

These minutes were approved at the March 30, 2010 meeting.

**ZONING BOARD OF ADJUSTMENT
TUESDAY, JANUARY 12, 2010
TOWN COUNCIL CHAMBERS - DURHAM TOWN HALL
7:00 P.M.
MINUTES**

MEMBERS PRESENT: Chair Jay Gooze; Ruth Davis; Carden Welsh; Edmund Harvey;
Sean Starkey; Chris Mulligan

MEMBERS ABSENT: Vice Chair Robbi Woodburn; Secretary Jerry Gottsacker

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

I. Approval of Agenda

Sean Starkey MOVED to approve the Agenda. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

II. Public Hearings

- A. **PUBLIC HEARING** on a petition submitted by Attorney F.X. Bruton, Dover, New Hampshire on behalf of Warren R. Brown, Brown Living Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Durham Zoning Ordinance to permit the subdivision of a lot into two lots where one lot is less than the required minimum lot size of 20,000 square feet. The property involved is shown on Tax Map 2, Lot 1-3, is located at 34 Edgewood Road and is in the Residence A Zoning District

Chair Gooze recused himself for this application, after appointing Ruth Davis to serve in his place. Mr. Starkey, Mr. Mulligan and Mr. Harvey were appointed as voting members for this application.

Attorney Bruton spoke for the applicant. He explained that when this lot, which contained 34,000 sf, was first developed, the intent was to cut it in half at some point in the future. He said in the mean time, the RA zone, which previously had a minimum lot size of 10,000 sf, now had a minimum lot size of 20,000 sf. He said the tax map of the area indicated that the existing lot stood out, because most of the properties there were about 10,000 sf.

He said the applicant would like to subdivide the lot in such a way that the lot that contained the house would completely conform to the Zoning Ordinance. He said the new lot created would conform to the Ordinance as well, other than the fact that it would have 14,000 sf and not the 20,000 sf the RA zone now required.

Attorney Bruton stated that the applicant would be willing to restrict the lot to having a single family home on it, noting that some other uses such as multi-unit elderly housing were allowed there. He also said that since Mr. Brown had lived there for decades, he was well aware of the issue of the renting out of single family homes to students.

He said as long standing members of the community, he didn't want to do that, and had suggested that he would be willing to agree to a stipulation that the structure on the new lot would be owner occupied. He said Mr. Brown would be willing to do this in order to assure the neighbors that the house would not be rented for student housing.

Attorney Bruton noted that the ZBA had granted a similar variance to the Martins, who lived just east of the Brown property. He said in that situation, a 24,000 sf lot was split into one 14,000 sf lot and another 10,000 sf lot, and said one of the lots didn't have the required frontage. He said the applicant therefore felt his variance request was consistent with surrounding properties, and was therefore reasonable.

He next went through the variance criteria. He said granting the variance would not decrease the value of surrounding properties, since the new house would be owner occupied. He said the applicant was going beyond what he was required to do, in an effort to protect surrounding property values.

He said granting the variance would not be contrary to the public interest in that the development on the new lot that was created would not alter the essential character of the locality, and in fact would be consistent with the other land uses in the area.

Attorney Bruton noted that the criteria for an area variance would soon be changing, but said right now, the Boccia decision did apply. He said the question was therefore whether the variance was needed in order to enable the proposed use given the special conditions of the property. He said this was a unique property because of its size, and also because it was a corner lot, with frontage on two roads.

He said that in regard to the second hardship criterion, as to whether the same objective could be achieved in a different way, there was no other way to achieve what the applicant wanted to do other than drawing a straight line, which would increase the deficiency in terms of being able to conform to the Zoning Ordinance.

Attorney Bruton said substantial justice would be done in granting the variance because it would allow the owner a reasonable use of his property, a use that was similar to that of other nearby properties.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance, which in general provided for safe, harmonious and manageable development. He said it was believed that there would be no adverse effect on residents, and that the subdivision plan would be consistent with the spirit and intent of the RA District.

He noted a comment from an abutter who didn't favor the granting of the variance, but he said the issues raised by the abutter were not ones the ZBA would typically consider. He said if the variance was granted, the Planning Board would consider those things, and would make sure the subdivision was done right. He noted that the owner was also interested in doing things right.

There was discussion on when the minimum lot size for the RA District had increased to 20,000 sf. It was determined that this had occurred after 1982, which was the year the applicant bought the property. The Board looked at tax maps for the area, to get an idea of the size of surrounding lots.

Chair Davis noted that the property could have been subdivided by drawing a straight line, but this would have meant that the lot that contained the house would have less than 20,000 sf.

Attorney Bruton said the line that had been drawn was the natural way to do this. He said the applicant could have drawn the line differently and then asked for more relief from the Zoning Ordinance, but he said this wouldn't have made sense. He noted again that Mr. Brown would be willing to agree that any future use on the new lot would be restricted to being a single family home, and would also have to be owner occupied.

