asking for an apartment that was larger, and couldn't do this any other way than by getting a variance, so he met the second hardship criterion.

Mr. Gottsacker said it really did come down to the bumped out bedroom, so there were some reasonable ways to get around things by making a portion of the bedroom part of the main house. He said if he did that, he wouldn't need a variance.

Ms. Woodburn said the question was whether this would in fact be reasonable.

Chair Gooze said he felt the substantial justice criterion was met because if the variance was allowed he didn't feel the public interest would be hurt versus the private interest. He said the only issue he had was with the hardship criterion, stating that the property was not unique compared to other properties of about the same size.

Mr. Gottsacker noted that if the Board didn't grant the variance, it was not the case that the applicant would have to tear down part of the building.

Chair Gooze said because this was an illegal structure, if he felt it was necessary he would say he thought it had to be torn down. But he agreed that the applicant wouldn't necessarily have to tear it down.

Mr. Gottsacker said the point was that there were reasonable alternatives.

Ms. Davis asked Mr. Johnson if it came up during the sale of a property that an apartment wasn't legal.

Mr. Johnson said it did if the purchaser did due diligence. He said this is what had

happened in this instance.

Chair Gooze said he thought the spirit and intent of the Ordinance was met, and said the 25% rule was instituted to avoid duplexes.

Mr. Mulligan said he thought this was consistent with the Residence B district. He said the 25% rule was intended to avoid duplexes, and said this met the spirit and intent of that. But he said the question was whether this went too far. He said it came to what the hardship was here.

Chair Gooze said the fact was that the applicant was seeking the benefits of a larger than allowed apartment, and there was no other way to do this than with a variance. He stated again that it was the first hardship criterion he had problems with, and asked again what was unique about this property.

Ms. Woodburn said to her it was the footprint of the original house.

Chair Gooze said the 25% rule assumed that there would be smaller accessory apartments in smaller houses.

Mr. Mulligan asked if it would be possible to get a variance for an accessory apartment that exceeded 25%. Told that the Board had granted such a variance, he asked what the special conditions of the property had been in that instance.

Chair Gooze said it was the way the house was made, so that there was only one place the apartment could be put without costing the owner a tremendous amount of money.

Mr. Mulligan said in this instance, he thought it was the existing architecture of the house that was the issue, as compared to something like ledge in the back yard. He said the architecture was that the family room and carport had been modified to create a living space, and said that was a special condition of this particular house.

Chair Gooze said he thought it would be quite easy to meet the 25% rule in this instance as compared to the situation with the other variance application he had just referred to.

Mr. Mulligan said perhaps it would be easy, but said compared to the value of the property, moving the interior could be a significant financial investment.

Chair Gooze said he was comfortable with whatever the Board decided, as long as it made the decision as if the apartment wasn't there to start with.

Mr. Gottsacker said it was feasible that when the owner built this expansion, he built it as an addition to the house, which would be perfectly legal, and at some point then decided to put in a kitchen in and not pull a permit for this.

Chair Gooze asked the Board not to do it this way.

Ms. Davis noted another variance application involving the 25% rule, and there was discussion that this didn't involve an attached apartment unit. Ms. Davis said she was considering the issue of the possible impact of granting this variance on the character of the neighborhood.

Chair Gooze said no matter what the Board did, there could be no more than 3 unrelated people legally living within the house.

Ms. Woodburn said the question was whether 200 extra ft affected the character of the neighborhood.

Chair Gooze spoke further about the problem he had with whether the first hardship criterion was met. He said the Board often ignored the issue of whether a property was unique. There was discussion.

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

Ruth Davis MOVED to approve an APPLICATION FOR VARIANCE from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to create an accessory apartment which is more than 25% of the total floor space of the dwelling in which it is located for the property shown on Tax Map 1, Lot 11-3 and located at 1 Pendexter Road, in the Residence B Zoning District. Robbi Woodburn SECONDED the motion.

Chair Gooze asked if there were any conditions the Board would like to include in the motion.

Mr. Johnson noted that the applicants, who wanted to sell the property, would still need to obtain a building permit because the accessory apartment was not created legally. He said it wouldn't hurt to include a condition in the motion concerning this.

Chair Gooze suggested the idea of possibly putting in a condition requiring an inspection of the property twice a year to determine occupancy.

