

**Durham Zoning Board Agenda  
Tuesday May 11, 2010  
Durham Town Hall - Council Chambers  
7:00 P.M.**

**MEMBERS PRESENT:** Robbi Woodburn; Ruth Davis; Carden Welsh; Sean Starkey; Jerry Gottsacker; Edmund Harvey; Chris Mulligan; Mathew Savage

**MEMBERS ABSENT:**

**OTHERS PRESENT** Victoria Parmele, Minutes taker

**I. Approval of Agenda**

Ms. Woodburn called the meeting to order and noted that she had been Vice Chair. She said they would be voting in new officers at the meeting. She then said the applicant for Agenda Item II A had asked for a continuance.

Mr. Savage was appointed as a voting member for the vote, in the absence of Ms. Davis, who had not yet arrived.

*Sean Starkey MOVED to approve agenda as amended. Chris Mulligan SECONDED the motion, and it PASSED unanimously 5-0.*

**II. Election of Officers**

Ms. Woodburn noted that the former Chair of the ZBA, Jay Gooze, was now on the Town Council. She also said the ZBA secretary, Jerry Gottsacker was shifting from being a regular member to alternate position on the ZBA.

Mr. Gottsacker was appointed as a voting member for this vote.

*Sean Starkey MOVED to appoint Robbi Woodburn as Chair of the ZBA. Carden Welsh SECONDED the motion.*

*Robbi Woodburn MOVED to appoint Ruth Davis as Vice Chair of the ZBA. Carden Welsh SECONDED the motion.*

*Carden Welsh MOVED to appoint Sean Starkey as Secretary of the ZBA. Chris Mulligan SECONDED the motion.*

*The motion PASSED unanimously 5-0.*

Ms. Davis arrived at the meeting at 7:03 pm.

### III. Public Hearings

- A. **PUBLIC HEARING** on a petition submitted by Pine Ledge Holdings Inc., Hooksett, New Hampshire, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a letter written on February 5, 2010, by Zoning Administrator, Thomas Johnson, regarding a violation of parking on a property. The property involved is shown on Tax Map 2, Lot 6-0, is located at 20 Strafford Avenue, and is in the Professional Office Zoning District.

Continued

- B. **PUBLIC HEARING** on a petition submitted by Thomas P. Sawyer, Durham, New Hampshire, on behalf of Albert K. Sawyer Sr. Living Trust, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59 of the Zoning Ordinance to allow for a goat shed with two goats within the 75-foot wetland buffer zone. The property involved is shown on Tax Map 9, Lot 18-0, is located at 8 Spinney Lane, and is in the Multi-Unit Dwelling/Office Research Zoning District.

The applicant, Tom Sawyer spoke before the Board. He noted the variances he had recently received, to allow for a goat shed with goats on a lot less than 120,000 square feet and within 100 feet of the property line. He said it had been forgotten that there was a wetland setback issue as well, so another variance was needed.

He said the shed was still proposed to be located in the same spot as before, and would be about 50 ft from the edge of the wetland. He said on this side of Town, it was hard to find a piece of land that wasn't within the wetland setback, and provided details on this. He said he wouldn't be doing anything that would endanger the wetlands, noting that the pond was currently healthy, and that the swales in the area had seasonal runoff only. He said once water drained across Spinney Lane into the pasture, it disappeared underground, so would not get into the Bay.

Mr. Sawyer said the goat shed would have a foundation, and said the plan was to dig it by hand so no heavy equipment would be brought in. He said that technically it would be an accessory structure, but said he wanted it to have a strong foundation.

He said the plan was for the goats to help pick up apple drops from the apple trees nearby, and he noted that he did not spray the trees with pesticides. He also said the shed would be located back from the road, as far as he could get it from the neighbors' house, in order to keep possible problems to a minimum.

Chair Woodburn noted that the Board needed to determine if the variance criteria were met with this application, and asked Mr. Sawyer whether he thought there would be a decrease in the value of surrounding properties if the variance was granted. She noted that this criterion was addressed with the previous variance application Mr. Sawyer submitted.

Mr. Sawyer said he planned to be careful about digging, and would use hay bails during construction, so there wouldn't be any runoff or any change in anything. He also noted again that

the shed would be set back from the road, so would not be visible, and also pointed out that other properties in the area had animals.

Concerning the hardship variance criterion, Chair Woodburn noted the special conditions of the property were the shape of the property and the wetlands Mr. Sawyer had just talked about.

