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

Durham Zoning Board
Tuesday October 5, 2010
Durham Town Hall - Council Chambers
7:00P.M
MINUTES
CONTINUATION OF SEPTEMBER 14, 2010 MEETING

MEMBERS PRESENT: Chair Robbi Woodburn; Vice Chair Ruth Davis; Secretary Sean Starkey; Carden Welsh; alternate Edmund Harvey; alternate Mathew Savage

MEMBERS ABSENT: alternate Jerry Gottsacker

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

I. Approval of Agenda

Chair Woodburn called the meeting to order at 7:03 pm. She said Mr. Savage would be a voting member for the approval of the Agenda.

Sean Starkey MOVED to approve the Agenda as written. Matt Savage SECONDED the motion, and it PASSED unanimously 5-0.

II. Public Hearings

A. **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.

Attorney Jim Schulte represented the applicant. He said this matter had started with a letter from Mr. Johnson in July that stated that Ms. Barrett had too many permanent structures on her property, and that one or more of them didn't meet the setbacks. He said that Administrative Decision was now being appealed.

He said Ms. Barrett had two good size tents that she used to cover two wooden boats. He explained that the boats needed a lot of attention, so a place was needed to work on them when they weren't in the water. He said neither of the tents had a permanent foundation. He also said one was mostly on grass, and the other was on loose gravel, which meant that rain soaked into the ground and there wasn't an impervious situation. He said the tents in theory were portable and could be moved to another location on the property, but said this would be cumbersome and would not be something to do on a regular basis.

Attorney Schulte said the definition of structure in the Zoning Ordinance lead to some ambiguity. He noted that the issue of tents had come before the ZBA six years ago, and noted that he had provided the Board with copies of the Minutes from relevant meetings in 2004, including the meeting where the Board had considered an Appeal of Administrative Decision filed by the Great Bay Rowing Club.

He said with that application, the Board had voted that a tent that measured 46 ft by 16 ft was not a structure as defined by the Zoning Ordinance. He noted that there was some ambiguity in the Minutes, but said the tent was characterized then as an accessory shed. He spoke further on this. He said at that time, the question had also come up as to whether Great Bay Rowing needed a building permit. He said there was a subsequent decision by the ZBA six months later that a building permit was not required for the tent.

Attorney Schulte said a condition on the original vote was that Great Bay Rowing Club's tent should only be in place for 5 years. He said the tent was still there, and said in August of 2010, the ZBA had said the tent could stay where it was, and that if the Town wanted it to be removed at some point, it would be removed. He said the tent was still not considered to be a structure.

Chair Woodburn noted that she had brought the original matter of the tent for Great Bay Rowing to the ZBA, and had recently recused herself from the updated application on this issue. She asked whether she perhaps should therefore recuse herself from the discussion on this application as well.

Mr. Starkey said he didn't think so, but Ms. Davis said she could see that there might be a reason why Chair Woodburn should recuse herself.

Chair Woodburn said she would recuse herself, and noted that she had not been thinking that these other cases would be brought up.

Ms. Davis took over as Chair for this application.

There was discussion that the Board had not yet seen the August 17th 2010 ZBA Minutes, where there was deliberation on the Great Bay Rowing application.

Attorney Schulte said the ZBA had consistently held that this type of tent was not a structure, and had recently reaffirmed this. He asked that the Board continue to uphold this position. He said the applicant's tents didn't have a permanent impact on the land since there was no permanent foundation, and he said there was no runoff or erosion. He said the tents met the specifications of an accessory shed, except that they were bigger.

He said it was clear to him that the Durham ZBA didn't decide cases based on personalities, but on interpreting the Ordinance, and the uses presented and not the entity involved. He said when the Board found similar instances, it applied the Ordinance consistently between those similar instances. He said in this case, there was almost the identical type tent structure, and said it was entitled to the same interpretation as the Board had had for the last six years.

Ms. Davis asked if there was a site plan showing where things were located on the property.

Attorney Schulte said when Ms. Barrett spoke, she would provide an aerial photo showing where things were located.

Mr. Welsh said he wasn't sure that the Board had ruled on the Great Bay Rowing application exactly as Attorney Schulte had characterized this. He said he didn't think the Board had recently said that the Great Bay Rowing tent was not a structure.

Mr. Starkey said he believed the Board upheld the previous notion that it wasn't considered an accessory structure.

Mr. Welsh said the Board put a definite time limit on the use, but Mr. Starkey said the Board had lifted the existing time limit, and he noted that the Town had said the tent could be there on a year by year basis. Mr. Welsh said that was still a limit on it, and said the Board limited it for a reason. He said if they had just said it wasn't a structure, they wouldn't have put any limitation on it. He said there was some other factor involved in that decision other than the fact that the Board said it wasn't a structure.

Mr. Starkey said the entity using the property was leasing it from the Town. He said the Board said as long as the Town owned the property and was ok with it continuing to be there with the current leasee, the Board was ok with that.

Attorney Schulte said he hadn't seen the August 17th 2010 Minutes yet. He said the Minutes from 2004 indicated that the Great Bay Rowing Club said they were ok with a time limit, because they planned to build a permanent structure over time. But he said the Board's vote on August 17th 2010 said that as far as the ZBA was concerned, there was no limit under the Ordinance, although the Town might have a limit because of an intent to use the property in the future.

He said Ms. Barrett didn't plan to work on the boats indefinitely, and said 10 years would be an outside limit. He also said if the Board felt there needed to be some kind of limitation that would be acceptable.

Mr. Starkey asked if the applicant had indicated how she planned to remedy the property line setback violations.

Attorney Schulte said if these were not structures, the setbacks didn't apply.

Mr. Johnson said under 175-109, accessory sheds were limited to a minimum of 10 ft from the property, unless an agreement was worked out with the abutter to make it closer.

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

There was discussion about the fact that the sides of the tents were up and the ends were removed in the summer, and that the tents were attached to the ground by stakes, as would be the case if someone was camping out.

Nancy Barrett, 36 Colony Cove Road, said she had resided at the property off and on since the early 1950s. She said she purchased 38 Colony Cove Road in 2005, which unfortunately bordered the property owned by the McNeill's, who had filed the complaint about the tents.