Mr. Gottsacker said he had a problem with that, noting that he was a landlord but was not subject to that requirement. He said it wouldn't be fair to pick on a house that hadn't had problems. He noted that if there were problems, the Town was currently in the process of developing some remedies concerning student housing issues.

Chair Gooze said until those remedies existed, he would like to consider doing something regarding this property.

Mr. Mulligan said there were already some enforcement mechanisms in place, and also said it was debatable whether they were effective or not. He said he agreed with Mr. Gottsacker that there shouldn't be a condition concerning this.

Chair Gooze said he understood this perspective, but asked if there was any way to handle the potential problems.

Mr. Mulligan said if the neighbors were obnoxious, people needed to call the police.

There was discussion that this issue was outside the domain of the ZBA.

The motion was restated.

Ruth Davis MOVED to approve an APPLICATION FOR VARIANCE from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to create an accessory apartment which is more than 25% of the total floor space of the dwelling in which it is located for the property shown on Tax Map 1, Lot 11-3 and located at 1 Pendexter Road, in the Residence B Zoning District, with the condition that the applicant will get building permits and certify that the accessory apartment is 38% of the square footage of the main structure as per the plan submitted. Robbi Woodburn SECONDED the motion, and it PASSED 4-1, with Chair Gooze voting against it.

Chair Gooze stated that he didn't think the special condition variance criterion for hardship was met.

Break from 8:11 - 8:15 pm

- B. PUBLIC HEARING** on a petition submitted by Vincent Todd Jr. & Cheryl St. Onge, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-65(F) of the Zoning Ordinance to place a septic system within the wetland setback. The property involved is shown on Tax Map 14, Lot 18-0, is located at 225 Packers Falls Road, and is in the Rural Zoning District.

Chair Gooze appointed Mr. Starkey as a voting member.

Cheryl St. Onge said she and her husband were nearing the completion of the renovation of their property. She said the septic system from the prior house was functioning, and said it was being upgraded by choice. She said she was still perplexed as to why they needed to come before the ZBA for this.

She said Mr. Johnson had forwarded the septic plan to the State, and it was approved. She said there was now a 90 day clock ticking to put it in, but there wasn't Town approval for it. She explained that they would rather not have to apply to the State for an extension.

Ms. St. Onge said 3 of their 4 abutters had written letters of support for this variance application, and she noted that she and Mr. Todd were also one of the abutting properties.

She spoke about two ditches in the area, one along Packers Falls Road and the other along Wiswall Road, and said they had been thoroughly cleaned and reworked so that

some of the runoff had been significantly reduced. But she said there were two culverts, one on Packers Falls Road, and the other on Wiswall Road, that were in substantial disrepair so were still impacting the lower region of their property. She said she believed Mr. Johnson had a letter from the DPW that they were aware of this and would address the culverts when work was done on Wiswall Road in a few years.

Mr. Nichols from NH Soils Consultants spoke before the Board. In response to a question from Chair Gooze as to whether the present stone and pipe septic system was functioning properly, he said he had observed what he believed was groundwater in the system, noting that the house had been vacant for quite some time. He said that scenario represented a failure to treat issue, which kicked into the failure state. He said in terms of functioning, the system wasn't backing up into the house, or bleeding out. He said unless an evaluation was done of the leach field, one would probably never know.

He said the property was originally approved for a 4 bedroom home, and showed the existing tank and leach field on the plan. He spoke in detail about the wetland delineation that was done, and noted the line of poorly drained soils, very poorly drained soils and surface water located adjacent to the culvert. He discussed in some detail the culvert situation, noting that at times now the stone wall in the area was covered over with water.

He provided details on the tests pits that were done, and said although shallow ledge was found in places on the property, a viable area was found for the septic system. He said the issue of tearing down some sheds, keeping some remaining trees and the new garage were taken into consideration in locating the system. He said it was a pretty tight sight, but said they tried to meet the State requirements the best they could. He noted that they had asked for two waivers from the State requirements, which were granted.

Mr. Nichols read from Section 175-65 (F) of the Zoning Ordinance, and noted its reference to Article XXIV 175-138 and 139. He said he had interpreted all of this language together as meaning that since this was a lot created in 1883, they didn't have to meet the 125 ft wetland setback.