Concerning the spirit and intent of the Ordinance criterion, Mr. Sawyer said the purpose of the wetland ordinance was to preserve the wetlands and wildlife. He said it was a forested wetland that the shed would be next to. He said ferns were about the only plant in that area, and didn't come up as far as where he was planning to build the shed.

Ms. Davis asked where the goat droppings would go, and Mr. Sawyer said the droppings from the shed would be put into a compost pile, and the droppings in the enclosure would be here and there. He said he understood that he would have to keep an eye on this, but said the situation would be safer than if there was a dog there.

Chair Woodburn noted that with the previous variances granted, the limit put on the number of goats was two.

Mr. Sawyer said he thought the droppings would break up quickly into the soil, but stated again that he would keep an eye on this. He also noted that he would rotate the locations where the goats would pasture, to avoid making mud everywhere.

Ms. Davis asked what the distance was from the proposed shed to the edge of the wetland.

Mr. Sawyer said it was 50 ft, and also said the shed would be about 120 ft from the pond.

Ms. Davis said the area where the goats would run around was mostly closer to the rental property.

Mr. Sawyer agreed, stating that it would be right behind that house, and said the distance to the wetland would be larger.

Chair Woodburn summarized that the hardship, spirit and intent of the Ordinance and public interest criterion have been addressed.

Mr. Sawyer said because of the lay of the land, it would be hard to meet the wetland setback. He said in that section of Town, one had to go issue by issue.

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

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

There was discussion that the shed would be built on concrete blocks, would have a dirt floor,

and would be located 25 ft inside of the wetland setback.

Chair Woodburn said no proof had been provided either way concerning the impact of granting the variance on the value of surrounding properties, so the Board couldn't say anything about this criterion.

Concerning the public interest criterion, Mr. Starkey pointed out that there was a lot of agricultural land in the immediate area around Mr. Sawyer's property. Ms. Davis said protection of the wetlands and water quality were the issues at hand, and said because the goat droppings would be collected and composted, she didn't see a need for concern about the health of the wetland. She also noted that there were only two goats involved.

Chair Woodburn said looking at the map, she could see that there were special conditions of the property, and that the use proposed was reasonable.

Mr. Mulligan said he thought the substantial justice criterion was met because he didn't see that there would be a significant gain to the public from eliminating this use that would outweigh the benefit to the applicant of this use.

Concerning the spirit and intent of the Ordinance, Mr. Starkey said the applicant was doing his best to preserve the wetland.

***Ruth Davis MOVED to approve the Application for Variance submitted by Thomas P. Sawyer, Durham, New Hampshire, on behalf of Albert K. Sawyer Sr. Living Trust, Durham, New Hampshire, from Article XIII, Section 175-59 of the Zoning Ordinance to allow for a goat shed with two goats within the 75-foot wetland buffer zone, as depicted on the submitted drawing titled B-1. Carden Welsh SECONDED the motion.***

Mr. Mulligan asked a condition needed to be added to the variance that there would be a limit of two goats.

Chair Woodburn said this number of goats was noted in the application.

Mr. Johnson said the issue of the number of goats had been addressed with the previous variance applications that had been granted for Mr. Sawyer, and said this could be enforced if needed.

***The MOTION PASSED unanimously 5-0.***

- C. **PUBLIC HEARING** on a petition submitted by Jeremy Broughton, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance for placement of a septic system within the property setbacks. 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.

The applicant, Jeremy Broughton, said he was seeking to replace the existing leach field with one of modern design. He said the recent septic evaluation had determined that the groundwater level on

his site was higher than would be ideal for the type of leach field he had now, which was a pipe and stone field. He said the new design would be a slightly raised bed, so would be a safer and more robust system.

Chair Woodburn asked what the dimension was from the closest corner of the leach field and the property line, and Mr. Broughton said he didn't know. He noted that there was a utility easement about 30 ft wide running along the edge of the field closest to the leach field, and also said there was basically a wooded buffer around the property.

Chair Woodburn asked if the new leach field go in the same place as the existing field.

Mr. Broughton said yes, also explaining that the footprint would be slightly larger than the existing field. He said there would be decrease in the wooded buffer separating the leach field and property from the abutting property. He said the change from existing conditions would be very minimal, and said the leach field would be less than two feet higher than it was now. He said the conditions could potentially be more detrimental if the situation wasn't remedied.

He said this was also why granting the variance would not be contrary to the public interest. He said it would be a more reliable system, and noted that the design had been approved by the State.

Mr. Broughton said this was an area variance being requested, and said denial would be a hardship because there would be inadequate sewage disposal. He also noted that he was trying to sell the property, and said denying the variance could preclude the sale because of a failed system because it would be difficult to get financing with such a system.

