

These minutes were approved at the November 9, 2010 meeting.

**Durham Zoning Board of Adjustment
Tuesday, September 14 2010
Durham Town Hall - Council Chambers
7:00P.M
MINUTES**

MEMBERS PRESENT: Chair Robbi Woodburn; Vice Chair Ruth Davis; Secretary Sean Starkey; Jerry Gottsacker; Edmund Harvey; Matthew Savage

MEMBERS ABSENT: Carden Welsh

OTHERS PRESENT Tom Johnson, Director of Zoning, Building Codes & Health

I. Approval of Agenda

Chair Woodburn noted that ZBA member Chris Mulligan had recently resigned, which meant that a regular member position was now open.

There was discussion that the Board would need to hold another meeting because there were so many applications to be heard that evening. It was agreed that there should be a second meeting on October 5th.

Chair Woodburn appointed Mr. Gottsacker and Mr. Harvey as voting members for the motion on this.

Jerry Gottsacker MOVED that there will be a second ZBA meeting on October 5th, 2010. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

There was further discussion on which applications would be heard that evening. Chair Woodburn noted that applicant Nancy Barrett had requested that her application be continued to the November meeting, based on the lengthy agenda and her late position on it. She asked Ms. Barrett if she would be available for the October 5th ZBA meeting instead and Ms. Barrett said she was fine with that.

Attorney Malcolm McNeill spoke on behalf of Vi McNeill, 44 Colony Cove Road. He said he had inquired about the online agenda prior to the ZBA meeting, and had ascertained that Ms. Barrett's application had been moved up to be the 3rd application to be heard. He said he had indicated to Mr. Johnson previously, after seeing the newspaper ad on the meeting, that if it was continued to another date, he and his wife weren't available because of long standing plans to be away. He also said he thought he was professionally committed on October 5th.

He said he was prepared to proceed now with the Barrett application, and said he didn't see why it should be continued. He said if the Board's agenda was published online, it was reasonable to believe that the case was going forward.

Mr. Johnson explained that the reason this application was placed third on the Agenda was that the applicant wanted to make sure the abutters were there. He said Mr. McNeill had said he was available prior to October 6th, so based on this it appeared that October 5th worked. He said it was put third so the Board could quickly dispense with it and get on to other applications at tonight's meeting.

There was further detailed discussion on how to proceed. The Board then agreed that Ms. Barrett's application would be the first application to be heard at the October 5th ZBA meeting.

Chair Woodburn appointed Mr. Harvey and Mr. Savage as voting members for the motion.

Sean Starkey MOVED to accept moving Item II C on the current Agenda to become Item II A on the Agenda at the continued meeting on October 5th, 2010. Matt Savage SECONDED the motion, and it PASSED unanimously 5-0.

Mr. McNeill said he was not sure if he had a conflict concerning that date, and said if he did and his other meeting couldn't be changed, he would notify the Board as soon as possible.

Mr. Starkey noted that applicant John Butler had said he would be willing to have his application heard at a continued ZBA meeting, if necessary.

Chair Woodburn said Mr. Gottsacker and Mr. Savage would be voting members for a motion on this.

Jerry Gottsacker MOVE to accept moving Item II K on the current Agenda to become Item II B at the continued meeting on October 5th, 2010. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

Chair Woodburn said there were now 10 agenda items, and asked if there were any applicants who would like their applications to be heard at the October 5th meeting instead.

Mr. Gottsacker suggested that since there were three septic related applications that would probably be quick, they should be heard directly after Agenda Item II A this evening.

Chair Woodburn suggested that they be heard after Item II B, the DiBerto application, since it had already been continued from the August ZBA meeting.

Applicant Frank Costa, whose application was last on the Agenda that evening, said he was amenable to rescheduling to the October 5th meeting.

Chair Woodburn thanked Mr. Costa, and said his application would be Item II C on the October 5th Agenda. She appointed Mr. Harvey and Mr. Savage as voting members for the motion on this.

Sean Starkey MOVED to accept moving Item II L on the current Agenda to become Item II C at the continued meeting on October 5th, 2010. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

There was further discussion on the idea of doing all three septic applications together earlier in this evening's meeting. Mr. Harvey suggested not doing this because it would be too complicated and wouldn't really accomplish anything. Other Board members agreed.

Chair Woodburn said Mr. Gottsacker and Mr. Harvey would be voting members for the motion to approve the Agenda.

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

II. Public Hearings

- A. CONTINUED PUBLIC HEARING** on a petition submitted by Janet Mackie, Durham, New Hampshire on behalf of Michael C. Mullins, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54, Article XIII, Section 175-59 and Article XIV, Section 175-74(A)(1) of the Zoning Ordinance to construct a 10-foot stockade fence within the property, wetland and shoreland setbacks. The property involved is shown on Tax Map 12, Lot 2-7, is located at 3 Cedar Point Road, and is in the Residence C Zoning District. A site walk of the property is scheduled for September 14, 2010 at 5:45 p.m.

It was noted that Mr. Harvey and Mr. Gottsacker had heard this application at the previous meeting, and would be voting members.

Chair Woodburn noted that the applicant had proposed to replace the existing fence with a 10 ft fence, and there had been some concern at the previous meeting that a 10 ft fence might be a bit too high for that site. She said the Board knew there was a depression there, so scheduled a site visit. She also noted that the original application also included a request for variance from the wetland setback for a septic system, which the Board had approved.

Mr. Johnson also pointed out that the original notice was for an 8 ft fence, and said it was re-noticed for a 10 ft fence, so this was essentially a new case.

Ms. Mackie explained that the proposed fence would be located in pretty much the same area as the existing fence, with a few slight alterations, as shown on the plan that had been provided.

Mr. Gottsacker said the site walk had been very useful, and answered all his questions.

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

Chair Woodburn said this seemed very straightforward, and Mr. Gottsacker said he believed the application met all the variance criteria. He said the 2 ft difference in the height of the fence was an improvement to the property because of the noise from the road. He said they observed the relocation of the fence and this didn't appear to be a big deal

Mr. Starkey said doing a sight line from the road one would only see a 4 ft section. He also said what was proposed would correct the fact that the current fence was encroaching beyond the property line.

Chair Woodburn suggested that the applicant allow the vegetation between the fence and the street to continue to grow, which would help hide the fence.

There was discussion that the portion of this beyond the property line didn't belong to the property owner.

Chair Woodburn noted the piece of the fence that didn't run parallel to the street or the road, and said if the vegetation there remained, that would be a good thing,

Mr. Gottsacker said this seemed to be a moot issue because it was in their interest to keep the vegetation because it was an additional buffer against the noise.

Ms. Davis said there were definitely special conditions of the property that warranted allowing a really large stockade fence there, and said the application met all five variance criteria.

Chair Woodburn said granting the variance would not have a negative impact on property values, and would probably make them better.

