

These minutes were approved at the February 8, 2011 meeting.

**Durham Zoning Board
Tuesday October 12, 2010
Durham Town Hall - Council Chambers
7:00P.M
MINUTES**

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

MEMBERS ABSENT: Carden Welsh

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

I. Approval of Agenda

Chair Woodburn noted that the Board was currently in need of a fifth regular member.

Mr. Gottsacker asked if any of the alternates had applied to move up to become regular members. There was discussion.

Chair Woodburn said the applicants for Agenda Item II D had asked that their application be continued until the December meeting. She appointed Mr. Savage and Mr. Harvey as voting members for the approval of the Agenda.

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

II. Public Hearings

A. CONTINUED 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.

Chair Woodburn appointed Mr. Gottsacker and Mr. Harvey as voting members for this application.

Mr. Butler spoke before the Board. He said he had bought the property in question

three years ago when his son played hockey for UNH. He said Mr. Johnson had told him that he needed a variance for the parking spaces, and said he had consequently had a plan drawn up with 5 parking spaces on it. But he said his updated plans had 4 parking spaces, explaining that DPW had said this design would make it easier for the Town to do snow plowing. He noted that his two tenants had cars and their girlfriends had cars. He also said Smitty's had his permission to tow any other cars than these.

Chair Woodburn said the plan read as if there was a driveway in front, and said she was concerned that someone might park there.

Mr. Johnson provided details on parking issues in this area, and efforts to clean this up. He said that traditionally, cars had pulled in and parked in front. He said the back was where the original garage was.

Chair Woodburn said the plan the applicant had provided implied that there were at least two parking spaces out front, and asked how, if the Board allowed the variance, they could ensure that no one would use this parking in front.

Mr. Johnson said right now, there was no parking plan for the property so everything was illegal. He said the applicant now had created a plan that indicated where parking could take place, and said this would be enforced in the future.

Mr. Gottsacker said the concern was that cars would pile up in that front area because the property was close to campus.

Mr. Butler said the only time that happened was when family members visited. He said he could put a gate there, but wasn't sure how he'd be able to police that.

Mr. Starkey said there would now be a Plot plan that showed the parking layout, so that if Mr. Johnson saw cars located in front, he would know there was a violation.

There was further discussion about the fact that this was an especially convenient place for people to park.

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 explained that three parking spaces were allowed by right for this single family home, and the applicant was asking for four. She noted that all of the parking spaces were located within the property setbacks.

Mr. Gottsacker suggested that there could be a condition of approval that the pavement in front would be marked in some way to indicate that no parking was allowed.

Mr. Starkey asked if the Town had asked property owners to post no parking signage in their yards before. He said this was a single family home regardless of what it was being used for now, and noted that the variance went with the property. He said it would be silly if a single family moved into the house at some point and then had to keep the no parking signage there.

Mr. Gottsacker said if the house was sold, the owner could discuss the signage issue with the Town.

Mr. Harvey said he could see that the signage would be an issue if the property were sold.

There was further discussion. Chair Woodburn said they wanted the property to look residential. She said she would like the plan itself to indicate where parking would not be allowed, so that when someone bought the property in the future, this would be clear.

Mr. Harvey discussed the fact that with something like a gate there to prevent parking, it would look more like a single family home.

Mr. Starkey spoke about losing pavement for the turnaround with that approach.

Mr. Gottsacker suggested that a no parking sign could be put on Town property nearby.

Ms. Davis suggested the idea of movable sign that could be placed where the spaces were.

There was further discussion on how to proceed concerning the parking spaces at the front of the property. The Board then went through the variance criteria.

Mr. Gottsacker said there was no evidence one way or other that granting the variance would decrease the value of surrounding properties, and other Board members agreed.

He said granting the variance would not be against the public interest, because it would mean there would be legal parking on the property.

Concerning the hardship criterion, Chair Woodburn said the Zoning Ordinance required parking, but said the special conditions of the property were that there

was no place on the property to put parking that wasn't within the setbacks. She said the proposed use was reasonable because people had to park somewhere

Chair Woodburn said there would be substantial justice in granting the variance because this would mean parking would be available on the property.