She provided some history on the 38 Colony Cove Road property ownership, including the fact that Evelyn Brown had owned it and bequeathed it to her nephew. She said he was harassed by the McNeills and was also sued by them for building a boat on the property. She said he also had to go before the ZBA, even though the Code Officer at the time had given him permission to build the boat.

Ms. Barrett said she wasn't building boats, and was just storing classic wooden boats. She said they required a great deal of maintenance, and said without shelter, it would be quite a hardship. She said she was being sued by the McNeills, who were trying to take by adverse possession a portion of the 38 Colony Cove Road property. She said they had threatened to report the tents to the Code Officer if she didn't give the land to them.

She said only the people who used the private road she lived on could see the tent in the field, and said the McNeills could only see it when they drove on the road through her yard to get to their property. She provided further details on issues with the McNeills, and noted that she was the fourth person living out there who had had such issues.

She said her other tent, close to the water, was lined up with the boat ramp that Evelyn Brown had put in. She said it needed to be there in order to be close to the water to launch the boat. She said to the left and right, all the houses along the water were just as close. She also said that from the water, most people didn't notice the tent was there.

Ms. Barrett reviewed the recent Great Bay Rowing club ZBA decision, and quoted from the 2004 ZBA Minutes where the tent issue was first heard. She noted that Robbi Woodburn, representing the club, had said that because of onerous State building code requirements, it was better if the tent was considered a shed and not a structure. Ms. Barrett also noted that as part of the deliberations on the Administrative Appeal in 2004, Mr. Gooze, the ZBA Chair at that time, said the Board's previous decision was quite definite that the tent was not a structure. She said he had then made a motion to grant the appeal, and it passed unanimously.

She said that the ZBA recently granted another variance to allow Great Bay Rowing to have a tent to store boats, and one that meant they wouldn't have to come back to the ZBA. She said she was requesting the same.

Mr. Welsh asked how close the tents were to the property line.

Ms. Barrett said she believed they were about10 ft. She noted that the tent near the water was close to the Benning property, and said the other one was in the same location where she'd had the boat when Evelyn Brown owned the property. She provided details on this.

There was discussion about surrounding properties.

Ms. Davis said if the 10 ft distance became an issue, it would be good to have the precise distance from the property line. She said 10 ft was required from the sideyard setback for an accessory shed.

Mr. Starkey noted the tent near the McNeill property, and asked if the tree line there was indicative of the property line.

Ms. Barrett said yes.

Ms. Barrett said the Bennings, who were also abutters, had no problem with the tents. She noted that she didn't live on the property, and said no one actually lived at the cottage there. She said there was no septic system. She said she walked her dog there, meditated, and worked on her boat there. She also said Evelyn Brown had just wanted there to be a boat house there to store boats.

Mr. Starkey asked if there was considered to be a dwelling on the property, and Mr. Johnson said he didn't believe so.

Mr. Welsh said the plan provided indicated a proposed boat shed on the property, and Ms. Barrett said there was one there that Ms. Brown had built. She said she had been invited to use it, but her boat didn't fit in it.

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

Chris Auty, 32 Colony Cove Road, said he had lived in the neighborhood since 1990. He said the houses there were on very unusual, irregularly shaped lots and were very close together. He said this proximity required a certain level of neighborly cooperation. He said the McNeills had been difficult neighbors, and had threatened to sue him in the past about a project he did.

He said Ms Barrett worked on the boats for most of the winter, and said if the tents weren't there and the boats were put on trailers, they wouldn't be having this conversation. He said he saw the structures every day, and said it was a very small price to pay in order to be able to get a view of these beautiful boats when they were not in the water. He said he was in favor of Ms. Barrett being able to keep her tents.

Mr. Auty said the property line was already well defined with a 6 ft wooden fence that was lined with 50 ft tall evergreens.

Sheldon Cassidy, said he didn't live in the neighborhood, but was a woodworker, and knew that these were award winning boats. He spoke in some detail on this, and said the boats were an asset to the Town.

Franklin Palmer, 206 Longmarsh Road, said he was speaking for himself and Susan Todd. He said this was a case where the Zoning Ordinance was so restrictive that it forced out something that was a part of New England's heritage. He said from the water, whether the boats were in the shelter or on the water, they in no way detracted from the beauty of the area. He said if the shelters went

away, the boats would soon be gone, and said soon, New England wouldn't look like the New England that kept them all here. He asked that the Board overturn the Administrative Decision.

Karen Garrison, Piscataqua Road, said she had sailed on Great Bay for 30 years, and had always admired these boats. She said Ms. Barrett needed the shelters for them, and said these weren't the kinds of boats that got wrapped in plastic in the winter. She said she didn't find the shelters objectionable, and said they were beautiful.

Ted McNitt, Durham Point Road, said he had been a member of the ZBA when it made its original decision concerning the Great Bay Rowing tent. He said this type of structure was used all over Town as an accessory place to store things, and said there might be as many as 40-50 of them around Town. He said discriminating against these particular tents was misplaced, and said he hoped that the Board would act consistently with what the Board had done in 2004.

Ms. Davis asked Mr. McNitt if he considered the tents to be an accessory shed.

Mr. McNitt said the tents should be considered an accessory something or other, and noted that the ZBA had to stretch things to let the Rowing Cub tent come in. He said the fact that they were similar to those in other places and were for storage was enough for the Board to approve them. He said the Board had discussed this for a long time before making their decision

Ms. Davis asked Mr. McNitt what factors had swayed him to consider it a tent and not a structure.

Mr. McNitt said his memory was that the definition for accessory shed was for something that was a use that was accessory to the use of a house or for storage. He said this use was consistent with accessory.

Susan Heckinaw, Lexington, MA, said she agreed with everything that others had already said. She said these wooden boats were classic, and said if there wasn't the capability for Ms. Barrett to continue to work on them, they wouldn't be around much longer.

Mr. Starkey read into the public record a letter from Richard Gsottschneider, 280 Durham Point Road, which said Ms. Barrett should be allowed to keep the tents on her property. He said he was not bothered by the tent, and said he recalled that the tent and/or other related items had been on the property for 30 years.

Mr. Starkey also read into the public record a letter from Kathleen Lohnes, which supported allowing the tents to remain on the property. She said they protected the most beautiful, classic boats on Little Bay, and said they were completed appropriate for waterfront property.