Ruth Davis MOVED to approve an Application for Variances from Article XII, Section 175-54, Article XIII, Section 175-59 and Article XIV, Section 175-74(A)(1) of the Zoning Ordinance to construct a 10-foot stockade fence within the property, wetland and shoreland setbacks, as presented on a plan dated Sept 13, 2010. The property involved is shown on Tax Map 12, Lot 2-7, is located at 3 Cedar Point Road, and is in the Residence

C Zoning District. Jerry Gottsacker SECONDED the motion and it PASSED unanimously 5-0.

- B. PUBLIC HEARING** on a petition submitted by Robert DiBerto on behalf of Elaine Helstrom, Eliot, Maine for an **APPLICATION FOR VARIANCES** from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback and from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to construct an accessory apartment in an accessory structure which is larger than 25% of the floor space of the principal structure to which it is accessory. The property involved is shown on Tax Map 11, Lot 2-0, is located at 116 Dover Road, and is in the Office Research Zoning District.

Mr. DiBerto said he represented his wife Elaine Helstrom regarding this application, and said he would address the septic issue first. He said there were two apartments in the garage structure that were apparently illegal, and said the septic system there was minimal or marginal. He said a new system was proposed, which required a variance because it would be located 110 ft from the wetland.

He said that structure currently had two 3 bedroom apartments, and said he proposed to change the use by eliminating using both the second floor and basement as living area. He said only the 825 sf first floor would be used as living area, and said the structure would go from being a 6 bedroom apartment to a 2 bedroom apartment. He said this would make it a conforming accessory apartment.

Mr. DiBerto said a new septic system would also be put in for the house, eliminating the drywell, and noted that it would be located within 110 of the wetland, rather than at least 125 ft from it.

Chair Woodburn asked if the wetland boundary was shown on the drawing that was provided, noting that the Board usually likes to see the wetland buffer documented on the plan.

Mr. Gottsacker said what was provided was less than the Board typically got with an application, and said he was uncomfortable with this.

Chair Woodburn said she didn't anticipate trouble with the wetland setback issue, but said it needed to be absolutely clear on the plans where the edge of the 125 ft wetland buffer was, and how far into it the septic system was.

She said this kind of information should be provided in application packets because otherwise it was a waste of everyone's time. She recommended setting aside the septic variance request for now, and addressing the other one.

Other Board members agreed.

Mr. DiBerto said the second variance request was the proposed exceedance of the square

footage requirements. He said right now, if he just used the first floor and eliminated the basement and top floor living areas, he would slightly exceed what was allowed.

He said there were 3 different ways to calculate this. He said the existing habitable area in the structure in question was about 827 sf, preexisting. He said the house had approximately 1,445 sf, and also said there was a partially finished basement in two sections of 810 sf and 225 sf. He said this all added up to 2,380 sf, which would allow 793 sf, if he finished the basement portions of the house.

Mr. DiBerto said he was trying to avoid finishing that basement because if he added additional living space, it could become additional bedrooms, and said it was not his intent to make this a 4 or 5 bedroom house. He said he didn't want that many people, and preferred keeping it a 3 bedroom house.

He said he could slice the building into thirds, but couldn't cut it in half, and was stuck with the footprint he had. He also noted again that the accessory apartment on the first floor was being cut down from a three bedroom to a two bedroom apartment.

There was further discussion about the numbers. It was noted that 25% of the 1,445 sf in the house would come to just under 500 sf that would be allowed for an accessory apartment, and what Mr. DiBerto had, and wanted was 827 sf, so a variance was needed to allow the additional 227 sf.

There was discussion with Mr. DiBerto about how the living space on the second floor of the structure would actually be discontinued. He said the exit door had been dismantled, and said the room partitions and plumbing had been taken out.

Mr. DiBerto summarized that he was stuck with the footprint he had, and wanted to slice things horizontally and not vertically. He said he thought he had done what it was possible to do, and said they didn't want more bedrooms and more people.

Chair Woodburn asked how many parking spaces there were, and Mr. DiBerto said there would be ample parking. Chair Woodburn asked how many spaces would be allowed if the variances were granted, and Mr. Johnson said 5-6 spaces.

Mr. Gottsacker noted that the concern was not that there would be enough parking, but that there might be a lot of cars parked there. He explained that this was an issue in Town that was being addressed, and said it would be good to be aware of this and confine the amount of parking to what the Zoning Ordinance allowed.

Ms. Davis asked who the abutters were.

Mr. DiBerto said the Durham Evangelical Church was to the south, there was vacant land to the north, and then the Town of Madbury. He noted that there were three duplexes nearby in Madbury, and also said behind their property was a farm and a Class VI road. He said the structures on his property were set back about 300 ft.

Chair Woodburn said Mr. Harvey and Mr. Savage would be voting members on this application. She then asked if there 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. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

Chair Woodburn said the issue for the Board to consider was the extra 227 sf the applicants wanted.

Mr. Harvey said this was being asked for as part of an overall reduction, and said he didn't think it was a lot of space. He also said it sounded like it would be a pretty standard apartment by the time it was done.

Mr. Johnson said he had been at the property a few times. He suggested not getting into square footage amounts and exact percentages, and simply limiting it to a one story accessory apartment in an accessory dwelling, in case the numbers might be off a bit when the applicant got into construction.

Mr. Savage said he thought the applicant was trying to do the right thing, and said this involved a reduction in the living area.

Ms. Davis said she thought the application met the variance criteria, but suggested going through these specifically. She said the purpose of the Ordinance was to keep an expansion to 25%, so it didn't overwhelm the residential nature of a property. She said given where the property was and the fact that the structure was already there, she didn't think having a slightly larger accessory apartment in this setting would overwhelm the residential nature of the property or neighborhood.

Mr. Harvey said he agreed, especially given the district this was in, the fact that it was on a major road, and was setback. He said he drove by this property all the time and didn't even know there was a structure there.

Mr. Starkey said there was a 1,450 sf home with a larger outbuilding that was pre-existing. He said he would feel cramped in an 827 sf apartment, and said it wouldn't overwhelm the property. He said telling the applicant he had to stay within the 25% would be a hardship, because of the existing conditions on the property.

Ms. Davis asked if the pre-existing building was a special condition of the property, and other Board members said yes.

Board members agreed that granting the variance would not be contrary to the public interest, and that the spirit and intent of the Ordinance would be observed in keeping a handle on the size of the apartment and the number of people living there.

Mr. Harvey said the house size and existing conditions didn't lend themselves to anything overwhelming.

Chair Woodburn said that concerning the substantial justice criterion, the owner was trying to bring the property into compliance. She said other properties would not be affected by what was proposed.

Ms. Davis said it would be different if the request had been to build a separate structure.

Sean Starkey MOVED to approve an Application for Variance from Article XX, Section 175-109(C)(2) of the Zoning Ordinance to construct an accessory apartment of no more than one floor with two bedrooms, which is larger than 25% of the floor space of the principal structure, and conditional upon using the same footprint and acceptance of the two new septic systems. The property involved is shown on Tax Map 11, Lot 2-0, is located at 116 Dover Road, and is in the Office Research Zoning District. Matt Savage SECONDED the motion, and it PASSED unanimously 5-0.