Chair Davis asked why the Browns or a future owner would have to abide by that, and Attorney Bruton said this would be made part of the record. He said it could be made a condition of approval.

Mr. Johnson said this would be a deed restriction, for anyone purchasing the property in the future.

Chair Davis noted that one of the neighbors had a concern about the possibility of mature trees on the property being taken down.

Attorney Bruton said the applicant could do that right now.

Mr. Welsh suggested that the Board could say something concerning mature trees a certain distance from the house.

Attorney Bruton said one had to be careful about mature trees on a property. He also noted that the applicant would be going to the Planning Board with a subdivision application, and said that board would be in a good position to consider those things.

Mr. Welsh said the applicant was asking for a variance, and said the Board therefore had a chance to ask for something in return that considered the abutters.

Attorney Bruton said he understood what Mr. Welsh was saying.

There was further discussion.

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

Jay Gooze, 9 Meadow Road, said he lived on the same street as the property in question, and said he was in favor of granting this variance, stating that he thought it met all of the variance criteria. He said the fact that Mr. Brown would be willing to put a deed restriction on the property, which would run with that property in the future, would provide adequate protection for the neighbors. He also said it was a good thought regarding the idea of having a minimum buffer of trees, stating that he wished there was a buffer in regard to the Martin house.

Milton Martin, 81 Madbury Road, said he abutted the Browns' property in the back, and noted that one of the lots in his subdivision was 11,000 sf, not 10,000 sf. He also said some trees had been removed from his property because of some problems with the trees themselves, which could have damaged a structure on the lot in the future.

He said he was in favor of granting this variance, and said he thought what the applicant had proposed would result in a beautiful new lot that would be put to its greatest use in this compact area, and would create more tax revenue without adding to the Town's infrastructure costs. He said it could only improve the Town.

Mr. Martin said the only thing he didn't like about this was the idea of the new house having to be owner occupied. He said this would preclude something such as a professor living there who wanted to go on sabbatical, which could impact the sale of the property.

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

Therice Willkomm, 24 Meadow Road, said she was an abutter, and said she was against the granting of this variance. She said the house on the new property would be really close to her, noting that her house was close to the property line. She said she thought this would have a negative impact on her property values. She also spoke about the mature trees on the property in question, and said when she bought her property, she did so because there was a buffer and some privacy.

Chair Davis said he would read Ms. Willkomm's letter into the record, but first asked her if as an abutter, she would be more comfortable if the second lot was a little larger, which would allow the house that was built there to be further from her property line.

Ms. Willkomm said her concern was with the proposed design, where the house would be close to hers, noting that her house was constructed close to the border. She also said the new lot that was proposed was smaller than the minimum lot size required in that district, and said there should be respect for why there was a minimum lot size in the Zoning Ordinance, which related to possible impacts on property values.

Mr. Starkey asked what kind of buffer there was between Ms. Willkomm's house and the Davis house, and there was discussion.

Ms. Willkomm said she didn't feel crowded in on that side because her garage and living space didn't come close to the Davis home.

Mr. Welsh determined that Ms. Willkomm had lived there for 18 months.

Chair Davis read Ms. Willkomm's letter into the public record, and then asked for rebuttals.

Attorney Bruton said the issue the abutter had addressed related to the sideyard setback requirement, but he noted that the only variance being requested was in regard to the minimum lot size requirement. He said the lot size did not affect the setback issue, and said the applicant met the setback requirement. He restated that granting the variance concerning the minimum lot size would be entirely consistent with the existing character of the neighborhood, and the spirit and intent of the Zoning Ordinance. He asked that the Board grant the variance.

Ms. Willkomm asked what the reason was for requiring the 20,000 sf minimum lot size, and Mr. Starkey explained that this had been determined by the Planning Board.

Ms. Willkomm said prior to moving to Durham she had lived in Canterbury, where the intent of the minimum lot size established by the Planning Board was to preserve land and trees so properties were not on top of each other. She asked that the ZBA honor the minimum lot size the Planning Board had created.

Mr. Welsh asked for more details concerning why the applicant couldn't move the lot line so the new lot could have more square footage.

Attorney Bruton said the applicant would have to ask for two variances if the line was moved, because in that case neither lot would meet the minimum lot size requirement. He said the intent was to have only one non-conforming lot, not two, explaining that there were some restrictions on non-conforming lots, which could mean that more variances might be needed later.

He said the buffer issue could be discussed with the Planning Board. He also said variances would never be granted if no relief could be sought from something like a minimum lot size requirement. He said the purpose of a lot size was to allow enough room for inhabitants to live safely. He said this new lot would meet the frontage and setback requirements, and would contain more land than others in the area who lived safely. He said the applicant had erred on the side of caution, and said this was the best plan that could be provided under these circumstances.

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

Mr. Starkey said he would go through the variance criteria. He said he didn't think a lot of this size would decrease the value of surrounding properties or affect anyone because it would fit well within the style of the neighborhood. He also said the fact that the lot was on a corner limited how it could be divided up. He said creating two lots that didn't contain the minimum lot size of 20,000 sf wouldn't make sense, and said keeping one lot that was conforming helped maintain the value of surrounding properties.