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

Malcolm McNeill, 44 Colony Cove Road, said he represented Vi McNeill, the owner of the property. He said the boats were beautiful, but said this case was not about Great Bay Rowing or about boats, and was about whether the structures could be located where they currently were. He

said he and his wife supported the findings in Mr. Johnson's letter, and said it was the obligation of the applicant to prove that Mr. Johnson was wrong. He said this had nothing to do with variance criteria, or what was stored in the structures.

He said none of the evidence provided had responded to the findings. He said the finding was that the applicant had more permanent structures on her property than was permitted by the Zoning Ordinance, which allowed only two accessory structures on the lot. He said there was no dispute that there were more than two additional structures on the property, which he and his wife claimed to be accessory structures.

He said one was located within the 125 ft shoreland setback, and said this hadn't been disputed in any of the testimony. He said a structure that was attached to the ground and had an impermeable roof that was based on a flexible surface was located there without a Conditional Use permit from the Planning Board or any other form of relief.

He said it was clearly the case that both accessory structures violated the sideline setbacks. He said they were accessory structures, and not accessory sheds. He said the basic premise of the applicant was that these structures were exempt from the Ordinance, could be placed anywhere, and there was no limitation on the number. He said if the Board decided in favor of the applicant, the ruling would be that these structures could be located any place in Durham, regardless of the relationship to adjoining property, protected environmental areas, or impacts on adjoining properties.

Mr. McNeill said he and his wife paid $25,000 in taxes each year, and passed by these plastic buildings every day. He said they were within close proximity to their boundary line, where no structure was permitted and no parking, including parking of boats, was permitted. He said the rationale was that the structures protected a valuable resource, which were New England style boats, and for some reason couldn't be placed somewhere where they would conform, and had to stay where they were.

He said to make his argument, he had provided sections of the Zoning Ordinance that related to the law, and photos and Town documents that related to the facts. He said the applicant had said that tents were not structures, and were accessory sheds. He said the proof was that they were neither. He said there was no residence on the lot, no one lived there and no one could live there because there was no septic system. He said no one had done so in the 20+ years he had abutted the property.

He spoke about the permanent structures on the property as indicated by the tax card and photos he had provided: the cabin/cottage, which was considered the principal building, as well as a one story barn and an outhouse, which were the two permissible accessory structures. He said these three structures were not being disputed.

He noted that the property was located in the RC zone, where the minimum lot size was 150,000 sf. He said the applicant's lot was half this size and had an irregular shape. He said it was approved as part of a subdivision in 1974, when a previous owner separated a parcel into lot A and lot B (the applicant's lot). He said lot B had extensive frontage on Garrison Road, which was necessary to legalize the lot.

He said that portion of the lot was wider, and had greater potential to have reasonable and legal setbacks. He said the lot took a convoluted and narrowing course to get down to the water, and at the same time progressed along his property line. He said any structure placed along that narrowed area would be in very close proximity to any neighbor.

He said the lot line was not the tree line. He spoke about the location of the structures that housed the boats, and said the building that had the sideline violation was about 8 ft from their boundary line. He said the larger building was clearly located within the Town as well as State shoreland districts, and was also about 10-15 ft from his wife's property, so violated the sideline setback as well.

Mr. McNeill described the private road off of Colony Cove Road that residents of the neighborhood used to access their properties. He also noted that he had a right of way across the Barrett property that led to a boat ramp on the McNeill property. He said that in terms of impacts to an abutter, he and his wife were affected in a unique way because of the lot that Ms. Barrett lived on , which was lot A. He said she had lived there for some time, and knew about the configuration issues with lot A, and also knew that none of the previous owners of lot B had these additional buildings.

He noted that reference had been made to Evelyn Brown, who used to own lot B. He said she had kept the property in meticulous shape, and placed no additional buildings on the property. He said there was an intervening owner, and Ms. Barrett then purchased the property in 2005.

He said the structure in the shoreland zone was close to the little cottage, and was about 15 ft by 35 ft and 10 ft high. He said this was about twice the size of the cottage. He said it had a wood frame/steel frame that was attached to the ground. He said if the two tent structures were made of wood, stone, etc., one would not take issue with them being structures. He said the effects on the ground were the same, and said one could see that they were year round, were not seasonal, and weren't movable.

He said they hadn't been moved for 3-4 years, and said because of their size, there appeared to be no means to readily move them. He said if they were movable, they should be moved to where they complied with the setbacks. He said they were attached to the ground and were stable during major windstorms.

He said the structure with the lot line issue was about 12 ft by 30 ft and 12 ft high, and was about 8 ft from their boundary, so was not outside the 35 ft required for an accessory structure.

Mr. McNeill said no building permits were obtained, no Conditional Use permits were obtained, and no real estate taxes were paid for these structures. He said they were used year round, and had been in use for about 3 years. He noted that despite the fact that this application dealt with uses that were accessory to the residential use, the property couldn't actually be used for residential purposes.

He said the McNeill property was purchased in 1983 and from then to 2005, the cottage, barn and outhouse were they only structures there. He said Ms. Barrett used the tent structures year round, including storage of the boats in the winter. He noted that there were 7 other boats on the property,

so they should have structures too.

He noted Exhibit # 7 he had provided that showed two sheds, and said they were accessory sheds because they fit Durham's definition. He provided details on this. He also noted advertisements for a Garage and a box for storing a car, and another for storing a boat that had a fifteen year warranty that looked very similar to what Ms. Barrett had.

He said this was not a case about a Durham boat club on Town property, and was about structures on a private property that was adjacent to a highly valued residential property.

Mr. McNeill next reviewed the Requested Findings and Rulings document he had developed for this application, which he said outlined why Mr. Johnson was not in error. He said the Ordinance was a permissive zoning ordinance, which meant that any use that was not permitted was prohibited, according to Section 175-53. He said the Table of Uses indicated that in no place were permanent tents permitted. He said given Durham's permissive Zoning Ordinance, they were therefore not permitted at all.

He next noted the ZBA Handbook for Local Officials that said if an ordinance defined a term or an issue, the definition would control. He said there was no doubt that the structures in question were not accessory sheds, noting that Section 175-109 N of the Ordinance said "the maximum floor area of the shed shall be 100 square feet and no dimension shall be greater than 14 feet". He said these buildings were larger than that so did not comply.