There was discussion about whether granting the variance was contrary to the spirit and intent of the Ordinance. Mr. Gottsacker said the Ordinance spoke very clearly about parking, and Chair Woodburn said it also spoke clearly about having appropriate open space. Mr. Gottsacker stated that what the applicant proposed was a good compromise.

Chair Woodburn said the applicants were allowed three spaces and had asked for four, and said the question was whether this would result in negative impacts on the neighbors.

Mr. Starkey said he didn't think it would, and said having a space for the landlord to park seemed to be allowable.

Ms. Davis said she was a little uncomfortable with that, noting that there were other properties in the area whose owners might like to be able to have an additional space for a visiting landlord. But she said it seemed to be more reasonable in this case to allow the additional space because the owner was making such a good faith effort to limit parking at the end of the street, with the towing service and perhaps other restrictions.

Mr. Gottsacker said he agreed, and would be more concerned with the variance traveling with the land and what would happen with a change of ownership.

Chair Woodburn noted that the fourth parking space that was proposed was already paved, and said she assumed it was being used as a parking space now. She said allowing it therefore wouldn't be a big change from what was happening now.

There was discussion that the fourth parking space wasn't a very useful space because of its location.

Chair Woodburn said she felt that the application met all the variance criteria, and asked Board members if they thought there should be any conditions with a possible approval. She said Mr. Starkey had made a good argument about the single family nature of the property and that it would be silly to mark off a no parking area. But she said the Board needed to preserve the single family nature of the neighborhood.

Mr. Gottsacker said he didn't think having the no parking signage was that important right now, given that the applicant had hired Smitty's to do towing if

necessary. He said he would be concerned when the property perhaps turned over in 5-6 years, but questioned the need to worry about that now.

There was further discussion on whether it would be clear on the plan, and at the space itself, that no parking was allowed in front.

Mr. Harvey asked if Chair Woodburn was concerned that there might be grandfathering of these spaces if they weren't clearly marked as no parking in the plan. He also said he understood Mr. Starkey's point about the idea of painting no parking spaces on the property.

There was discussion that the key issue was that the plan itself should say no parking was permitted in the front area.

Chair Woodburn reopened the public hearing, and confirmed with Mr. Butler that he would indicate this on his plan. Chair Woodburn then confirmed that the Board was ok with allowing the four spaces as proposed by Mr. Butler.

Sean Starkey MOVED to approve 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, as shown on the plan dated 9/16/10 as amended, for the property shown on Tax Map 2, Lot 8-2 and located at 8 Madbury Court in the Professional Office Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.

B. CONTINUED 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.

Mr. Gottsacker said he had missed the site walk. Chair Woodburn appointed Mr. Harvey and Mr. Savage as voting members for this application.

Chair Woodburn reopened the public hearing. She noted that at the site walk, Board members had looked at the layout of the property and where the chickens were. She said there were 25 chickens and about 2 roosters, and noted that the age groups were discussed with the applicant. She provided details on this.

Mr. Starkey asked the applicants if the intent was that while the birds were in their possession, they would lay eggs or be slaughtered for commercial purposes.

Mr. Costa said no.

Mr. Starkey asked how many birds there would be on the property at any given time. Mr. Costa said that was a difficult question to answer. He said after hatching, the birds were penned up until they were several weeks old, but were not outside. He said once they were viable, the young chickens would be removed from the property.

Chair Woodburn asked whether if the variance was granted, if at any one time there would be no any more than 24 chickens roaming outside.

Mr. Costa said no. He said there would be 24 adult birds, and said while there might be juveniles outside for some length of time, there wouldn't be a significant number of them, for a significant length of time.

Chair Woodburn asked Mr. Costa why 24 was the number of chickens he had chosen.

Mr. Costa said that number wasn't on his application, but Mr. Starkey noted that this information was in fact on the application.

Chair Woodburn said a limitation of some kind on the number of chickens was a good thing, in order to limit the impact on surrounding properties. She said the Board needed to consider how many chickens they felt would be appropriate on a site like this, which was significantly smaller than what was required in the regulations. She said whether the chickens were juveniles or adults, she believed the number allowed should be the same.

She asked if there were any members of the public who wished to speak for or against the application, and 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 reviewed the three criteria required in order to have accessory animal husbandry on a property: a minimum lot size of at least 120,000 sf; a pasture that is a minimum of 25 ft from the property line; and housing for the animals that is at least 100 ft from the property line.