There was discussion with Mr. DiBerto on the wetland information that needed to be provided so the Board could address that variance application.

Sean Starkey moved to continue to the October 5, 2010 ZBA meeting the petition submitted by Robert DiBerto on behalf of Elaine Helstrom, Eliot, Maine for an Application for Variances from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

- C. **PUBLIC HEARING** on a petition submitted by Nancy Barrett, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a July 8, 2010 letter of Zoning Administrator, Thomas Johnson, regarding the definition of a structure. The property involved is shown on Tax Map 12, Lot 18-0, is located at 38 Colony Cove Road, and is in the Residence C Zoning District.

Postponed to October 5th

- D. **PUBLIC HEARING** on a petition submitted by Julian Smith, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A) of the Zoning Ordinance to construct a shed to support photovoltaic array within the wetland setback. The property involved is shown on Tax Map 14, Lot 13-1, is located at 246 Packers Falls Road, and is in the Rural Zoning District.

Chair Woodburn said she would recuse herself for this application, and said Ms. Davis would serve as Chair in her place.

Ms. Davis noted that the Board had received some correspondence concerning this application and would read it into the record later.

The applicant, Julian Smith, said he had lived at this location since 1970, and before that had lived across the road. He provided photos of the existing A frame structure that he propose to remove and replace with a larger structure. He explained that he wanted to take advantage of the fact that the sun shined on most of the meadow/hay field that he and his wife had cherished since before they had purchased the property. He noted that this land had been in agricultural use since the 1730's. He said the idea of having solar power there was consistent with the fact that the sun had been used to grow hay, and produce cows for many years.

He noted that over the past 42 years, he had turned what had been well ditched and drained field created by previous owners into a series of ponds and wetlands, much like the beavers who had moved into the wetland that had been created. He said he wished to replace the shed on some of the wetland soils that had been created.

Mr. Smith said the new shed would not store any liquids, fuels, etc, and also said he didn't use fertilizers or pesticides. He said the shed would also be attractive to bats as well as wasps, which ate a lot of mosquitoes.

He noted the aerial photo that included an overlay of poorly drained soils, and said he thought of them as well watered soils. He explained that he had reversed the drainage and ditching that previous owners of the property had done. He said the proposed location was the best and most reasonable one for the building, because it received sun most of the day and was immediately next to the man-made drainage swale, which led from the spring fed pond down to the old cow pond near the duck house. He said because of the swale, this was a good place to bury the electric supply line from the solar array on the roof to the house, and up to PSNH.

Mr. Harvey asked if there would be a battery involved in terms of storage of electrical energy, and Councilor Smith said there was nothing about this in the estimate he'd received on the system. He also said if a battery was needed for the system it would be located in the house or the cellar.

He said another reason he wanted the shed to stay in the same location was that it wouldn't be in the way of the farmer who had cut his hay since 1954. He said there would be no foundation dug, and said the shed would rest on pressure treated timbers. He noted that it was fairly level ground, and said although he wouldn't be able get a jack under the shed later to level it if necessary, he expected it would find its own level over time.

Mr. Starkey noted on the rough scale drawing was a house, garage, shed, and the duck shed. He asked if all of these buildings still existed on the property, and Mr. Smith said yes.

Mr. Starkey asked how many accessory buildings were allowed, and Mr. Johnson said it was two accessory buildings per property, and one additional per every 80,000 sf of lot area.

Mr. Smith said he had 10 acres, and had 5 structures on the property. In answer to a question from Mr. Starkey on the use of paths on the property, he noted that he frequently gave tours of the property, and also explained that he had allowed public access across the property for many years. He provided details on this.

He said the existing duck shed was 12 ft by 13 ft, and was about 10 ft high. He said the new shed would be 17 ft above ground level, and said the toe print of the new shed would be 12 ft by 20 ft. He said the roof, which would have an overhang, would be about 17 ft by 22 ft. He noted that it might be less if it didn't have to be as long on the south side.

Ms. Davis asked where water running off the roof would go, and Mr. Smith said it would fall onto the well watered soils that were already there. He noted that if the grass in that area wasn't cut, water loving plants would grow there. He said the water level was very high there because of the height of the "duck pond" closest to the road.

Ms. Davis asked Mr. Smith if he saw erosion there now when there were heavy rains.

Mr. Smith said he had had some erosion five years ago, during the Mother's Day flood partly because the property received so much water through a 16 inch culvert under Packers Falls Road, and because of the drainage pattern across the property of his neighbor to the north. He said he had corrected that erosion by leveling out the lawn between the two ponds near the duck house.

He said he doubted there would be the opportunity for erosion from water running off the roof, even in a torrential rain, because the water would fall on plants that loved water. He said he could put crushed stone immediately under the roof to dissipate the course of the water, but said that with his other roofs like this, he didn't have erosion problems.

Mr. Gottsacker said Mr. Smith was a good steward of the land, and said if there was erosion, he would take care of it.

Mr. Smith said he did this, and was why he had started building rip rap dams in 1968, after watching spring floods come through the property. He provided details on the drainage he had done of portions of his property over the years.

Chair Davis said the concern had been the runoff from the roof and its proximity to the pond. She asked if any members of the public wished to speak for or against the application.

Mr. Starkey noted correspondence from direct abutters Steve Frolking and Robert Harter that spoke in favor of the variance application, despite the fact that the shed would be higher.

It was noted that there was a letter that spoke against the application, from Pine Ledge Holdings, which was not an abutter, or a person who lived in Durham.

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

Mr. Gottsacker said this was an excellent project, and said more people should be doing this. He said the application met all five variance criteria, and stated again that Mr. Smith was an excellent steward of the land. He said he was strongly in favor of granting the variance.

Mr. Harvey said with the structures and uses going on there, he thought the next person would want to continue them. He suggested that perhaps there should be wording that the shed wasn't to be used as a storage structure.

Mr. Starkey agreed. He said this was a large property, and said a special condition of it was that a large majority of the property was poorly drained soils. He said the area where the shed was located was kept open on purpose and was hayed, and said placing a building in the middle of that would cause problems. He said the proposed location and replacing the existing structure there was a good idea.

Ms. Davis said she wasn't opposed to the application, but was having a problem with putting a structure right near the wetland and pond. She said the purpose of the wetland setback requirements was to protect the wetland from erosion and sedimentation caused by roof runoff.

Mr. Harvey said the protections also related to things like septic systems, chemicals that normally went with a single family home, which weren't an issue with a structure like this.

Mr. Starkey said he thought there would be a low amount of roof runoff, given the proposed design, and he provided details on this. He said water would drain off the roof to the sides, away from the water. He also noted that the entire area was already poorly drained soils.

Mr. Savage said there was plenty of vegetation to absorb the runoff.

There was further discussion on roof runoff issues.