Mr. Welsh said he believed there was a chance that the value of Ms. Willkomm's property could be impacted because right now she essentially had a park right next to her house. He said he therefore had a question concerning this variance criterion. He said he wasn't sure the other houses nearby would be impacted.

Mr. Harvey said the applicant could cut trees on the property now, regardless of whether a variance was being requested.

Mr. Mulligan also noted that the applicant could rebuild the house in a way that put it closer to the neighbor than it was now.

Mr. Starkey said the Board wasn't there to discuss what could be built there, but instead should discuss how the new lot would fit with the neighborhood. He noted that if the applicant went outside the setbacks, he would have to come back to the ZBA for more variances. He said he thought the subdivision that was proposed fit with the neighborhood. He said it was understood that he would be concerned if a new lot was being created next to his house. He noted that he did have a new lot near him, and couldn't do anything about it.

Mr. Harvey said the fact that a similar variance had previously been granted for a property nearby had no bearing on this application. He also said it was almost a detriment that the Martin property has received a variance, because two properties getting similar variances could change a neighborhood.

Mr. Starkey said there were a number of lots in the neighborhood with less than 20,000 sf, and it had been that way for a long time. He said he was therefore looking at how granting this variance would fit with that.

Mr. Harvey noted that the minimum lot size requirement in the neighborhood had originally been smaller, and the Planning Board had changed it to 20,000 sf. He also said there was a pretty big buffer there.

Chair Davis noted that the Master Plan and the Zoning Ordinance encouraged infill development in that district.

Mr. Welsh said he was on the fence concerning whether the property value variance criterion was met, but said other Board members had brought up some good points. He said he liked the fact that a deed restriction had been proposed, which required that the

house had to be owner occupied. He said this would help address the issue of a possible decline in property values.

Regarding the public interest variance criterion, Mr. Starkey noted that an abutter had spoken against the variance request, which was important to consider, because the public interest included abutters. But he said he thought the lot size that was proposed fit with the lot sizes that had been developed for the neighborhood long ago, and the way the neighborhood had actually been developed. He said he didn't feel it was necessarily contrary to the public interest to allow a lot size to be smaller, keeping in mind that someone had spoken against this.

Mr. Harvey said the deed restriction was the applicant's idea, but said he wasn't sure it would be a good idea. He spoke in some detail on this, and there was discussion. Mr. Starkey said such a restriction could cause a decrease in property values, and Mr. Harvey said it should be voluntary.

Chair Davis said that regarding the public interest criterion, if abutters identified a specific possible adverse affect on the public interest, the Board would like the applicant to overcome this. She said the adverse effects identified here included the loss of mature trees. She said she realized that ultimately such trees would become a liability, but she said right now they were a nice feature.

She also noted that concern had been expressed about crowding as a result of the new lot, but said she believe that it had previously been intended that the existing lot be subdivided. She also said the new lot would look a lot like others in the area.

Mr. Welsh said he didn't believe granting the variance would be contrary to the public interest, given the size of the lot and other things the Board had brought up. He said it might be an interesting idea for the Board to put in an advisory that the applicant keep the trees whenever possible during the construction.

Mr. Mulligan said the applicant had spoken to abutters' concerns about buffering, and would respect the setbacks. He noted that if the applicant wanted to build to those setbacks now, he could do so. He said he didn't think granting the variance would be contrary to the public interest, although he said the abutter had raised some legitimate concerns. He said the purpose of the RA District was to maintaining existing high density housing, and he said what was proposed fit with the neighborhood in terms of lot sizes.

Mr. Welsh said given that he had some concerns that there could be a decrease in the value of a surrounding property, he recommended that some plantings be undertaken in the side yard of the new lot to provide a buffer.

Mr. Mulligan said he thought the buffering issue should be left to the Planning Board to address.

Mr. Harvey said specific evidence was needed to indicate that granting a variance would

result in a decrease in property values, so the Board was taking a step beyond that.

Mr. Mulligan said with the Martin variance, there was some indication that the orientation of the houses would be such that they wouldn't run into each other. He suggested that there could perhaps be a stipulation regarding the location of the driveway.

There was further discussion, with Mr. Starkey noting that there was no subdivision plan in front of the Board right now. He said they were just looking at the lot size issue right now, and said what was done with the lot was a completely separate issue.

Regarding the hardship criterion, Mr. Starkey said it looked like the intent had been to subdivide the 34,000 sf lot at some point. He said the orientation of the lot on the corner didn't allow much room to maneuver the lot line. He said keeping a 20,000 sf conforming lot and getting the second lot as close to that as they could was probably the best way to do the subdivision, although he said he thought the line could have been moved a bit. He said he thought they drew the line the best way they could, based on the special conditions of the property, and said he believed the hardship criteria were met.

Mr. Harvey said he thought a 14,000 sf lot was reasonable, did fit well with the surrounding area, and kept the other lot conforming. He said he didn't think there was anything the applicant could do other than the design that was proposed.