He noted that 175-109 N also said "An accessory shed used in conjunction with a residential use shall…..", but said he wasn't even making an issue of this.

He said the question then became what these two structures were. He read the definition of "structure" in the Zoning Ordinance. He said in this definition, there was reference that a building was a structure. He read the definition of "building", which said it was "any structure designed or intended for the support, enclosure, shelter or protection of person, domestic animals, chattels or property" . He said that was exactly what was happening here.

He said these were not accessory sheds, and were structures and in fact were buildings because of the way they were used.

Mr. McNeill said the first violation was that there were two extra accessory structures, for a total of four. He said the second violation was that the setback requirements weren't met. He said he would agreed that if the structures were accessory sheds, there would be a 10 ft setback, but he said they were not, based on the definition of accessory shed. He said both structures were therefore bound by the 35 ft setback for accessory structures in the RC zone.

He said the structure within the shoreland setback was contrary to the shoreland ordinance, and he reviewed the purpose of the shoreland setback in the RC district, as outlined in Section 175-69, relating to the construction or alteration of buildings. He said it didn't comply with the 125 ft setback. He said if someone wanted to build there, he could apply for a Conditional Use permit for an accessory structure, but said this was not done in this instance.

Mr. McNeill noted that one of the criteria for granting such a permit was that there was no alternative location on the parcel outside of the shoreline district that was feasible for the proposed use. But he said none of this had come forward, no permit was sought and nothing had gone before the Conservation Commission. He said no evidence had been supplied that the structure couldn't be located in a legal location on the lot.

He said this case had to stand on its own merit. He said he and his wife didn't object to boats or their maintenance, and said they would love to see a nice building on the lot that complied with the setback requirements that could be used 24 hrs a day, was placed in an area that was not within 35 ft of their lot line, and didn't affect their property values.

Mr. McNeill referred to a photo provided to Board members that showed what he and his wife looked at from their house, which was a plastic building that was 8 ft from the property line. He stated again that this was not a variance request or a request for special exception. He said if the Board ruled in favor of the applicant, this would mean the Ordinance didn't mean what it said regarding an accessory shed. He said it would also mean that this type of structure, which was a building as defined by the Ordinance, could be located any place in Durham.

He said the facts supported a finding that if these were called tents, they were not permitted in the Zoning Ordinance, and that the location, density, and shoreland impact was not permitted. He said if Board members had any doubt about the attractiveness of the structures, they should go take a look and ask themselves if they would want this within their setbacks.

He said permitted uses in required yards, as outlined in Section 175-75, clearly said if there was a required yard, it had to be free of structures and buildings, and should be landscaped or left with natural vegetation. He said none of this had occurred here.

In answer to a question from Chair Davis about what he had said about tents, Mr. McNeill said he didn't believe these were tents in any fashion, and believed they were structures. He said the Zoning Ordnance didn't permit tents in the RC zone. He said he thought of tents as something put up for a temporary circumstance. He said even if the Board found that these structures were tents, they would still not be permitted because the Ordinance didn't allow them.

Vi McNeill. 44 Colony Cove Road, said she agreed that the boats were beautiful, but said a big part of the problem was the nature of this tiny lot and the fact that there wasn't a residence on it. She said when Evelyn Brown had owned it, no one lived there and it was beautifully maintained. She noted that the person who owned it after that didn't live there and maintain it, and it was used in a way that was not compatible with the neighborhood. She said when someone didn't live at a property, other things started to happen

She said she and her husband, and people visiting them, had to drive by these two buildings to get to their house. She noted that the tree line was not the boundary line and that the trees were 8-10 ft within their property line. She said they had put the fence up when some trees were taken down by Ms. Barrett, and they were then looking at these structures.

Ms. Davis asked Ms. McNeill how she would feel if the boat shelters were located further back on the property, in the wider area further from the water.

Ms. McNeill said she would prefer to see a true building, which she said would be more attractive. But she said if the Board allowed these structures, she would have no objection to this if they were located outside the setbacks. She said that would be the minimum thing they would ask. She said if they complied, they would have no grounds for an objection. She also noted that in the other case involving a tent, the Town could do whatever it wanted with the property, and was not bound by the Zoning Ordinance.

Mr. Johnson said that was true, but said the Rowing Club was a tenant, which as a private entity was bound by the Ordinance.

Ms. McNeill said the Town could choose to have this tent for them if it wanted, so this was a very different case.

Attorney Schulte noted that Ms. McNeill had said that if the tents were relocated out closer to the road, she would have no objections to this and they would comply. He said this argument acknowledged that they really weren't structures. He said this argument was somewhat different than the argument her husband had made, which was that regardless of where they were located, the fact that they were there at all was the big problem, and there were also too many of them.

He said Mr. McNeill's argument was primarily that if he called these things structures often enough, that was what they became. He noted that Mr. McNeill also had said that the Ordinance controlled. Attorney Schulte said when the Board had looked at this type of thing in the past, it had interpreted the Ordinance to say it was not a structure, and was not something the Ordinance was intended to regulate or did regulate.

He said what Mr. McNeill had said about setting a precedent with this decision was wrong, and said it had been set six years ago, reaffirmed twice by the ZBA, and ratified by the Planning Board. He noted that there had been amendments to the Zoning Ordinance since 2004, and said a definition for tent could easily have been adopted so that going forward people would have to comply with it. But he said the Town had not done this.

He spoke further on this, and said he called them tents and not structures. He said the ZBA should do what the ZBA did in 2004 and say these were tents and not structures, and so didn't have to abide by setbacks, etc.

Ms. Davis asked Mr. Schulte if he would call these accessory sheds. She noted that there was a size limitation for these.

Attorney Schulte said he would not, but said if the ZBA did, the applicant could live with this. He said that was probably what happened in 2004, although it wasn't clear. He said the Minutes from the meeting at that time said tents were not clearly buildings or accessory sheds, had some characteristics of each, and on balance had more characteristics that looked like an accessory shed for regulatory purposes than something more permanent that should be regulated differently. He

said the ZBA decision was that these were not things that should require building permits or permanent foundations.

He said Mr. McNeill was right that the Ordinance was permissive, except that when one looked at the details of that, there were a number of things that weren't regulated by the Ordinance. He said they weren't expressly permitted, but weren't denied. As an example of this, he noted the 6 ft fence Mr. McNeill had put up. He said a building permit wasn't needed for it because the Ordinance said it wasn't a structure so it wasn't regulated. He said the same argument applied to these tents, since it had been decided in the past that they were not structures.