He said granting the variance would result in substantial justice being done because it would allow a safer, more modern system. He also said granting the variance would not be contrary to the spirit and intent of the Ordinance, because the footprint would be roughly the same, the leach field would not be significantly visible from adjacent properties, and greater reliability of the property concerning sewage disposal would be ensured.

He noted to the Board that the septic tanks on the property didn't need to be replaced. He said moving the leach field to another location would mean new tanks would be needed, which would result in significant cost. He also said there wasn't another place on the property where the system would fit better.

Mr. Mulligan asked how old the existing system was.

Mr. Broughton said the current system was replaced 7 years ago, and was done by the previous owner at the time the property was sold. He said it was failing now because it was replaced in kind, and said the design may never have been adequate. He noted that there was no design paperwork or permits on file. He said he was seeking to fix the situation now and get a good system in there.

There was discussion that the previously illegal residence on the property had now been legalized.

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

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

Mr. Welsh asked Chair Woodburn if she was familiar with the leach field that was proposed.

Chair Woodburn said yes, and said it made sense.

Chair Woodburn said there had been no testimony regarding whether granting the variance would impact property values. She determined from Board members thought that granting the variance would be helpful to property values.

There was discussion that the special conditions of the property were its configuration and the existence of the septic tanks, so the hardship criterion was met.

Mr. Mulligan said it was possible that if the leach field was sited some place else, it might be closer to the sideyard setback, so would encroach even closer toward abutting properties.

Mr. Starkey said with the new design, the applicant had done his best not to encroach further. He said he was basically replacing it in the same footprint, with a beefed up design. He said he felt the hardship criterion was met.

Board members agreed that the substantial justice criterion and spirit and intent of the Ordinance criterion were met.

***Carden Welsh MOVED to approve an Application for Variance submitted by Jeremy Broughton, Durham, New Hampshire from Article XII, Section 175-54 of the Zoning Ordinance for placement of a septic system within the property setbacks. 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. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.***

#### **IV. Approval of Minutes – March 30, 2010**

##### March 9, 2010

Page 17 6<sup>th</sup> paragraph, last sentence, should read “...concern what the spirit and intent of...”  
Page 19, 5<sup>th</sup> paragraph, should read “Ms. Woodburn asked whether when the building was built..”

***Sean Starkey MOVED to approve the March 9, 2010 Minutes as amended. Chris Mulligan SECONDED the motion, and it PASSED unanimously***

##### March 30, 2010

*Chris Mulligan MOVED to approve the March 30, 2010 Minutes as amended. Carden SECONDED and it PASSED unanimously 5-0.*

**V. Other Business**

A.

B. Next Regular Meeting of the Board: **\*\*June 8, 2010**

Mr. Starkey spoke about the fact that the request for reconsideration of the Hiller case vs. Seacoast Repertory Theatre had been denied.

Ms. Davis asked if there were further steps Mr. Hiller could take, and Mr. Mulligan said it could appealed to the NH Supreme Court.

Mr. Johnson said he hadn't received anything further on the case. He noted that the Planning Board's final decision could be appealed, but said nothing had been received on this either.

There was discussion the recent NH Office of Energy and Planning conference,

Ms. Woodburn said she had learned that a proposal to allow ZBA alternates to participate prior to deliberations was on the Governor's desk for signature. She said if this passed, the Durham ZBA would have to adjust its procedures to reflect that.

Ms. Davis said the policy had changed from that to the current policy, where alternates could not participate prior to deliberations, while she had been on the ZBA.

Chair Woodburn noted that the Local Government Center had advised ZBAs not to allow alternates to participate in discussions prior to deliberation.

There was discussion about the best way for Board members to determine who would be attending a particular ZBA meeting.

Mr. Johnson recommended that the Secretary should call Karen Edwards to send out an email to see who would be attending. He said Board members could then reply just to her, and she would later send out an email letting everyone know who would be attending.

Mr. Johnson said he and Mr. Campbell had met with the Town Council the previous week, regarding the issue of leasing parking spaces. He noted that this issue had come out of the denial of the Mill Plaza site plan application. He said the Council had said to continue holding off on enforcement at Mill Plaza and other locations, and to let the Planning Board fix the problem in the Zoning Ordinance.

**VI. Adjournment**

*Sean Starkey MOVED to adjourn the meeting. Carden Welsh SECONDED the motion, and it*

***PASSED unanimously 5-0.***

Adjournment at 7:50 pm.

Victoria Parmele, Minutes taker