Chair Davis said if the Board denied this variance and didn't allow the existing lot to be subdivided, she felt it would be a hardship for the owner, especially given that the lot was large for this block. She said the applicant essentially had a double lot, and said this was a special condition of the lot.

Mr. Welsh said he had nothing to add to this.

There was next discussion concerning the substantial justice criterion. Mr. Starkey said he believed it was met, stating that the applicant had a reasonable right to use this lot to the best of his ability.

Mr. Harvey said if the variance wasn't granted, the lot would be left at 34,000 sf, as compared to the other lot sizes in the area. He said it was sort of the nonconforming property in the area.

Chair Davis noted that the property taxes were greater on this lot. She said substantial justice would be done in granting this variance, as long as the subdivision was done in a way that had a minimal impact on the abutters. She noted the deed restriction that had been proposed.

Concerning the spirit and intent of the Ordinance criterion, Chair Davis said the RA District was intended for high density residential development, yet there was the 20,000 sf minimum lot size in place now. She said there were very few properties in this particular area that met that requirement.

There was discussion that there were some other lots in the area that were also larger.

Mr. Welsh said when Fairchild Drive was developed, the houses were allowed to be on smaller lots, but the Town asked that there be a common area around them. He said he didn't think granting the variance would be contrary to the spirit and intent of the Ordinance, because it worked given the localized neighborhood they were looking at. But he said one had to be careful about saying that a 20,000 sf minimum lot size was put in for no reason at all.

Mr. Starkey said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said it was smart to keep lots at a certain size, and said he didn't think subdividing the lot would work against that in this instance.

Chair Davis said it sounded like all of the Board members felt the application met all five variance criteria.

Mr. Welsh said he still had a concern about the property value variance criterion, but said he thought he could get around that if there was a deed restriction, and if the Board was convinced that the Planning Board would have the applicant put in a vegetative barrier. He asked if the ZBA should put something in the motion regarding this.

Mr. Starkey said he thought this should be left to the Planning Board, and he spoke in some detail on this.

After further detailed discussion, the Board agreed to leave the buffering up to the Planning Board.

Chris Mulligan MOVED to close the discussion. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

Carden Welsh MOVED to approve the APPLICATION FOR VARIANCE from Article XII, Section 175-54 of the Durham Zoning Ordinance to permit the subdivision of a lot into two lots where one lot is less than the required minimum lot size of 20,000 square feet. as shown on the document associated with the petition submitted by Attorney Bruton on behalf of Warren R. Brown, Brown Living Trust, Durham, New Hampshire, with the condition that there will be a deed restriction on the smaller property restricting lot use to a single family owner occupied structure. The property involved is shown on Tax Map 2, Lot 1-3, is located at 34 Edgewood Road and is in the Residence A Zoning District. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

Recess from 8:27-8:34 pm

- B. **PUBLIC HEARING** on a petition submitted by Christopher Levesque, Madbury, New Hampshire on behalf of Charles M. Hart Rev Trust, Madbury, New Hampshire for an

APPLICATION FOR VARIANCES from Article XII, Section 175-54 and Article XIV, Section 175-74(A&B) of the Durham Zoning Ordinance to permit the demolition and reconstruction of a single family home, a garage and septic system within the frontyard, rearyard and shoreland setbacks. The applicant is also seeking variances from Article IX, Section 175-30(D)(3)(c&d) and Article XX, Section 175-109(D) to reconstruct a home that exceeds the volume of the current structure by greater than 30 percent and the footprint of the current structure by greater than 15%, and to construct a garage as a third accessory structure. The property involved is shown on Tax Map 12, Lot 1-26, is located at 14 Cedar Point Road and is in the Residence C Zoning District.

Chair Gooze returned to the table. He said Mr. Harvey and Mr. Mulligan would be voting members for this application.

The applicant, Charles Hart, said he had bought the property two years ago, and knew at the time that he would need to get some variances because it had no bedrooms and a nonconforming septic system. He said he planned to construct a house that was aesthetically pleasing and would have a minimum impact on the environment. He said he was very pleased with the plans architect Walter Rous had come up with, and said he had shown the plans to the neighbors. He said there was support for what he was trying to do.

Mr. Welsh said he wasn't sure what the plan was for the new construction, and said he would like to get a better understanding of what it would look like.

David Eckman of Eckman Engineering provided copies of the boundary plan and aerial photographs, in order to show the site in relationship to neighboring properties. Among other things, he noted that Mr. Hart owned two adjacent parcels, 1-26, the lot under consideration, and 1-27, which contained a field and some sheds.

Mr. Levesque said the applicant proposed to replace the house on the existing footprint as much as possible. He also said there was a proposed garage, noting that the plan was to center the garage on the existing wellhead. He said the plan was to put a studio apartment in the garage.

Chair Gooze noted that one of the variances was to allow three structures on the property, where two were allowed.