He said again that if the Planning Board said this was now an issue the Town needed to be concerned about, it could come up with a definition for tents. But he said it hadn't done that, so not only had the ZBA decided these weren't structures, but the Planning Board and Town Council had ratified and approved that decision.

Attorney Schulte noted there were some other letters that needed to be acknowledged in the public record.

Mr. McNeill said it was nice of Attorney Schulte to guess what the Planning Board might have thought it was doing in the last six years. He said he thought he had it backwards, and said if the Planning Board had wished to permit these structures, it would have done so. He said permanent tents did not appear in the Table of Uses so were not permitted. He also said there was nothing ambiguous about the Town's definition of accessory shed.

He said Ms Barrett in her response said these were tents or accessory sheds. He said the only way she could argue that they could be within 10 ft of the property line was if they were accessory sheds, but said they did not meet the definition. He read the definition again. He also said tents were not allowed, and said in this instance, Mr. Johnson had found that they were structures, there were two too many of them, and they were too close to the side boundary and to the shoreland overlay. He said fences were exempted, but tents were not. He spoke further on what it would mean if they were in fact exempted.

Mr. McNeill said if there was a permissible structure on the applicant's property to take care of her boats and it complied with the setbacks, he and his wife would have no objection.

Mr. Johnson said he didn't rely on the accessory shed performance criteria in 175-109 because they were adopted in 2007, and these things probably predated that so were grandfathered to what was in place in the Ordinance at the time they were put up.

He also noted that if a fence was 6 ft or higher, it was a structure and had to meet the setbacks, so there might be a non-compliant fence based on the testimony that evening.

Break from 8:51-8:59 pm

Mr. McNeill said if Mr. Johnson was alleging that the accessory shed definition came in 2007, if it wasn't defined before then, it wasn't permitted.

Ms. Davis asked if there was a rebuttal to that point.

Attorney Schulte said this didn't affect his argument, which was that the ZBA, presented with a less clear version of accessory shed back in 2004 -2005, was able to determine that a tent bigger than those his client had was not a structure. He said it was referred to as an accessory shed, so presumably this tent could be treated as such. He said this probably eliminated Mr. McNeill's argument about these things popping up all over Town, because if the Board did define Ms. Barrett's tents as accessory sheds that were grandfathered, that meant that new accessory sheds would have to comply with the new requirement.

Chair Davis appointed Mr. Savage and Mr. Harvey as voting members for this application.

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

Chair Davis noted the hour and that there were a number of other Agenda items still to be heard. She asked if there were any applicants for these other Agenda items who would be willing to move their applications up to the ZBA meeting on October 12th. Mr. Butler agreed to do so. Chair Davis said this application would be the first item on that Agenda.

Chair Davis said the Board needed to decide whether Mr. Johnson had erred in coming to his conclusion, or if there was new evidence, and noted that he had said that these were structures. She said that clearly the Ordinance was not crystal clear on how to define this shelter type, metal framed, fabric or plastic wrapped entities.

Mr. Starkey said the code didn't clarify whether this was a permanent structure. He said the boat shelters were put in place to remain there. He said it was interesting to hear that they had been put up before the accessory shed criteria were put in place.

Ms. Davis asked if the Board had a choice as to whether they were permanent structures or accessory sheds.

Mr. Starkey noted that ZBA member Jay Gooze had said he was more comfortable with calling the tent in question in 2004 an accessory structure. He said he would be interested to know what Mr. Gooze had been reading at that time to come to that conclusion. He said he thought they might need to do a site walk to see things more clearly, or that the Planning Board might need to step in.

Mr. Savage said a structure was affixed to the ground, and said the tents were not. He said he didn't think they were structures.

Mr. Starkey said the tents were staked directly into the ground to makes sure that they didn't move. He noted that a shed could be placed on something and not necessarily attached to it.

Mr. Savage said a tent was staked so it wouldn't blow away, and wasn't staked as if would be there forever, like a foundation.

Mr. Starkey said the question was whether there was an intent to ever move these things, and if they were structures if there wasn't that intent.

Mr. Savage said one could put an accessory shed somewhere and not move it, and said he didn't think that was what defined it. He said again that to him, a structure was something that was affixed to the ground.

Ms. Davis said the Board had been asked to identify this as a structure or an accessory shed. She said it didn't meet the definition of accessory shed because it was too big, and also said Mr. Johnson said it was grandfathered because it was put out there before accessory sheds were defined with size limits.

Mr. Starkey asked for more background information on this.

Mr. Johnson said sheds weren't defined in 2007, and said the definition of temporary might be able to provide some guidance.

Ms. Davis said because the Ordinance was not very clear on these types of shelters, this had to be handled on a case by case basis until they were defined better in the Ordinance.

Mr. Starkey said "temporary" read "a period of less than 90 days when in reference to a time frame, ….and not having or requiring permanent attachment to the ground when in reference to structures."

Ms. Davis said these were not like wedding tents, because they weren't temporary by that definition.

Mr. Starkey said that was his concern.

Mr. Savage said the way he looked at it was that it wasn't permanently attached to the ground.

There was discussion on the way the tents were held down.

Mr. Harvey said the testimony was that these weren't really going anywhere. He said the stakes were staying there through the winter and said he wasn't sure it was temporary although he wasn't calling it a structure per se.

There was discussion that the tents were there year round.

Ms. Davis said she wouldn't call it an accessory shed by today's definition based on the size. She said the question was whether it was a structure.

Mr. Harvey asked whether accessory sheds were defined at all before 175-109 was developed.

Mr. Johnson said they weren't defined at all.

There was discussion on the Great Bay Rowing Club application. Mr. Harvey said a major piece of that application was that the ZBA was trusting in the Town because the tent was on Town property, so it had complete control of it whenever it needed to deal with it. He provided details on this.

Ms. Davis said the Board could consider that this was a grandfathered accessory shed. She said parts of that definition met some of it. She noted that she lived in the RA district, and said it would be disconcerting if someone put up a structure like this in her backyard.

Mr. Welsh said that couldn't happen now because of the Zoning change in 2007.