Ms. Davis said the way the Ordinance was written, the Town didn't want structures in the wetland buffer, and said this was right in the middle of it. Other Board members noted that the house was in it as well.

Ms. Davis said these were created ponds. She asked if there was any distinction made between natural and manmade wetlands.

It was noted that even if the footprint of the new shed was going to be the same, the applicant would still need a variance because the use was changing, and it would still be

located within the wetland.

Mr. Gottsacker said what drove the size of the roof was the solar array, and said it needed to be large enough so Mr. Smith could sell power back to PSNH.

Ms. Davis said she wanted to be sure that the Board imagined a situation where there was a beautiful field with ponds, and someone wanted to build a shed there within 5 ft of a water body. She asked what the special conditions were, with this property.

Mr. Gottsacker said the special conditions were the wetlands. He said if the applicant had to move the shed out of the wetlands, it would be so far away that it would probably be prohibitively expensive to run the electricity back to the house. He said this had to be done in order to sell the power back to PSNH. He also said this would infringe on mowing the hay in the field.

He said the special conditions were that anywhere near this house was wetlands, and it was noted that the house itself was in the wetland.

Chair Davis said a special condition of this property was that about 75% of it was wetlands, and said it would probably be quite a hardship to put the shed someplace else than where it was proposed.

Chair Davis said she didn't think property values would be impacted by granting the variance, and she stated again that there was a hardship because of the special conditions of the property. She said granting the variance would not be contrary to the public interest, stating that in this instance it was the wetland.

Mr. Gottsacker said that concerning the public interest criterion, the abutters supported the application. He also said there was a general public interest in doing the photovoltaic array on the roof.

Chair Davis said the public interest with this application related to the protection of wetlands. But she said the applicant had noted that there wasn't an erosion problem with the existing shed.

Board members agreed that the substantial justice would be done in granting the variance, and that reconstructing the shed in this location would not be contrary to the spirit and intent of the wetland provisions of the Zoning Ordinance.

Jerry Gottsacker MOVED to approve a petition submitted by Julian Smith, Durham, New Hampshire for an Application for Variance from Article XIII, Section 175-59(A) of the Zoning Ordinance to construct a shed to support photovoltaic array within the wetland setback. ,The property involved is shown on Tax Map 14, Lot 13-1, is located at 246 Packers Falls Road, and is in the Rural Zoning District. Sean Starkey SECONDED the motion.

Sean Starkey MOVED to amend the Motion to include the condition that the shed will be used only for the photovoltaic array, housing of any bats and/or woodland creatures, and will not be used for storage. Matt Save SECONDED the motion, and it PASSED unanimously 5-0.

- E. PUBLIC HEARING** on a petition submitted by Carl & Judith Spang, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to construct a second story balcony and a screen porch within the sideyard setback. The property involved is shown on Tax Map 17, Lot 6-1, is located at 55 Wiswall Road, and is in the Rural Zoning District.

Chair Woodburn returned to the table.

Judith Spang explained that after about 60 years, the bank had discovered that the property line had been improperly surveyed, which meant that about 27 ft of land on her property was lost. She said she and her husband had decided they would like to have an alternative exit out of their bedroom window, so would like to put in a 6 ft by 8 ft balcony. She said because of the current property line, it would be within 6 ft of the Town property line.

She also said they would like to have a screened in porch, and said they were increasingly concerned about mosquito born diseases. She said they would also like to take advantage of the Lamprey River flowing by. In addition, she noted the new Town park next to the property, and said they would like to be able to take advantage of that as well.

Ms. Spang said the variances were needed to allow these two additions. She said she was surprised that the balcony would be 3 ft farther from the property bound than the existing deck, and that the screened porch would be 9 ft further than the existing deck was from the property bound.

She said the land bounded by this property at one time belonged to the family, but said the Town wanted to buy the Wiswall dam from the family. She said there was no reason she could think of what the property line was chosen when it could have been much further down toward the river.

Chair Woodburn said Mr. Gottsacker and Mr. Harvey would be voting members for this application.

At the request of Mr. Gottsacker, Ms. Spang provided details on the abutters. She also noted that the proposed porch would be 50 ft beyond the shoreland setback line, so this was not an 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.

Jerry Gottsacker MOVED to close the Public Hearing. Sean Starkey SECONDED the

motion, and it PASSED unanimously 5-0.

Mr. Gottsacker said the only impact would be at the corner where the porch would be located, which abutted Town land. He said all the other abutters were located quite far away, and noted that the Board hadn't heard from any of them. He said he therefore didn't see that there was an encroachment issue in regard to the sideyard setback, and also said what was proposed would be quite a distance from the Lamprey River.

He said it was clear that there was a hardship, in terms of where else the balcony and screened in porch could be located. He said a special condition of the property was the fact that the property line came right up to house, and the history behind this in regard to the surveying error.

Mr. Gottsacker said there would not be a negative impact on property values as a result of granting the variance. He said that regarding the public interest criterion, there had been no word from the Town that the exceedance of the sideyard setback would be a problem.

Ms. Davis said that in terms of the spirit and intent of the sideyard setback provision of the Ordinance, there was no issue here concerning visual crowding even though the setback was exceeded.

Chair Woodburn said substantial justice would be done in granting the variance.

Sean Starkey MOVED to approve the petition submitted by Carl & Judith Spang, Durham, New Hampshire for an Application for Variance from Article XII, Section 175-54 of the Zoning Ordinance to construct a second story balcony and a screen porch within the sideyard setback, as shown on the plans provided with the application in the packet. The property involved is shown on Tax Map 17, Lot 6-1, is located at 55 Wiswall Road, and is in the Rural Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

- F. PUBLIC HEARING** on a petition submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a septic system within the wetland setback. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road, and is in the Rural and Residence C Zoning Districts.

Chair Woodburn said that Mr. Savage and Mr. Harvey would be voting members for this application.

Mr. Andersen said he interpreted the Zoning Ordinance as requiring a 125 ft setback to a leachfield, and a 100 ft setback to a septic tank. He said there was some confusion and inconsistency in the language in the Ordinance regarding this, so it was up for debate why he was before the ZBA.

He said when he originally talked to Mr. Johnson about the leach field requirements, he was told he could get a design that didn't need 4 K. He spoke about how the Zoning Ordinance addressed the components of a septic system, and said in reading it, he thought the intent was to allow a septic tank in the 100-125 buffer. He said the State buffer was 50 ft so his system would be well outside that.

He noted that plans had been submitted to the State, and it had no problem with the design, but had provided additional notes. He said pending an approval by the ZBA that evening, the designer would address the notes and send the application back to the State. He provided details on the system and how it would work.

Mr. Gottsacker said the ZBA couldn't change the Zoning Ordinance, and asked Mr. Andersen whether or not he was actually asking for a variance.

Mr. Andersen said he was applying for a variance, but did think that language needed to be addressed. He said he would bring this to the Planning Board, but said it was something the ZBA could address if they thought there was an ambiguity.