She said the property was about a third of what was needed, but said the lot wasn't close to other residences. She noted that the Seymours were the closest abutters and had written that they weren't necessarily against the variance but had concerns about noise and dumping of chicken droppings. Chair Woodburn said these issues were discussed at the site walk, and provided details on this.

Chair Woodburn said the question was whether the Board felt chickens were appropriate for the property and if so, how many were appropriate.

Mr. Starkey said based upon how the property was situated and those around it were situated, and the fact that there was only one abutter that had two concerns but was not against the application, he didn't think granting the variance was out of bounds. He said that in terms of the number of chickens, the applicant had asked for 24, and he suggested that the Board should therefore say that was the number he could have.

Chair Woodburn asked Board members whether they thought the approximately 25 chickens at the property had seemed like a lot.

Mr. Savage said he didn't think so.

Ms. Davis said the property felt densely occupied by chickens, but noted that they weren't roaming when the Board was there. She said it felt like a different scale of chickens.

Mr. Savage said it had felt like the chickens were clustered, but said they did have room to roam. He also noted that the applicants were working with the schools in regard to the raising of the chickens.

Chair Woodburn pointed out that the variance would go with the property.

Mr. Harvey asked if working with the schools, etc. got into the question of whether this was a business.

Mr. Starkey said he had asked the applicants about this, and he said this was not about selling the chickens or the eggs, and that it was not a commercial enterprise.

Mr. Harvey received confirmation that if the variance was approved, that part would go with the approval.

Chair Woodburn spoke about the fact that if this were a different property, the application might not fly.

There was discussion about the fact that in years to come, the use might be an issue for future property owners in the area.

There was discussion on the variance criteria. Ms. Davis said the Board hadn't heard anything from the abutters concerning whether granting the variance would decrease the value of surrounding properties.

Mr. Harvey said the Board didn't know one way or the other whether there would be an impact.

Concerning the public interest criterion, Ms. Davis said sounds, odors, and aesthetics were the issues to consider.

Mr. Savage said the applicants were addressing these issues.

Mr. Starkey agreed, and noted that the abutters' concerns were being addressed.

Mr. Harvey asked if a concern was that the chickens might attract predators, and he spoke in some detail on this.

Mr. Starkey noted that there was an electric fence. He also pointed out that compost piles on residents' properties attracted animals, and also noted that dumpsters on a property attracted animals.

There was discussion that the chickens were contained on the property.

Chair Woodburn said the applicants had enough land and the neighbors weren't close, so she didn't think that granting the variance would be contrary to the public interest.

Mr. Starkey also noted that the applicants were willing to address the abutters' concerns.

There was discussion on the hardship criterion, and Board members agreed with what the applicant had said in the application concerning hardship, under 3 a and b. Chair Woodburn said the issue of the special conditions of the property was applicable in this instance.

Mr. Starkey said the variance was necessary in order to enable the reasonable use of the property, given the way the applicant wanted to use it.

Chair Woodburn said it was the special conditions of the property that resulted in the fact that the use couldn't happen without a variance.

Ms. Davis asked what it was about this property that was different.

Mr. Harvey said he thought it was the requested use that was different.

Chair Woodburn said the applicant had argued well that there was hardship under 3 a, "that no fair and substantial relationship existed between the general public purpose of the ordinance provision and the specific application to the property, because the immediate area was lightly populated, heavily wooded and only viewable from the front. A small, contained backyard flock of chickens would not be highly visible, could not be heard, or smelled..."

Mr. Harvey said there would be substantial justice in granting the variance, stating that there was a good argument that raising chickens was an historical and sustainable use of the property.

Chair Woodburn said the spirit and intent of the Ordinance criterion in this instance was concerned with whether the property was an appropriate size and whether the setbacks were appropriate. She noted that the applicant had said that because of where the property was, the use was isolated, and had also said the chickens were kept in the back. She spoke about the special nature of the property, and said granting the variance would not be contrary to the spirit and intent of the Ordinance.

Mr. Starkey agreed.

Mr. Harvey spoke about the issue of chickens roaming over the new leach field, and asked how a possible failure of the system related to this application.

Chair Woodburn explained that there was discussion about this at the site walk. She said the vegetative cover on a leach field was required by the State, and was intended to keep it from eroding.