He said the applicants had provided a follow up letter to Mr. Johnson giving the ledge depths as a restriction, and noted that the system designed for the site was an Enviro-septic system. He spoke in detail about how an Enviro-septic system was appropriate for the property and would provide better treatment than the system installed in 1973. He said the best technology to use depended on what the site was, and said the Enviro-septic system made more sense on this property than a Clean Systems system, which was a mechanical system that required electricity, and was designed for really small lots.

Chair Gooze said he didn't see where Article XXIV, Section 175-139 came into play with this application, since it was a replacement system that was proposed.

There was discussion about why one would think Section 175-139 would be relevant to this application, as Mr. Nichols had indicated. Mr. Johnson said Article XXIV of the Zoning Ordinance concerning Septic Systems didn't apply here, and was for new

subdivisions.

Chair Gooze said Article XXIV would apply if there was an existing vacant lot and there was a new building and septic system being put on it, or if the lot was made a lot after this Ordinance and a new septic system was being put on it. He said Article XXIV didn't apply to the property in question, and said they were only dealing with the 125 ft wetland setback issue.

Mr. Nichols said some additional information was provided based on the conversation with Administrator Selig. He said the location proposed for the septic system was the only one that was feasible, and noted that the original system was located a little closer to the wetland than what was proposed now. He said this design also considered tank location as well as ledge depth and some trees that were being saved.

He said the 125 ft setback encompassed the whole property so there was no way to meet the setback requirement. He noted that the existing stone and pipe system was actually a larger leachfield than what was proposed now. He said they had proposed to put the system in the only location on the property that was viable.

Mr. Nichols said the new system would be further from the wetland line than the existing system. He said the new system encroached 3 ft into the State's 50 ft poorly drained soils setback, and 15 ft into the 75 ft surface water/very poorly drained soils setback. He said waivers were received from the State for both of these encroachments.

Mr. Starkey asked about the wells on the property, and Mr. Nichols said there were two, explaining that the one to the east was in use, and the other was an old stone well that had recently been filled in.

Mr. Gottsacker asked if the setback applied with the old well and was told no. It was noted that the 75 ft well setback could be waived if it was the property owner's well that was involved.

Ms. Davis said the issue of the culvert backup was a problem for the owners, and asked how this related to the Board's discussion of this application. She asked if the wetlands would perhaps recede in the future if the culvert issue was addressed.

Mr. Nichols said the area had not ponded like this in the past, but said with the culvert backup now, the property was not draining as much and was probably getting wetter. He said if the culvert working properly, this might or not be affect the poorly drained soils area, but said he believed that the surface water area would drain off.

Chair Gooze asked if there were any members of the public who wished to speak for or against the application.

Chair Gooze noted that there were two letters of support from abutters, one from John Sheehan, and the other from Michael Hookailo.

Ms. St. Onge said she and Mr. Todd were one of the abutters, and said there was only one abutter who they had not heard from.

Sean Starkey MOVED to close the Public Hearing. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.

Chair Gooze said the proposed septic system was better than the one it would replace, and would be further from the wetland than the existing system. He asked Board members if they had any problems with this application, and there was agreement that all 5 variance criteria were met.

Sean Starkey MOVED to approve an Application for Variance from Article XIII, Section 175-65(F) of the Zoning Ordinance to place a septic system within the wetland setback, for the property shown on Tax Map 14, Lot 18-0, and located at 225 Packers Falls Road in the Rural Zoning District. Ruth Davis SECONDED the motion.

Chair Gooze said he wondered whether, if someone was replacing a septic system and it would be located further away from the wetland, this had to come before the ZBA for a variance.

Mr. Johnson suggested that this could be discussed with the Conservation Commission.

Chair Gooze said he guessed that the ZBA had to review what was proposed in order to make sure that it would be a good enough system.

The motion PASSED unanimously 5-0.

III. Approval of Minutes – No minutes

IV. Other Business

Chair Gooze noted that there was a response from the ZBA's attorney regarding the Hiller case. He said the court case would be heard on January 14th, and said he would attend the session and report back to the Board.

V. Adjournment

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

Adjournment at 8:48 pm

Victoria Parmele, Minutes taker

Jerry Gottsacker, Secretary