Chair Woodburn said she didn't think there was ambiguity. She said in both locations of the Zoning Ordinance Mr. Andersen had referred to, her understanding was that the wording "other components of the system" included the septic tank.

Mr. Andersen said the whole section of 175-139 spoke about the suitability of the leaching field, and Chair Woodburn said she disagreed.

Chair Woodburn said the tanks were down at the lower end of the building, and determined that there would be a bathroom in the basement of the house. Mr. Andersen said there would have to be a pump up tank in the basement if the variance was denied.

Chair Woodburn said in that instance, the tanks could be located in the front of the house, within the setbacks.

Mr. Andersen said the system had to be at least 10 feet from the house, and also said he didn't want to put it under the driveway, given the pump out requirements.

There was discussion on this.

Mr. Andersen noted that the area he was proposed was less ledgy, and noted that the abutter had commented about keeping blasting to a minimum.

Ms. Davis determined that the wetland contained somewhat poorly drained soils, and that the septic system would be over 300 ft from poorly drained soils.

Mr. Andersen said the most practical place to put the tanks was where he proposed. He said it could perhaps be put in front of the garage doors, but said at some point, the Board had to be pragmatic about what they asked of residents of the Town.

Ms. Davis asked if these septic tanks ever leaked, and Mr. Andersen spoke in some detail on this, noting that the company that did these tanks said they never leaked. He said they had said there had been poor installations that had caused a leak.

There was discussion on what the tanks would be made of.

Ms. Davis asked if the tanks would be located above or below the water table.

Mr. Andersen said he didn't know the exact height of the water table because he hadn't done a test pit there. He noted that when the water came out of the second tank, it would be 95% clean before going to the pump up tank. He noted that being able to have a larger pump up tank in the ground would be better than one that would fit in the basement.

He said granting the variance would not cause a decrease in the value of surrounding properties, stating that there would be no visual impact from the system. He also said it would be the greatest difference from the neighbor's well. He said locating it there would also minimize ledge disturbance.

He said granting the variance would not be contrary to the public interest. He said the system met the State regulations in terms of the wetland setback requirements, and also said it would meet the intent of Durham's Zoning Ordinance. Mr. Andersen spoke further about whether the sewer pipe was part of the septic system, and said again that he would bring the problems he had with the code to the Planning Board at some point in the future.

He said that in terms of the hardship, the special conditions of the property were that he was hemmed in by a really large wetland setback, and also had relatively shallow ledge between the house and the street, down about 30 inches. He said the tanks would be significantly deeper than that.

He said granting the variance would result in substantial justice being done, stating that there would be maximum storage capacity when there was a power failure, which reduced the possibility of having raw sewage in the house. He said it would not be contrary to the spirit and intent of the Ordinance for the reasons he had already stated.

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

Dea Brickner Wood, One Colony Cove Road, said she lived across the street. She said she hadn't yet seen the new plans, but did have a copy of the application. She noted that a new lot was being created, which provided the opportunity for siting the septic system. She asked that the Board consider whether there might be alternatives to what the applicant was proposing. She asked what analysis had gone into other possible locations for the septic systems before planning to encroach on the wetland setback.

She said the concern about locating the tank in the wetland setback was possible failure of the system. She said if it did fail, the consequences to water quality were tremendous. She noted that the Crommet Creek wetland, which the property was a part of, was a complex system. She said it fed into Plum Creek, which fed into the Great Bay estuary. She asked the Board to consider whether the encroachment was absolutely necessary, and if there were alternatives that might work just as well. She suggested that the Town Engineer could look at this.

Mr. Starkey asked Ms. Brickner Wood how she would feel if the suitable area for the septic system was located closer to her home.

Ms. Brickner-Wood said she thought there would be less environmental damage if it was located in ledge and failed, as compared to being in the wetland setback. She said it was a good sized lot, and said if it was within the setbacks, all was fair. She said locating it there would be in keeping with the area.

Mr. Andersen said that regarding the siting issue, the leach field in front would be really tight and would touch the front setback. He also noted that as part of the Planning Board process, the abutter had previously requested that he maintain as much vegetation buffer in front as possible, and was part of the Planning Board approval. He said he had bent over backward to accommodate the abutter, including the elimination of a lot, and said he thought he had gone far enough.

Mike Sievert said he was not for or against the application. He noted that he was a civil and structural engineer and had helped develop these septic systems. He said they were excellent, and said while they didn't usually leak, they could leak. He provided details on this. He said the PVC pipe from the house usually didn't leak, but said the pipe from the tank to the leach field could potentially leak.

Mr. Sievert said he disagreed that the leach field would be better if located in ledge as compared to being located in the wetland setback. He said if it was in ledge and untreated effluent got into the fissures in the ledge, it could travel directly to the groundwater, and much faster than if it was in the wetland setback. He said this was why the State required a 4 ft separation. He also said that a wetland buffer soils would treat the effluent better.

He said given the septic system design that was proposed, things were backwards. He said the leach field/dispersal field would simply disperse water that was of almost drinking water quality. But he said the septic tank with the raw sewage in it would be allowed to be closer to the wetland than this leach field.

There was discussion that the dispersal field would be above ledge. Mr. Sievert said there could be a waiver, noting that the leach field would be a candidate for one because the water entering it would have been treated to a much higher level.

Ms. Davis asked if the tanks would bottom out in the ledge, and Mr. Sievert said the applicant would have to blast down below the ledge and put the tank on a sand/gravel

bed. He said the location proposed for the septic system right now was a 400 series, so was a marginal soil

Chair Woodburn noted the possible location under the driveway, and asked Mr. Sievert what he thought about this.

Mr. Sievert said as an engineer, his first location for a septic system would not be under a driveway, but said this could be done fairly easily. He said there would be a manhole, and said this wouldn't cause problems with snowplowing. But he said if it could be located outside a driveway, he would highly recommend this for cost reasons. He said it would cost about \$150 more per tank than if the system was located on the lawn.

Mr. Andersen asked if there was an increased likelihood of water infiltration if a system was under the driveway. He said the proposed location was more than 10 ft from the foundation, and said there would be a deck above it so it would be relatively protected.

Mr. Sievert said he didn't think there would be any greater infiltration. He said there might be some minimal infiltration with the cover, but said one usually graded away from the cover.

Ms. Brickner-Wood said she had meant that she had heard it was better for the tanks to be in the ledge, not the leach field. She also said she thought annual maintenance was a very good idea. In addition, she encouraged the Board to check with the Town Engineer if there was any question regarding the review.

Larry Brickner Wood, One Colony Cove Road, said he was not necessarily opposed to the application, but said he and his wife hadn't had a chance to see the plans. He said as an abutter, it was hard to take a position without having seen it.

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

Chair Woodburn said the Board usually looked to see if there was another way a septic system could be done that would not be within the setback. She said there was a way, especially because the driveway would be within 4 ft of fill. She said the tank would be six feet deep.

Mr. Starkey said this would mean the tanks would be under the driveway, and the leach field would be in the front open area.