There was discussion on whether this in some way was associated with the variance in that the chickens, in grazing, might be taking some of the vegetation away. It was agreed that this was really a separate issue, after further discussion.

There was discussion by the Board on the rooster issue. Chair Woodburn reopened the public hearing and asked Mr. Costa how long the rooster had to be on the property.

Mr. Costa said he would probably want the rooster to be there for a week to ten days at a time, for a total of 30 days out of a year. He noted that the rooster would be inside the structure at night, and that he didn't sound off at night anyway.

Mr. Starkey asked if 4 ten day visitations per year would work, and Mr. Costa said yes.

Chair Woodburn MOVED to grant 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 chickens outside. 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. Sean SECONDED the motion.

- ***The rooster will be on site for no more than 40 days per year***
- ***The chicken pen or pasturing for chickens will be kept 25 ft from all property lines***
- ***Waste from chickens will be spread within the pen area along the side of the home, where the leachfield sits***
- ***Continued use of the electric fence***

The motion PASSED unanimously 5-0.

Break from 8:22 - 8:26 pm

C. PUBLIC HEARING on a petition submitted by Raymond Holmes, Greenland, New Hampshire, on behalf of David Ieni, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from the Article XII, Section 175-54, Article XIII, Section 175-59, Article XIV, Section 175-74, Article XXI, Section 175-111(A) and Article XX, Section 175-109(C&D) of the Zoning Ordinance to construct a deck and a detached garage with an accessory apartment within the property, wetland and shoreland setbacks and to waive the required parking requirement. The property involved is shown on Tax Map 12, Lot 1-21, is located at 20 Cedar Point Road, and is in the Residential Coastal Zoning District.

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

Mr. Holmes spoke before the Board, and said he represented Mr. Ieni. He reviewed the variances being requested. He explained that the property owner would like to put a garage where the two cars were currently parked, and also said the proposed deck would be located to the right of the gable end in the back.

Chair Woodburn noted the area denoted as a wetland on the plan.

Mr. Holmes explained that it was a reclaimed wetland, and said this work had been done back in 2006. He noted that the wetland had been filled in by a previous owner. He reviewed the existing conditions plan, and explained that the shed on the property contained water treatment equipment. He also said the small shed behind it was probably illegal, and would probably go.

Ms. Davis asked if water treatment was done at other properties in the area, and Mr. Holmes said he didn't know. He explained that the water was brackish.

Chair Woodburn determined that the well was located in the shed Mr. Holmes had spoken about.

There was discussion about the deck that was proposed.

Mr. Johnson told the Board that an 8 ft by 8 ft shed and hot tub were done without approvals.

Mr. Ieni explained that he had brought the hot tub with him when he moved in.

Mr. Johnson said a hot tub was considered a structure, as per a recent decision of the ZBA.

Chair Woodburn noted that the hot tub was not on the proposed conditions plan, and Mr. Holmes explained that Mr. Ieni was considering putting it on the deck,

and hadn't decided.

There was discussion that if the hot tub was on the deck, it would be located within the footprint, which was ok, but if it was not on the deck, it would have to meet the setback requirements.

Mr. Holmes noted that the Proposed Conditions plans indicated the removal of the shed. He handed out an amended Proposed Conditions plan that indicated that the driveway had been moved so that it was over the septic field. He explained that this got the driveway onto the property more safely. He said the septic designer had said the manufacturer allowed driving over the septic field as long as there was enough distance/cover over the chambers.

Mr. Holmes also said the garage had been spun 90 degrees, and said the owner would like to attach it to the house.

Chair Woodburn said a variance would be needed for parking in the setback and asked if the application would therefore need to be re-noticed.

Mr. Holmes said the revised Proposed Conditions plan showed that 2 cars could park in the garage, and 2-3 that could park outside.

Mr. Johnson said with the revised Proposed Conditions plan, it was legal that three outside cars could park in the driveway on the property within the frontyard setback.

Mr. Gottsacker explained that it was ok to park within the setback as long as the parking was in the driveway.

Mr. Holmes said the driveway was crushed stone right now and the plan was to do an asphalt driveway. But he said this was up for discussion.

Mr. Gottsacker noted that there was already a lot of impervious surface on the lot, and Ms. Davis said that was a good point.