Ms. Davis said if the Board overturned Mr. Johnson's decision, and said these really were not structures, they wouldn't be saying what they were. She said in overturning the Administrative Decision, they would be saying it was a grandfathered accessory shed. She said the only way she would feel comfortable overturning it was to say that.

Mr. Starkey asked if anything concerning such entities had come up recently to the Planning Board, and Mr. Johnson said he didn't recall that it had.

Ms. Davis asked if the Board had the authority to call this a grandfathered accessory shed.

Mr. Johnson said it didn't meet the 2010 criteria for an accessory shed.

Mr. Welsh noted that former ZBA member Jay Gooze had said in 2004 that he felt more comfortable calling it an accessory structure, and didn't call it an accessory shed.

Mr. Johnson said this was on a nonresidential property, and the principal structure was the UNH boat house, which was an exempt structure on Town exempt land.

Mr. Welsh pointed out that the Board had recently said a hot tub was a permanent structure. There was discussion.

Mr. Starkey said the Board had felt there was no intent to move it at any time. He said he was struggling now with whether the intent was to keep the tents permanently in place, or at least as long as the current owner owned the property.

Mr. Welsh said he struggled with the shoreline setback aspect of this. He asked if they were saying that someone could put up a significant structure on the shoreland. He said the setback was clearly to prevent quick drainage and loss of habitat, and said he couldn't buy that this was ok, or that anyone who had helped create the shoreline setback rules would find this acceptable.

Mr. Harvey said these kinds of tents weren't brand new in Durham, but he said they weren't included in the Ordinance. He said he didn't want to make that leap that this was something different. He agreed that there were runoff issues to consider.

Ms. Davis said these were wonderful boats, but said the Board wasn't there to discuss them and was there to discuss the shelters. She asked what they might think if there was an old car parked in such

a shelter close to the shoreline.

Mr. Starkey suggested that the Board could perhaps say that the shelter was only permissible to house specific things.

Ms. Davis said the question was whether if the Board upheld Mr. Johnson's letter, it was saying these tents were structures, and if it overturned it, it was saying they were not.

Mr. Starkey asked if the ZBA was comfortable defining this, or instead sending it to the Planning Board for clarification.

Ms. Davis asked what recourse the applicant would have to keep the tents there if the Board said they were structures.

Mr. Johnson said she would have to come back for variances, and he provided details on possible ways things could proceed.

Ms. Davis said at that point, the Board could treat this on a case by case basis.

Mr. Harvey said he was more comfortable not defining what these shelters were. He said things were vague right now, and needed to be re-written. He said he was leaning toward upholding the Administrative Decision.

Mr. Savage said he was leaning toward reversing the decision because he didn't think these were structures. He said if things were vague, it should go to the Planning Board for discussion.

Mr. Welsh said he didn't see why the Administrative Decision would be overturned. He said the tents were permanent based on the definition of temporary. He also said the reason there were setbacks from the shoreline was to keep vegetation there and avoid erosion issues. He said the reason there were sideline setbacks was that he wouldn't want a neighbor to put something like this 8 ft from his property line. He said if it was 8 ft and not 10 ft, it was illegal anyway.

He said he could see no definitive reason to repeal Mr. Johnson's judgment on this. He said these looked more like a structure than a shed. He noted again that the Board had said the hot tub was permanent.

Mr. Savage said he wouldn't have defined hot tub as a structure.

Mr. Welsh said because the situation was a little unclear, he looked at why an Ordinance provision existed. He said to him, the shelters seemed to be in violation. He also said there was property further away from the water that the applicant could move the shelters to, so there wasn't a hardship.

Ms. Davis said she understood that having one shelter close to the water was helpful in terms of its use, but said she didn't think they could bring that into their decision.

Carden Welsh MOVED to deny 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. Ed Harvey SECONDED the motion, and it PASSED 4-1, with Matt Savage voting against it.

B. 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 a 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 October 12, 2010 meeting

C. 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.

Chair Woodburn returned to the table, and appointed Mr. Harvey as a voting member.

Mr. Costa said the variances were needed because the lot size was a third the size of what was required, the chicken coop needed to be 100 ft from the property line, and the pasturing for the chickens needed to be 25 ft from the property line.

He said there would be no decrease in the value of surrounding properties as a result of granting the variance, noting that there was sufficient space between the property and the abutters to provide adequate separation. He said with a small number of birds, there would not be odor issues beyond the property. He said the property was fenced appropriately, and noted that it prevented predators from getting in. He said it was a heavily wooded area, and said the closest abutters couldn't be seen on the property. He said the most noise that could be heard on a given day was a hen laying an egg, and said this wasn't a noisy event.

Mr. Welsh asked f there were any roosters in the flock, and Mr. Costa said right now there was one, which was a gift from the hatchery. He said he was finding his voice, but it didn't carry well. He spoke further on roosters, and said some types were louder than others. He said this particular rooster wasn't a noisy bird.

Mr. Costa said they lived in a residential area, and said although they only had one acre, the property backed up to Town conservation land. He said the closest neighbor on the downhill side was at least 300 ft from the property line, and he provided details on this. He said he couldn't see the house on the upside, other than the light there in the winter, and also said there was a maple grove across the street. He noted that no one had complained about the chickens.

He said that concerning the hardship criterion, the proposed use was reasonable because the

existence of the flock was consistent with the independence and self-sufficiency that had been the hallmark of the American experience. He said there was no conflict with the desire to maintain a sanitary, quite residential area and the maintenance of a well kept flock of chickens.

He said substantial justice would be done in granting the variance because the property, although zoned residential, was not bounded by close-in neighbors. He said it was very much like a rural property. He also noted that the flock was used to support local elementary schools in their lessons on new life, baby animals and the origin of their food. He spoke further on this, and read a letter from first grade teacher Christina Dolcino at the Mast Road School, who spoke in detail about the good work the Costas did with the school children.

Mr. Costa said the use would not be contrary to the spirit and intent of the ordinance because the Ordinance attempted to posit general rules for the benefit of the largest portion of the resident population. He said the property was used in a manner that was consistent with creating a rule-set that reflected the desires of the community, while providing for the needs of the owners. He said the property did not present a health, safety or nuisance issue.