It was explained that this third structure was a small shed, which was the old privy for the property, and that the applicant would like to relocate it on the lot rather than get rid of it. Mr. Hart said he wanted to slide the shed over and maintain it, because it was a nice building and he like historical properties. He noted that it was a non-functioning privy.

Mr. Eckman spoke about the variance request for the septic system. He said a Clean Solutions system was proposed, and said it had already been approved by NHDES, pending local approvals. He noted the location of the old septic system, and said the new one had been pushed back as far as possible.

Mr. Welsh asked if the applicant was planning to build the new garage with a new studio within the 125 ft shoreland.

Mr. Eckman said the lot itself was pretty much within the shoreland zone, and said the new building would be within the shoreland zone. He explained that as part of the development, the existing driveway would be removed and the new one put in would be comprised of porous concrete. He also said porous pavers would be used for the patio, and said these two things would offset any increase in imperviousness from what was proposed.

Chair Gooze asked if all the houses in that area were within 125 ft setback, and was told yes. It was noted that the ZBA had previously seen variance applications for 5-6 houses located in that same area.

Mr. Levesque noted that the photos provided to Board members showed the setbacks for houses in the area.

HOUSE VARIANCE REQUESTS

Article IX, Section 175-30 D (3) for the reconstruction of a house that exceeds the volume of the current structure by greater than 30%

Mr. Levesque said no decrease in the value of surrounding properties would be suffered because the new construction was a substantial improvement over the existing structure. He noted that the existing structure was comprised of two old camps that had been built poorly and moved together. He explained that the existing lot at one point had been three lots of record, which were subsequently combined. He said he suspected the buildings were put together when the lot was consolidated. He said the new house that was proposed would be a vast improvement, and would raise property values.

He said granting the variance would not be contrary to the public interest because the scale and scope of the proposed construction was consistent with other dwellings in the neighborhood, and posed no risk to the desired rural character. He also said there was no additional encroachment on sensitive coastland areas, noting that the new building would not be any closer to the water..

Mr. Levesque said it had taken extra effort to work with the existing footprint as much as possible, noting among other things that they planned to work around the mature trees on the lot and cause as little disruption to the land as possible. He also said the proposal included adding a half story to the footprint, and noted that the second floor wouldn't have a full eight foot wall, which would keep the building below the maximum roof height allowed.

He pointed out that there were numerous full size two story structures in the neighborhood, and also said the applicant's lot was a fairly good size for that area. He said the area of the house would only increase by 5.5%, which was below the 15%

increase limit for area. But he said the volume would increase by 88%.

Mr. Welsh said the existing house already looked pretty big. He asked if there were drawings of what the house would look like.

Mr. Levesque agreed that it appeared large, but said the house that was proposed would still be smaller than some in the area. He provided details on the building elevations that had been drawn, and noted that a variance wasn't needed concerning the height of the proposed building.

There was discussion about the current 1,600 sf building footprint, and about what the square footage of the new building would be. The Board looked at the proposed building elevations facing in various directions.

Chair Gooze pointed out that the house across the street was very large.

Mr. Levesque said the hardship criteria were met with this application because there were numerous deficiencies in the existing house, and the benefits of remodeling were disproportionately small compared to the expense. He also said a simple increase in volume of 30% would not accommodate the owner's spatial needs.

He said by granting the variance substantial justice would be done because the owner would be permitted to build an energy efficient, environmentally conscious house that contained the amenities of his neighbors' homes, while maintaining the coastal character of the area.

Mr. Levesque said granting the variance would not be contrary to the spirit and intent of the Ordinance because the proposed construction was scaled to its surroundings. He said it was designed to minimize impacts on the coastal environment, and would be constructed with a style that was fitting for a coastal community.

Mr. Welsh asked if the 30% increase that was allowed under the Ordinance included the patio and deck, and was told no, and that it only referred to usable space. It was determined that the deck would be a slightly different configuration than the existing deck on the house, would be constructed of hardwood with spaces between the boards, and would not have a roof.

There was discussion about whether a variance was needed for the proposed patio.

Mr. Johnson said this wasn't up to the Board, and would be covered under NHDES's permitting.

Mr. Levesque said he had pursued this with NHDES. He said in principle they had no problems with the proposal, and also said the applicant had tried to address the agency's concerns initially in an effort to be proactive.

Chair Gooze noted that anything the Board approved and NHDES subsequently did not approve could not go forward.

Article XII, Section 175-54 regarding the construction of a structure with a small portion extending 6 ft inside the 30 ft minor road setback.

Mr. Levesque said the proposed bump-out was 6 ft by 22 ft, and was proposed for the kitchen. He said this design would avoid creating a house that felt like a bowling alley. He said the 5.5% area increase included the bump-out. He also said if one also considered the fact that the road itself was generally not traveled on and was grown in, the setback was more like 40-50 ft. It was noted by Mr. Eckman that the Town had an easement to use the road, and that the center line would be the property line if it ever disappeared.

Mr. Welsh asked if the Bates would be able to see the bump-out.