Mr. Holmes said the applicant was agreeable to discussing this.

Mr. Johnson noted that the impervious surface limit was 20% in the RC district.

Chair Woodburn asked if this was met with what was proposed.

Mr. Holmes said the amount of impervious surface currently was 22%, and it was noted by the Board that a variance was therefore needed. There was discussion that a pervious surface could not be installed over the chambers of a septic system. It was also noted that crushed stone/gravel was considered to be a pervious surface in Durham's Ordinance.

Mr. Gottsacker said if the driveway configuration was changed or a pervious surface was used so that the 20% impervious limit was met, a variance would not be needed.

Mr. Starkey said crushed stone would work.

Mr. Holmes said the owner's first choice in order to address the impervious area exceedance would be to leave the driveway as it was configured now, and to use crushed stone.

Mr. Holmes said he had brought the stormwater drainage plan for the site. He noted the reclaimed wetland area that was shown on the Proposed Conditions plan. He explained that on the east side of the garage, there would be a drip line installed to catch water coming off of the roof. He said this would trap water somewhat so it didn't run toward the wetland.

He also said that to the left of the house, there would be a drip line trench for water coming off of the house. In addition, he said the owner proposed that drainage from the garage would go to an infiltration trench in order to catch the water as it came off the driveway and slow it down. He said the green area on the plan was a rain garden.

Ms. Davis asked if the house was guttered, and Mr. Holmes said no.

Chair Woodburn asked if there was a drip strip on the water side, and Mr. Holmes said there were mulched gardens there.

Ms. Davis asked if there were runoff problems right now off the back of the house. She noted the angled roof on the rear left side, and the fact that there were no gutters, and asked if there was an erosion problem there when there were heavy rains.

Mr. Holmes and Mr. Ieni said there wasn't a problem there right now.

Ms. Davis determined that the house was 47 ft to the water and that the area in back was pretty flat.

Mr. Holmes spoke about the fact that NHDES allowed a deck that came out 12 ft from the house and would run 49 ft, which was the length of the house. In addition, he said an approximately 12 ft by 12 ft deck was proposed for the second floor. He also said the owner would like to do the garage with a small accessory apartment above it.

Mr. Gottsacker said it would help to know what the applicant's plans were concerning the Jacuzzi.

Mr. Holmes noted that if it became a part of the deck, it became a non issue, but if placed elsewhere it would be considered another structure.

Chair Woodburn explained that the Board had previously determined that a hot tub was a structure, which meant that a variance was needed if there were setback issues.

Mr. Gottsacker noted that because the applicant had revised the plans and planned to create an attached garage, it was not considered another structure.

Chair Woodburn asked Mr. Johnson what the issues were concerning a proposed accessory apartment, and determined that it was an allowed use, and that the issue was whether the existing septic system could handle the additional loading from a one bedroom apartment.

There was discussion that with the revised Proposed Conditions plan, the parking issue went away as long as the impervious surface ratio was met.

Ms. Davis spoke about the fact that this property was before the ZBA previously, and Mr. Johnson provided details on the history of the property.

Chair Woodburn noted that the application said among other things that a variance was requested concerning an accessory apartment and an accessory structure.

There was discussion that because the applicant now planned to do an attached garage, there was longer an issue regarding an accessory structure.

Mr. Johnson explained that concerning the accessory apartment issue, the original elevations for the proposed garage showed a second floor, and he had asked that the applicant plan that out.

Chair Woodburn said she just wanted it to be clear that if the Board approved the garage, the accessory apartment would be an allowed use so a variance wasn't needed for this. She also summarized that because the garage would be attached to the house, it would no longer be considered an accessory structure. She also said the parking was no longer an issue.

She said the only variances that were still needed were concerning the exceedance of the property setbacks, and the wetland and shoreland setbacks.

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.

There was discussion on the garage that was proposed and the fact that the setbacks were exceeded. Chair Woodburn said she had driven the neighborhood, and said there was a garage down the street that was similar to what the applicant proposed, so it didn't seem out of place. She noted that the houses in this area were tight, and that this was a bigger house than some of the others on Cedar Point Road.

Mr. Gottsacker said what was done with the property had been a huge improvement over what was there before. He also said Cedar Point Road was like this in general.