Chair Woodburn determined that a 120,000 sf lot was required, and that the applicant had about a third of this. She also determined that the property had a rectangular shape. Mr. Costa provided details on the layout of the property, including the coops and the fenced in area for the chickens, and how close this area was to the property line.

Mr. Starkey read out loud a letter from the Seymours, who were abutters. The letter indicated that they had no major concerns with the Costas' use of the property, but had two items they wanted the Board to consider. The first was the issue of noise from roosters crowing, which they said began an hour before sunrise. They said the location of the coops tended to broadcast the sounds down the hill directly to their house.

The letter from the Seymours also said the wood shavings from the coops were currently being dumped over the bank behind the coops toward their lot line. They noted that this was directly up-gradient from their well and asked if there was a better place to dispose of the waste. They said they would be happy to take some of it for their gardens.

The letter said there were two variance criteria, hardship and diminution of property values, which might be at issue.

There was discussion about enforcement, with Mr. Johnson noting that former ZBA member Chris Mulligan had asked about this, when there was a recent variance application involving goats. He said issues to consider with this application was whether chicks would be hatched on site, how many coops/accessory structures there would be, and what would be done with the eggs.

There was discussion about how the Ordinance dealt with this kind of use, which was an accessory use to a residential use. There was discussion with Mr. Costa as to whether he got money for the commercial sale of eggs, and claimed income from this.

Mr. Costa said he and his wife consumed some of the eggs, but said most of them went to his sister in Loudon, who was permitted to sell the eggs from there. He said this had been grandfathered since the 1950's.

Mr. Starkey asked Mr. Costa if he claimed income from the sale of eggs, and Mr. Costa said no.

Chair Woodburn said this was a question the Board needed to consider, given that the applicants were asking to be allowed to have 24 chickens on the property. She asked if the coops there now were sufficient in size to hold 24 chickens, and Mr. Costa said yes.

Mr. Johnson provided background on how he had come to focus on the issue of chickens on the Costas' property, and then spoke in some detail on why the variances were being requested. He said there were the three dimensional issues that needed to be considered, according to 175-109(B). He also said there was the issue of whether the chickens were being used for commercial purposes or not. He said a variance was not being requested for an accessory structure, and said the applicants might make a few little coops into one accessory coop. He said the setbacks had to be considered in regard to this.

Chair Woodburn said the Board had to determine if this was an accessory animal husbandry use. It was noted that there were two terms in the Zoning Ordinance, accessory agricultural activities found in the Definitions section of the Ordinance, and accessory animal husbandry, found under 175-109(B), under Performance Standards.

Chair Woodburn asked if the Board had any questions for Mr. Costa regarding the three dimensional criteria for accessory animal husbandry.

Ms. Davis said it would be good if there was some kind of site map for Board members to look at.

There was discussion as to whether the setbacks were met, and Mr. Costa said they were not.

Chair Woodburn said it would be helpful to do a site walk to consider the various issues involved with this application.

Ms. Davis agreed, and said it would be helpful for the Board to be able to put into perspective the various issues that came up with this type of use.

Mr. Costa noted that if the Town was willing to consider leasing some acres of conservation land, he could gain enough land to total 3 acres.

Chair Woodburn said the ZBA couldn't discuss that, but said it would be very helpful to have a site walk. She suggested that the public hearing be continued, and asked that the Board be provided with a plot plan so they could see where everything was, and could scale it. She said having this information would be very helpful.

There was discussion that the plot plan could be hand drawn.

Sean Starkey MOVED to continue to the next ZBA meeting the Public Hearing on the 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, for the property shown on Tax Map 16, Lot 2-2 located 120 Durham Point Road and in the Residence C Zoning.

There was discussion that there would be a site walk before the next meeting at 5:45 pm.

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

D. CONTINUED PUBLIC HEARING on a petition submitted by Robert DiBerto on behalf of Elaine Helstrom, Eliot, Maine 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 11, Lot 2-0, is located at 116 Dover Road, and is in the Office Research Zoning District.

Chair Woodburn said Mr. Savage and Mr. Harvey would be voting members, noting that Mr. Welsh was not present at the previous meeting, when this application was heard.

Mr. Diberto said that since the last ZBA meeting, the septic system design had been revised so that the leach field was no longer within the setback. He said the septic system was still within it, but said the revised design was a significant improvement over what was there now.

Bruce Pohopek, the surveyor and site designer, discussed the new design, and also provided details on the septic system. He said the only encroachment now would be the water tight septic tank, which would service the two bedroom accessory building.

Chair Woodburn noted that there were no members of the public present to speak for or against the application.

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

Chair Woodburn said the plan provided showed exactly where the septic system was, and said the only incursion now was the tank. She went through the variance criteria, and said there would be substantial justice in granting the variance. She said there would be no impact on property values, and said there was hardship, noting that the special conditions of the property were the wetlands.

Mr. Starkey asked for details on why septic tanks were generally closer to a residence.

Chair Woodburn reopened the public hearing.

The site designer said the closer the tank the house was, the less chance there was of clogging of the system. He said it was generally 5-10 ft away and then there was either gravity feed or

pumping of wastes to the leach field.

Mr. Starkey said he was in favor of granting the variance. He said there was hardship because there was no possible way to move the tank further from the house, given the wetlands. He also noted that the applicant was putting in a better system than was there now. He said granting the variance would not be contrary to the spirit of the Ordinance or against the public interest.

Sean Starkey MOVED to approve and Application for Variance from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback, per the plan dated 9/28/10, for the property shown on Tax Map 11, Lot 2-0, located at 116 Dover Road in the Office Research Zoning District. Matt Savage SECONDED the motion, and it PASSED unanimously 5-0.

III. Board Correspondence and/or Discussion

A. REQUEST FOR REHEARING on an August 17, 2010 denial of 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.

Mr. Starkey noted the document that Mr. Kimball had provided.

Mr. Welsh said he had not been present the first time this issue was heard, and had sat out the second time.

There was discussion as to whether it was appropriate for Mr. Welsh to vote on this application. Chair Woodburn determined that this was appropriate since Mr. Welsh could determine from the document that had been provided whether there was an error or new evidence.

Mr. Welsh said he would depend on other Board members to determine whether new evidence had in fact been provided.

Chair Woodburn said Mr. Harvey would also be a voting member on this application.