Mr. Levesque said even with the vegetation down, the house was almost invisible. He noted that the Bates had said they were all right with the proposal. He then reviewed how the criteria were met concerning this variance application.

He said granting the variance would not decrease the value of surrounding properties because the new structure would be similar to the existing structure. He also said the structure would be nearly invisible from the road in question, due to a dense vegetative buffer.

He said granting the variance would not be contrary to the public interest because the new structure was located nearly exactly on the location of the existing structure, and was in fact further from the traveled way than many other neighborhood structures.

Mr. Levesque said denial of the variance would result in unnecessary hardship because the lot offered no alternatives due to the nature of the setbacks. He said without a variance, the lot was unbuildable.

He said substantial justice would be done in granting the variance because the owner would be permitted to utilize the property in a way that was consistent with its historical use, and consistent with the neighborhood.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance, which in this case was to maintain a reasonable distance from the traveled ways while preserving rural character. He said the intent was met in this situation because the portion of the road was so lightly traveled that the earth had nearly reclaimed it. He said if one were to consider the edge of the defined dirt road, the setback distance was about 40 ft.

Article XIV, Section 175-74 (A), regarding the construction of a house within the 125 ft shoreland setback

He said there would be no decrease in the value of surrounding properties as a result of granting this variance because the proposed construction was an improvement, and should raise property values.

He said granting the variance would not be contrary to the public interest because the proposed structure was located on the footprint of the existing structure, and the location with respect to the water was consistent with other properties. He said maintaining this location would allow the applicant to keep a lot of the mature trees, including some odd trees like horse chestnut.

He said denial of the variance would result in unnecessary hardship because due to the nature of the lot, if all the setbacks were observed there would be no buildable area.

Mr. Levesque said by granting the variance, substantial justice would be done because this would allow the owner to utilize the property in a way that was consistent with its historical use while doing so in an upgraded, efficient house. He said at the same time, there would be no adverse effects on the neighbors' rights or values.

He said granting the variance would not be against the spirit and intent of the Ordinance because all efforts had been made to make no further impacts on the shoreland area, while minimizing encroachments on front and side setbacks. He also said the use was unchanged.

Article XII, Section 175-54 50 ft regarding the reconstruction of a house inside the 50 ft rear yard setback

Mr. Eckman said it was his feeling that it was appropriate to consider the setback in the back a 30 ft road setback, which the Board had already addressed. But he said Mr. Levesque had also included a variance request concerning a 50 ft rear yard setback, in case the Board considered this to be more appropriate. He said there was a road there, but said it was up the Board.

Board members agreed that Mr. Levesque didn't need to go through the criteria for this variance request.

Article XIV, Section 175-74 (B), regarding the construction of a septic system for the house inside the 125 ft shoreland setback

Mr. Levesque said granting the variance would not result in a decrease in the value of surrounding properties because the system was subsurface and would not be visible from the adjacent properties. He also said it was an improvement over the nonconforming system currently in place.

He said granting the variance would not be against the public interest, noting that the current system was in poor condition and was also closer to the shoreland area than the new system that was proposed.

Mr. Levesque said denial of the variance would result in unnecessary hardship because the existing dwelling unit was of no use without a septic system.

He said granting the variance would result in substantial justice because the owner would retain the use of the lot while the public would benefit from a proper sewage disposal system.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because the new location was an improvement on the existing conditions. He said it wasn't known how old the existing system, or what it was. He said the proposed system was a Clean Solutions system, designed for lake lots and high water tables. He provided details on the system.

Chair Gooze asked if there were any other possible locations for the septic system that would result in less encroachment.

Mr. Levesque said the location proposed was as far from the water as they could possibly put it. He also said it was the only area that had soils that were adequate for a subsurface disposal system.

GARAGE VARIANCE REQUESTS

Article XII, Section 175-54 regarding the construction of a garage that extends approximately 10 ft into the 30 ft minor road setback

Mr. Levesque said granting the variance would not result in a decrease in the value of surrounding properties because the garage was a tasteful new structure that was consistent with coastal architecture. He said it was similar in terms of the setback to other structures in the neighborhood.

He said granting the variance would not be contrary to the public interest because it would not adversely affect the publicly traveled areas, and would not impede the neighbors' ability to utilize and enjoy their property.

He said denial of the variance would result in unnecessary hardship due to the nature of the setbacks on the lot. He said there were no alternate locations for the garage, and said moving it further from the road would mean it would be closer to the water. He said the applicant had erred on the side of caution and maintained as much distance as possible from the water, while maintaining a reasonable distance from the road. He noted that many of the buildings on the south side of Cedar Point Road were quite close to the water.

Mr. Levesque said granting the variance would mean substantial justice would be done because it would allow the owner to enjoy the same amenities as many of his neighbors, without granting an exception that had not been previously granted to other owners.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because the intent of the Ordinance for the RC zone was to protect the water quality, rural character, and coastal scenic beauty. He said the garage would support this in that it would provide concealed parking, concealment of lawn and snow removal equipment, and would provide parking on an impervious concrete slab, near sensitive coastal areas.