Chair Woodburn said she understood the practicality of having the tanks down at a lower level, but said they were trying to protect the wetlands. She said it wasn't that big a deal to put tanks in a driveway, and also said nothing had been built yet, and said there were ways the design could be changed to keep things with the setback.

Mr. Harvey said if everyone had seen this previously, it might be different. He said to

dismiss the fact that there might be other alternatives would fly against the public interest.

Chair Woodburn said the general issue of when plans were provided was a policy issue that the ZBA needed to address. But she said this was separate from what they were looking at concerning the application itself.

Mr. Starkey said he understood that there were special conditions of the property, but said he thought the hardship was self imposed. He said a new lot had been created out of an existing lot, and said there was another place the septic system could be put. He said he realized the applicant wanted to put a bathroom in the basement, but said his understanding was that this could still be done. There was discussion on this.

Ms. Davis said she believed there were a lot of conditions on the property that together warranted placing it where the applicant had requested it. She noted the slope of the land, and the preponderance of ledge and wetlands.

Chair Woodburn said there were other ways to do this that were not necessarily in the driveway. She said the hardship was self imposed.

Mr. Starkey noted that the applicant wanted to build a certain size house with a certain configuration and a certain number of bathrooms.

Ms. Davis said the concern was to protect the wetlands, and said they often granted variances for systems that were much closer to wetlands.

Board members noted that this was always the case with existing buildings.

There was additional discussion, with Ms. Davis stating that the present position of the building had probably been iterated many times given how tight things were out there. She asked if they should ask the applicant if there was a way to configure things on the property.

Ms. Davis also said she didn't like the idea of putting the tank in ledge, and there was further discussion about how things might be located. Chair Woodburn said if the system was in the driveway, it would be in 6 ft of fill. There was further discussion on this and on whether there was a self imposed hardship.

Chair Woodburn said if they denied this based on hardship, stating that there were alternate locations for the tank, and the applicant found he didn't have one, she believed he would have recourse to come back because there would be new evidence.

Mr. Harvey agreed, and said the possible alternatives could be explored.

Ms. Davis said the purpose of granting a variance was to allow a property owner the reasonable use of his land. She said the location proposed was reasonable, and would be

protective of the wetlands, given the low failure rate of these systems and the fact that there would still be a 100 ft to the wetland.

Regarding the public interest criterion, Mr. Starkey said the septic system proposed was a high grade system, and said he didn't think the idea behind it was contrary to the public interest.

Chair Woodburn said the spirit and intent of the wetland overlay was to protect the wetlands. She said in this instance, she believed the applicant was trying to observe the spirit and intent of the Ordinance with the septic system proposed, even though she thought the application might not meet the variance criteria on other grounds.

Mr. Starkey said it was hard to say whether granting the variance would impact property values. He said he would tend to say it would be better for surrounding properties because there would be a high quality septic system.

Ms. Davis said she felt substantial justice would be done in approving this location for the tanks.

Chair Woodburn said Ms. Davis was probably right.

Mr. Starkey said that based upon expert testimony, the Board's understanding, the fact that the applicant had created the lot in question and that there would be new construction, it would be possible to put the septic system outside of the wetland setback. He said he therefore didn't know that the hardship criterion had been met.

Mr. Harvey said that with most variance application involving wetland setbacks, there was no other place to put a septic system. He said it could be argued in this instance that the hardship was self imposed. He said if he learned more about the site, perhaps he would think the driveway location was a bad idea, but said right now he didn't know that.

Ms. Davis said there were a lot of restrictions on the property, and said she did not think there was a self imposed hardship.

Ruth Davis MOVED to approve the petition submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire, for an Application for Variance from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a septic system within the wetland setback, and based on the location of the septic system as shown on the plan by Atlantic Survey Company dated July 31, 2010 . The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road, and is in the Rural and Residence C Zoning Districts. The motion FAILED for lack of a SECOND.

Sean Starkey MOVED to deny the petition submitted by Peter Andersen, Durham, New Hampshire, on behalf of Elizabeth C. Smith Trust, Durham, New Hampshire, for an Application for Variance from Article XIII, Section 175-65(F) of the Zoning Ordinance

*to construct a septic system within the wetland setback. The property involved is shown on Tax Map 16, Lot 19-0, is located at 260 Durham Point Road, and is in the Rural and Residence C Zoning Districts. Matt Savage **SECONDED** the motion, and it **PASSED** unanimously 4-1, with Ruth Davis voting against it.*

Break from 9:53 to 9:59 pm.

- G. PUBLIC HEARING** on a petition submitted by Richard & Virginia Petrie, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement leachfield within the wetland setback. The property involved is shown on Tax Map 7, Lot 1-14, is located at 3 Moharinet Way, and is in the Residence B Zoning District.

Chair Woodburn said Mr. Savage and Mr. Gottsacker would be voting member for this application.

Mike Sievert from MJS Engineering said he represented the applicants. He provided details on what was proposed. He said the septic system had failed, and needed to be replaced within the wetland setback. He provided details on the site, and said there was no other location on it that would be better for the leach field.

He ran through the variance criteria and how they were met. He said there would be no decrease in the value of surrounding properties, noting that there was now a failed system, and it would be replaced by a new state of the art septic system.

Mr. Sievert said granting the variance would not be contrary to the public interest because the failed system would be replaced with a system that would properly treat and dispose of wastewater, and to an extent that exceeded State and local regulations.

He said the special conditions of the lot that caused hardship were the size of the lot relative to the newer wetland setback, the position of the building, ledge, the tennis court and the well. He noted that the lot was grandfathered. He said the variance was needed to enable the reasonable use of the land.

Mr. Sievert said in granting the variance, substantial justice would be done because it would allow the applicant to construct a state of the art system to properly treat and dispose of wastewater on the site, while protecting the environment to a greater extent than the current system.

Mr. Sievert said granting the variance would not be contrary to the spirit and intent of the Ordinance, noting that the residential structure was an allowed use in the zone. He also said onsite wastewater treatment was required because there were no municipal services available to the property. He said the proposed location was the best possible location on the grandfathered lot, and maximized the setbacks to the greatest extent possible.

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

Chair Woodburn said Mr. Sievert had covered well how the 5 variance criteria were met. She said there was no other place to put the leach field that would be better than the location that was proposed.

Jerry Gottsacker MOVED to approve a petition submitted by Richard & Virginia Petrie, Durham, New Hampshire for an Application for Variance from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement leachfield within the wetland setback, as shown on the plan dated 8/30/10 The property involved is shown on Tax Map 7, Lot 1-14, is located at 3 Moharinet Way, and is in the Residence B Zoning District. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

- H. PUBLIC HEARING** on a petition submitted by Kenneth Chute, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback. The property involved is shown on Tax Map 10, Lot 6-14, is located at 4 Gerrish Drive, and is in the Residence B Zoning District.

Chair Woodburn said Mr. Harvey and Mr. Savage would be voting members for this application.