Ms. Davis said one argument the applicant had made was that there had been selective enforcement. She said she thought this was a misinterpretation of the Ordinance, and said she didn't think the Ordinance limited the number of vehicles that could park in an owner occupied home.

Mr. Johnson said the Ordinance applied to single family homes, regardless of whether they were owner occupied. There was discussion.

Chair Woodburn said Mr. Kimball was saying in the document he had provided that the Code

Enforcement Officer was unfairly targeting certain kinds of residences, and not single family residences that had the same thing allowed for them. She said she wasn't sure there was enough evidence for this. She also said he was saying the Ordinance was unfair.

Mr. Starkey determined that the parking situation at the applicant's property had been brought to Mr. Johnson's attention when he had received some complaints.

Mr. Johnson said if he got to the point where he had the time, he was supposed to look for violations.

Mr. Starkey said because the violation had been brought to Mr. Johnson's attention, this took the selective enforcement issue out.

Chair Woodburn said the document also pointed out, through the emails the Town Administrator had put out, what that the intent and purpose was of what was being done regarding enforcement. But she said that wasn't something the ZBA was involved with, and could use as a basis for a rehearing. She said the Board could simply address Mr. Johnson's decision. She said if the Town was indeed doing unbalanced enforcement of the law to achieve a goal, that was another legal entity's problem.

Other Board members agreed.

Chair Woodburn note the applicant's argument that an excessive burden of proof had been put on the applicant concerning the grandfathering issue, in that the 1942 drawing, which she said didn't show anything, was dismissed by the Board. She said she didn't agree.

Mr. Starkey said he didn't believe there was enough information there to make the applicant's argument in the first place.

Chair Woodburn said the applicant said the Board hadn't taken his testimony at face value. She said the reason the Board didn't do this was that the abutters' testimony was different.
Mr. Starkey said he didn't think the Board had necessarily erred in the interpretation of the grandfathering law. He said he didn't think sufficient evidence was found that there was grandfathering.

Chair Woodburn noted the applicant's argument that the Board erred in interpreting the grandfathering law and RSA 674-19. She said the Board said he was allowed a total of 7 spaces for the property, and it wasn't that there could be 6 spaces for one of the houses on the site, and there could be 1 for the other. She said the Board said the applicant could use those 7 spaces as he wanted to.

Mr. Starkey agreed. He also noted the applicant's argument that the Board had erred in supporting the Code Enforcement Officer's interpretation of the Site Plan, and said the Board hadn't ruled on this.

Chair Woodburn referred to the applicant's discussion about not being able to park his own car

there, or to allow UPS trucks, etc. to park there. She said there was a big distinction between permanent parking and this kind of parking, including parking for parties.

Mr. Starkey agreed. He noted a question he had had about whether some of the people who parked on the property even lived there. He said the Board had received a letter from someone in support of Pine Ledge Holdings, which stated that he liked to park there during the day, and now wouldn't be able to do so. Mr. Starkey read this letter out loud. He said this wasn't a commercial parking lot, and said the letter spoke to the fact that the applicant wanted parking spaces, whether they met the Zoning Ordinance or not, just to be able to allow people to park there, whether for free or for commercial purposes.

Mr. Welsh said he had taken this letter to mean that the person who wrote was also the person who helped maintain the property. There was discussion on the wording of the letter. It was noted that this would be a sought after place to park.

Mr. Welsh said the letter indicated that the parking space was used by the person who wrote it as well as a couple of other people. He questioned what that meant.

Chair Woodburn asked if any Board members had found any errors on Mr. Johnson's part or the Board's part, or anything new, in the document that the applicant had provided.

Mr. Starkey said he did not.

Ms. Davis said the only new thing was evidence that it was being used as parking.

Mr. Welsh noted some discussion in the document about the definition of a parking space. He said there was some judgment involved in determining what a parking space was.

Chair Woodburn said that was especially the case when the plan submitted didn't accurately call the parking spaces out. She said that wasn't a new issue.

Sean Starkey MOVED to deny the Request for Rehearing on 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. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

Mr. Starkey noted that a letter was received from Julian Smith stating that he was sorry that with his recent variance application, he hadn't made it clear that the shed he had requested would also be used for storage. He said Mr. Smith had asked to have further discussion with the Board on this. Mr. Starkey noted that with the Board's motion to approve that application, there had been a condition that the shed could not be used for storage. He said he would like to request a rehearing, to reconsider the conditions set with the original application, in order to discuss those conditions.

Mr. Savage was appointed as a voting member for this motion.

Sean Starkey MOVED to rehear the decision in regard to the conditions for the Julian Smith case, and put this on the Agenda for the November meeting. Matt Savage SECONDED the motion, and it PASSED unanimously 5-0.

Chair Woodburn said the Town was starting up work on updating the Master Plan, and was looking for a member of the ZBA to be on the Master Plan Advisory Committee.

Mr. Starkey said he would make the time to do this.

IV. Approval of Minutes

July 13, 2010

Page 5 spacing of the 2 paragraphs at the bottom of the page
Also 7th paragraph on that page should say "..met the 35 ft front…."
Page 7, spacing of 2 paragraphs toward the bottom of page
Page 16, last paragraph should read "She said the applicant would be…"
Page 17, last paragraph, should read "…for a total of 8 tenants."
Page 19, 5th paragraph, should read "…grandfathered for 8 people."
Page 24, 6th full paragraph, should read "..any members of the public…"

Chair Woodburn appointed Mr. Harvey as a voting member.

Sean Starkey MOVED to approve the July 13, 2010 Minutes as amended. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.

July 20, 2010

Chair Woodburn appointed Mr. Harvey as a voting member.

Sean Starkey MOVED to approve the July 20, 2010 Minutes as submitted. Ed Harvey SECONDED the motion, and it PASSED unanimously 5-0.

V. Other Business

Mr. Starkey said the recent Notice of Decision regarding Pine Ledge Holdings and Xemed had affirmed the ZBA's findings.

Mr. Johnson said he hadn't heard whether Pine Ledge Holdings had filed for rehearing.

He said the Mackin case was heard the same day as the Pine Ledge Holdings/Xemed case, but said there was no decision on it yet.

VI. Adjournment

Chair Woodburn appointed Mr. Savage as a voting member.

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

Adjournment at 10:40 pm

Victoria Parmele, Minutes taker

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Sean Starkey, Secretary