He noted that the casing for the well in the garage would be constructed in a way so that it could be accessed.

Article XIV, Section 175-74 (A), regarding the construction of a garage inside the 125 ft shoreland setback

Mr. Levesque said granting the variance would not result in a decrease in the value of surrounding properties because the proposed structure would be tastefully constructed and designed to complement the coastal character. He said it would also be located in a way that was consistent with neighboring structures.

He said granting the variance would not be contrary to the public interest because the construction would have no adverse effects on the environment, and would not detract from abutters' property values or impact the function of adjacent public areas.

He said denial of the variance would result in unnecessary hardship because all setbacks were overlapping, and there was no alternative location for the structure.

Mr. Levesque said substantial justice would be done in granting the variance because there were many residences with garages on Cedar Point Road, and none of the structures on the south side of the street were outside of the 125 ft shoreland setback. He said the owner would simply have the amenities his neighbors enjoyed.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because it had no impact on water quality, it did not threaten the shoreland, and it was not destructive to the rural character of the area.

Mr. Welsh questioned the claim that there would be no adverse impacts on the environment, noting that the roof would result in runoff with more velocity than would be the case if the rain was simply hitting the ground.

Mr. Levesque disagreed, and also said they intended to minimize the re-grading of the lot, and to make sure that the water would go the same place it had gone before.

Mr. Welsh said he thought one of the reasons for the shoreland setback was to prevent impervious surfaces there.

Mr. Levesque said the initial conditions reflected an approximately 12% impervious

cover, and said this percentage would be maintained with the proposed development by taking out the old driveway and putting in new porous pavement.

Mr. Eckman explained that both a wetland permit and a shoreland permit had been applied for. He provided details on the fact that the 12% impervious cover would be maintained with the new construction. He also said Mr. Hart was willing to collect roof runoff and put it underground if needed. He said NHDES was very supportive of the approach they planned to use, which balanced pre and post flows.

Chair Gooze said the applicant was within the allowed impervious pavement percentage, and also noted that NHDES would be keeping an eye on this.

Article XX, Section 175-109(D) regarding the construction of a garage as a third accessory structure.

Mr. Levesque said there would be no decrease in the value of surrounding properties as a result of granting the variance because the garage would benefit the neighborhood aesthetic since it would allow concealed parking and storage. He said the garage would also be constructed in a style complimentary to the coastal character. He noted that there were a number of properties in the area that had quite a bit of clutter, and said the garage would allow the Harts to avoid this.

He said granting the variance would not be contrary to the public interest because the construction of a garage in addition to two small sheds did not threaten the sensitive coastal area, did not impact water quality, and did not harm the rural character or affect the use of adjacent public or private lands. He said the remaining little buildings were remnants of a time when the lot was actually three lots. He said they were nice buildings, and provided details on this.

He said denial of the variance would be a hardship because it would mean that one of the existing structures would have to be torn down. He said it was nicely built and was worth saving.

Mr. Levesque said substantial justice would be done in granting the variance because the owner would have the benefit of having a garage, something his neighbors enjoyed, while not having to destroy a functional asset. He said the sheds were not an eyesore, and also noted that this was a large lot in relation to others in the area. He said one of the sheds would be virtually invisible from the street.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance because two of the buildings in question were as much ornamental as they were functional. He also said they were remnants of when the property was three separate lots, and were not inconsistent with the cottage like nature of coastal communities.

Chair Gooze asked if there were questions from the Board.

Mr. Welsh received clarification that a variance wasn't needed for the proposed apartment in the garage.

Ms. Davis received details about the fact that the house currently had no bedrooms.

There were no other questions from the Board.

Mr. Johnson noted that the new house would have a new foundation, and he determined that there would be nothing below grade, and no walkouts.

Chair Gooze asked if there were any members of the public who wished to speak for or against the variance applications. He noted letters from the Mabeys, the Heiligs and the Bates, which all spoke in favor of granting the variances.

Mr. Johnson asked if the architectural plans had been completed.

Mr. Hart said he was comfortable with the footprint of the design and pretty much everything in the design. He said the windows might move a foot or two, but said the number of them would stay the same.

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

Chair Gooze said to him, most of the variances reflected the issue of whether the Board wanted to allow a larger structure in the shoreland zone. He said if they allowed this, the septic system went along with that. He recommended first addressing the variances for the structure itself.

House Variances

- **Article IX, Section 175-30 D (3) for the reconstruction of a house that exceeds the volume of the current structure by greater than 30%**
- **Article XII, Section 175-54 regarding the construction of a structure with a small portion extending 6 ft inside the 30 ft minor road setback.**
- **Article XII, Section 175-54 regarding the reconstruction of a house inside the 50 ft rear yard setback**
- **Article XIV, Section 175-74 (A), regarding the construction of a house within the 125 ft shoreland setback**
- **Article XIV, Section 175-74 (B), regarding the construction of a septic system for the house inside the 125 ft shoreland setback**

He asked Board members to indicate whether they thought any of these variance requests didn't meet any of the five variance criteria.