The applicant, Kenneth Chute spoke before the Board. He said he was asking for a variance to allow the replacement of an existing septic system that had failed. He provided details on this. He noted that it was a 4 bedroom house, and would like to be able to sell it as one, which could support a family. He said what was proposed was to replace the 1,000 gallon tank with a 1,700 gallon two stage tank as well as an Enviro-Septic leach field, which should be a marked improvement.

Mr. Chute went through the variance criteria and how they were met. He said there would be no decrease in the value of surrounding properties, noting a new Enviro-Septic system would replace a failed 40 year old tank, clogged pipe and rock leach field.

He said granting the variance would not be contrary to the public interest because the failed system would be replaced with a system that would properly treat and dispose of wastewater, and to an extent that exceeded State and local regulations.

He said that concerning the hardship criterion, there were no other practical locations on the lot for the septic system, without major tree cutting, disruption of vegetative cover and re-grading. He said the use was allowed in the zone, and said the septic system was required because there were no municipal services available.

Mr. Chute said in granting the variance, substantial justice would be done because it

would allow the applicant to construct a state of the art system to properly treat and dispose of wastewater on the site, while protecting the environment to a greater extent than the current system.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance, noting that the residential structure was an allowed use in the zone. He said onsite wastewater treatment was required because there were no municipal services available to the property. He said the proposed location was the best possible location on the lot.

There was brief discussion with Mr. Chute about whether there were possible other locations on the site to put the septic system.

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

Mike Sievert, MJS Engineering, spoke in favor of the application. He said the reason the plan was to put the new septic system in the same location as the existing system was that there was already fill, and therefore a receiving area there. He said if that mound wasn't already in place, it wouldn't be as great a location, and the whole system would have to be put someplace else. He also noted that the existing location was good in terms of the plumbing.

Mr. Johnson noted that the State had approved the system on July 30th.

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

Chair Woodburn said there had been clarification as to why the location for the septic system should remain the same, even though it was within the wetland setback. She said the plumbing situation alone was enough for her.

There was discussion that what made this application different than a previous application heard that evening was that there was an existing house, and specific characteristics of the site that led toward needing to do it this way.

Mr. Savage said the applicant had gone through well how the variance criteria were met. Chair Woodburn agreed.

Mr. Starkey said that concerning the hardship criterion, there were some native vegetation and hard soils in the area of the lot outside of the wetland setback. He said that beyond that, the plumbing it would take if the septic system was put on the other side would cause hardship, and would also involve moving around a lot more soil. He said this would mean that two different areas of the site would have to be disturbed.

Sean Starkey MOVED to approve a petition submitted by Kenneth Chute, Durham, New

Hampshire for an APPLICATION FOR VARIANCE from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback as per the plans dated 7/27/10, which were also approved by the State. The property involved is shown on Tax Map 10, Lot 6-14, is located at 4 Gerrish Drive, and is in the Residence B Zoning District. Matt Savage SECONDED the motion, and it PASSED unanimously 5-0.

- I. PUBLIC HEARING** on a petition submitted by Jane Crooks, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A) of the Zoning Ordinance to construct a replacement deck with three to four season porch within the wetland setback. The property involved is shown on Tax Map 1, Lot 16-6(13), is located at 28 Fitts Farm Drive, and is in the Residence A Zoning District.

Ms. Crooks said she had bought the condo less than a year ago, and knew she would want to replace the deck. She explained that the deck was done this way because of the wetland location, and was the only one in the condominium association that was like this, so was not in keeping with the other properties. She said all the abutter agreed with what she was proposing to do.

Ms. Davis asked what the contractor proposed to put underneath the deck, and Ms. Crooks said there were stones there now, and they would be used again with the new deck. Ms. Davis asked if the porch would be guttered to catch runoff.

There was discussion on this with Ms. Crooks, and it was noted by an abutter that there were gutters on the stair side of the buildings.

There was discussion that the existing deck was 50 ft from the wetland, which at the time the development was built was appropriate. It was noted that the setback now 75 ft, so much of the property was now within the wetland setback.

There was discussion that the existing deck was in bad shape.

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

Mr. Starkey said there was a letter from **Richard Ozenich, 15 Fitts Farm Drive**, who agreed the deck was oddly shaped and was ok with what proposed, but also said he would like to see something to capture runoff, which the other units had.

Hank Spaanenburg, 26 Fitts Farm Drive, said right now the existing deck looked bad, and also said he thought the porch would enhance the value of the property. He said that aesthetically, what was proposed would be fine.

Chair Woodburn said Mr. Harvey and Mr. Gottsacker would be voting members for this application.

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

Mr. Gottsacker said what was proposed would be a great improvement. He noted that he walked his dogs down by Fitts Farm, and said he liked the fact that the back porch that was proposed would match the other porches nearby.

Mr. Starkey said it was good that the applicant would be addressing water runoff with the stone underneath, and the guttering on one side. He said he didn't think granting the variance would decrease the value of surrounding properties, stating that other condos nearby had a similar style to what was proposed. He also said that currently it wasn't much of a porch, and wasn't safe.

He said he didn't think granting the variance would be against the public interest, noting that two people had spoken in favor of the application, and no one had spoken against it.

He said that regarding the hardship criterion, given the special conditions of the property, there was nothing else Ms. Crooks could do that wouldn't require a variance, unless she put the deck back exactly as it was. He said that would be useless.

He said substantial justice would be done in granting the variance, because the applicant would have better use of the property. He said granting the variance would not be contrary to the spirit and intent of the Ordinance because as the Ordinance stood now, nothing would be done to the wetland area that would make bad use of it.

Chair Woodburn reopened the Public Hearing. She noted that there was a tree beyond the deck, and Ms. Crooks said what she proposed would not bother the tree.

Chair Woodburn closed the Public Hearing

Mr. Gottsacker received clarification that the drip strip issue would be addressed as part of meeting the building code requirements.

Ms. Davis said the contractor, Bud White, had done a screened porch for her, and did a great job. She noted that he didn't put gutters on at the time, but did so later. She said she thought the use of stone would be appropriate in this instance to address runoff from the roof. She also said that in terms of the hardship criterion, the special condition of this property was that it had the wetland setback closer to it than the others nearby properties did.

Jerry Gottsacker MOVED to approve a petition submitted by Jane Crooks, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XIII, Section 175-59(A) of the Zoning Ordinance to construct a replacement deck with three to four season porch within the wetland setback, as shown in the documents in the package. The property involved is shown on Tax Map 1, Lot 16-6(13), is located at 28 Fitts Farm Drive, and is in the Residence A Zoning District. Sean Starkey SECONDED the motion, and it

PASSED unanimously 5-0.

- J. PUBLIC HEARING** on a petition submitted by Brenda C. Nelson Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to construct an addition within the frontyard setback. The property involved is shown on Tax Map 12, Lot 1-14, is located at 27 Cedar Point Road, and is in the Residence C Zoning District.

Chair Woodburn said Mr. Harvey and Mr. Savage would be voting members for this application.

The applicant, Brenda Nelson spoke before the Board, and explained that she needed a variance in order to construct a three season porch on the front of her home. He said there was currently an ungainly metal ramp there and some steps. She said it was put in with good intentions by the VA, but said it made it very difficult to get out in and out of her house quickly.

She said the porch would also serve as a mud room, and a place to enjoy her home. She said it would greatly improve her quality of life every day. She said her disabilities would increase over time, and said she needed to do something now to make things easier for herself.

She said the frontyard setback encroachment she proposed would not be different from other buildings on Cedar Point Road, and provided details on this. She said the porch would actually be further from the road than the metal ramp now was. She said it would be much more aesthetically pleasing than what was there now.

Mr. Starkey asked how far the ramp came out from the house.

The contractor, Kim Dalzell, said it came out about 13 ½ ft. Ms. Nelson said the proposed addition would be 2 ½ ft closer to the house than the mess that was there now.

Ms. Nelson went through the variance criteria. She said granting the variance would not decrease the value of surrounding properties. She said the existing steps and front entry were already within the setback and would be replaced with a more aesthetically pleasing entry.

She said granting the variance would not be contrary to the public interest because the proposed entry would greatly improve the visual impact of the neighborhood, and the character of the homes.

Ms. Nelson said there was hardship, and said there was no fair and substantial relationship between the general public purpose of the ordinance and its specific application to the property. She said what she proposed would not impact any abutters, neighbors or access in the neighborhood. She said the proposed use was reasonable because it would provide ease of access to the residence from her driveway, with a shorter distance and shorter ramp. She also said the addition would be further from the road than the existing ramp.

She said substantial justice would be done in granting the variance because the proposed stairs entry would face the driveway to further ease wheelchair access to her house, when it became necessary in the near future. She said a much smaller ramp would be required on the new addition, and would be at the side, rather than in front.

Ms. Nelson said she had lived in and enjoyed her home for more than 27 years, and intended to live out her life there. She said the addition would allow her additional practical and aesthetic enjoyment of her home.

She said granting the variance would not be contrary to the spirit and intent of the Ordinance because not only would the visual impact on the neighborhood be greatly enhanced, and would be an improvement over the existing arrangement.

Chair Woodburn asked Ms. Nelson if she had a plan for adding a ramp in the future.

Ms. Nelson said she would be saving portions of the ramp, noting that it came in sections. She said it would be adapted to the new construction very nicely.

There was discussion that the applicant might need to come back for another variance when this happened. Mr. Gottsacker said he was trying to protect Ms. Nelson from having to do this.

Kim Dalzell and Elizabeth Wivell of Custom Homes Great Bay provided details on this, with Mr. Dalzell stating that if the ramp had to be put in, it could be done within the contours of the existing steps.

Chair Woodburn asked how much of a grade change there was between the ground and the porch.

Mr. Johnson said the elevation was 30 inches, and the ramp was 30 ft long.

Chair Woodburn explained that she would like the applicant to have the flexibility to add a ramp at a later time. She asked if it was legal for the ZBA to do this.

Mr. Johnson said he questioned whether the ZBA had jurisdiction concerning an ADA required ramp.

Chair Woodburn suggested that the applicant could keep the steps and put the ramp up to the other end of the landing, in which case she wouldn't need a variance. She asked Ms. Nelson if that made sense, and Ms. Nelson said it did.

Mr. Starkey noted correspondence from Frank and Susan Poland, which said they were neighbors and supported Ms. Nelson's plans to put in the porch.

Mr. Johnson noted that if the Board approved this variance application, it would not be

approving the construction plans, and would only be approving the footprint for the porch.

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

Chair Woodburn said what was proposed would incur into the frontyard setback less than 7 ft, which was less than the ramp that was there now did. She also said the porch would certainly be more handsome than the ramp. She said granting the variance would therefore not decrease the value of surrounding properties.

She said granting the variance would not be contrary to the public interest, noting that the setbacks incursion would not be significantly different than that of other homes on the street. She also said it would allow better access.

There was discussion on the issue of special conditions of the property that created hardship. Chair Woodburn said the property was like others on the street, but that was the special condition.

Mr. Starkey said that because of where the driveway was, what was proposed would allow the applicant easier access from the home to her driveway off of the front, versus off of the back. He said there was also hardship in that the lot wasn't big enough to put what she proposed some place else.

Mr. Harvey said in order to make the house accessible to the applicant the stairs had to go out.

Chair Woodburn agreed, and said this was therefore a reasonable use. She said substantial justice would be done in granting the variance because it would allow the owner comfortable access to the building. She said granting the variance would not be contrary to the spirit and intent of the Ordinance because other residences on the street had the same kind of encroachment.

Ms. Davis said the current ramp was in the frontyard setback, and encroached further than what was proposed. She also said a purpose of a frontyard setback was to make sure a property was visually pleasing, and said the porch would certainly be more visually pleasing than what was there now.

Ruth Davis MOVED to approve a petition submitted by Brenda C. Nelson Trust, Durham, New Hampshire for an Application for Variance from Article XII, Section 175-54 of the Zoning Ordinance to construct an addition within the frontyard setback, as shown on the plan in our packet titled Plan of Land for Brenda C Nelson trust dated July8, 2010. The property involved is shown on Tax Map 12, Lot 1-14, is located at 27 Cedar Point Road, and is in the Residence C Zoning District. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

- K. PUBLIC HEARING** on a petition submitted by John Butler, Marlboro, Massachusetts, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to construct parking area within the property setbacks. The property involved is shown on Tax Map 2, Lot 8-2, is located at 8 Madbury Court, and is in the Professional Office Zoning District..

Postponed to Oct 5th

- L. PUBLIC HEARING** on a petition submitted by Francis & Linda Costa, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(B) of the Zoning Ordinance to keep chickens in a backyard flock not to exceed 24 adult birds. The property involved is shown on Tax Map 16, Lot 2-2, is located 120 Durham Point Road, and is in the Residence C Zoning District.

Postponed to Oct 5th

The Board discussed the October 5th ZBA meeting. It was noted that four applications from the September meeting would be heard then , along with the Pine Ledge Holdings Request for Rehearing. It was also noted that the July 13th and July 20th Minutes would be approved at that meeting.

Mr. Gottsacker volunteered to put together documentation that was more explicit as to what applicants had to submit with their variance applications.

Chair Woodburn suggested that the Zoning Ordinance called out what was needed. She said any kind of setback issue needed to have a plot plan with dimensions on it.

III. Approval of Minutes –

July 13, 2010 and July 20, 2010

Postponed to October 5, 2010

IV. Other Business

- A.
- B. Next Regular Meeting of the Board: **October 12, 2010

IV. Adjournment

Chair Woodburn said Mr. Savage and Mr. Gottsacker would be voting members for the motion to adjourn.

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

Adjournment at 11:00 pm

Victoria Parmele, Minutes taker

Sean Starkey, Secretary