Ms. Davis noted that a lot of the Board's discussion about the Sidmore application had been about concerns about what the view would be from the water. She said because of

the proposed orientation in this instance, one wouldn't be able to see much of it from the water.

She also said it was not a full second story that was proposed, which would minimize obstruction of views from neighboring properties while maximizing views for the occupants. She said this was a plus, although there was definitely a volume increase. She said as Chair Gooze had noted, what was proposed was compatible with the rest of the houses in the area.

Chair Gooze asked that when the construction was being done that the applicant keep in constant contact with Mr. Johnson, and that inspection of the work be done while in progress to make sure that it didn't deviate from the variances that had been granted. He said the onus was on the owner to do this.

Carden Welsh MOVED to approve the variances requested relating to the house and septic system of the Hart property as per the plan submitted. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

Garage Variances:

- **Article XIV, Section 175-74 (A), regarding the construction of a garage inside the 125 ft shoreland setback**
- **Article XII, Section 175-54 regarding the construction of a garage that extends approximately 10 ft into the 30 ft minor road setback**
- **Article XX, Section 175-109(D) regarding the construction of a garage as a third accessory structure.**

Chair Gooze said there were some other garages in the area were close to road, but also noted that some properties didn't have a garage. He said it was better from an environmental perspective to have a garage, and also said it was difficult to ask someone not to have one.

Ms. Davis pointed out that the plans, including the garage, had stayed within the impervious coverage limit.

Mr. Welsh said he would like to ask that the applicant collect the roof runoff and put it into the ground where it would have a chance to percolate, in order to avoid runoff issues. He noted that the applicant had offered to do this.

Chair Gooze asked why it couldn't simply be allowed to run off on the lawn. There was discussion about the slope of the property.

Mr. Welsh asked why the runoff couldn't instead be put into the ground.

Ms. Davis acknowledged that the garage would be pretty close to the water.

Chair Gooze re-opened the public hearing. He said if the applicant felt strongly that

collecting the runoff wasn't needed, the Board needed to be told why.

Mr. Eckman suggested that they could collect the runoff with gutters, and run it into the same collection system that the porous concrete runoff would go into.

Mr. Levesque said there was a good bit of vegetated area between the garage and the shoreland, and said any runoff would have to travel through that. He noted that it was an extremely flat area that might even be pitched away from the Bay. He said there was even an area that puddled.

Chair Gooze noted that he had been at the property, and said it looked like there would be enough percolation of runoff without having to collect it, so he didn't think this was necessary.

Mr. Levesque said there would be an additional expense involved, and said he didn't know that there would be that much of a benefit. But he said the owner would be willing to do this if it was necessary in order to get the approval.

Mr. Johnson said the building code required that there either be gutters or a drip edge, so there would be no erosion around the building.

Mr. Levesque said the owner would be willing to provide crushed stone or porous pavers around the building in order to stabilize the runoff area.

Chair Gooze closed the public hearing, and asked Board members if they were comfortable enough with what was already proposed for runoff. It was noted again that gutters or a drip edge would be required. After further discussion, the Board agreed that no conditions concerning addressing runoff needed to be added.

Mr. Mulligan asked if a condition was needed that the applicant would remove the existing impervious driveway.

Chair Gooze said if the Board was basing its decision on the existing plan as presented that evening, this covered the driveway removal.

He then asked what Board members thought about the variance request concerning the third accessory structure. He said he had seen the property, and said one wouldn't even be able to see the privy shed. He said one could see it from the water, but said he didn't think it needed to be taken out.

Mr. Mulligan said what was proposed with this project was a great improvement, and said he didn't think the shed was a concern.

Chris Mulligan MOVED to approve the variances requested relating to the garage of the Hart property, as per the plan submitted. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

III. Approval of Minutes – November 10, 2009

Page 1, top of page, need space between 7:00 and P.M.

Page 3, need space between two bottom paragraphs

Page 7, 3rd paragraph, should read "...Mr. Pasay if he would accept..."

Page 8, top paragraph, should read "...that would close the existing small.."

Page 11, top paragraph, need period at end of sentence.

Page 16, need space between two bottom paragraphs.

***Chris Mulligan MOVED to accept the November 10, 2009 Minutes as amended.
Carden Welsh SECONDED the motion, and it PASSED 4-0-1, with Sean Starkey
abstaining because of his absence from that meeting.***

IV. Other Business

Chair Gooze said the Hiller court case had been postponed, and said hopefully the differences with Seacoast Repertory Theatre would be worked out so the case could be dropped. He said the Planning Board public hearings on the project had meanwhile been continued.

Chair Gooze spoke briefly about the upcoming changes in the language for hardship criteria.

V. Adjournment

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

Adjournment at 10:05 pm.

Victoria Parmele, Minutes taker

Jerry Gottsacker, Secretary