Chair Woodburn said the Board had to be careful that the area didn't get too dense, and that proposals weren't too huge, and didn't encroach upon the street more than neighboring properties did.

Mr. Gottsacker noted that the main building was rather small so that if the owner wanted another bedroom, there weren't many options.

Mr. Starkey said he liked the re-configuration of the garage and how it solved the parking situation, and also said he liked the fact that it was attached. He said he thought the parking area should be pervious. He said he liked it that the shed would be removed, and also said the plan that was accepted should not show a hot tub on it.

Ms. Davis said Cedar Point was a beautiful location, but was over built, noting that the brackish water was an indication of this.

There was discussion on the deck that was proposed and the fact that setbacks were exceeded. Chair Woodburn noted that the Board had questioned other applications for decks that were close to the water.

Ms. Davis said if people at the house were on the deck rather than on the lawn, there were fewer erosion issues. She then said she would like to see some plans for the water that was coming off the roof at the corner where the valley was. There was discussion.

There was further discussion that the accessory apartment was allowed because this was a single family home, and that it could be built within the footprint, at the allowable height. Mr. Johnson noted that when the house was originally approved, there was a height limit, and said the garage would have to comply with that same limit.

Chair Woodburn told the applicant that certain criteria would have to be met for the accessory apartment, and said he would have to come back before the Board if

he went ahead with it

The Board went through the variance criteria. They said that as a result of what the applicant proposed, the home would be more attractive, which if anything would drive up the value of surrounding properties. It was noted that there had no testimony to the contrary.

Board members said granting the variance would not be contrary to the public interest because of the benefits of housing the cars, and the fact that the deck would be attractive, safer and would keep people off the lawn which would result in less disturbance of the property. It was noted that a drainage plan showing how stormwater would be addressed had been provided.

Mr. Starkey said that concerning the hardship criterion, 3 b applied in that the variance was needed to allow a reasonable use of the property, which was to house the cars. He said the special conditions were that the entire building was located with the shoreland, wetland, frontyard, backyard, and sideyard setbacks.

Mr. Starkey said substantial justice would be done in granting the variance because it would mean that the cars could be housed, water management would be addressed, and there would be less disturbance of the land itself because of the deck.

Ms. Davis said granting the variance would not be contrary to the spirit and intent of the Ordinance. She noted that the intent of having a frontyard setback was for visual purposes and to provide some open space, but said on Cedar Point Road, if there was an expansion it needed to move toward the road.

Mr. Starkey pointed out that this had happened with many of the properties on Cedar Point Road.

There was discussion that the intent of the wetland overlay was to protect Great Bay from excessive erosion and from pollution from cars, etc. which would be addressed with the garage. It was also noted that there was a drainage plan, and that the 20% impervious cover on the lot would be maintained.

There was detailed discussion on what conditions should be included with the motion.

Sean Starkey MOVED to approve the Application for Variances submitted by Raymond Holmes, Greenland, New Hampshire, on behalf of David Ieni, Durham, New Hampshire from Article XII, Section 175-54, Article XIII, Section 175-59, and Article XIV, Section 175-74 of the Zoning Ordinance to construct the decks and the attached garage within the property, wetland and shoreland setbacks for the property shown on Tax Map 12, Lot 1-21 and located at 20 Cedar Point Road in the Residential Coastal Zoning, as shown on the revised plan dated

10/12/2010, with the following conditions:

- *There will be pervious paving surface for the driveway*
- *There will be crushed rock under the entire first floor deck*
- *There will be splash block or other erosion control at the southeast valley for the roof*
- *There will be adherence to the stormwater management plan as submitted*
- *All deck surfaces must be pervious*

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

D. PUBLIC HEARING on a petition submitted by Stagecoach Farms Neighborhood Association, Durham, New Hampshire, on behalf of the Town of Durham Public Works Department, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XXIII, Section 175-129(A) and 175-133(C) of the Zoning Ordinance place a new, permanent neighborhood sign within the Town right-of-way. The property involved is shown on Tax Map 18, Lot 17-2, is located on Stagecoach Road, and is in the Rural Zoning District.

Continued to the December 14, 2010 ZBA meeting.

III. Approval of Minutes

August 10, 2010

Chair Woodburn said Mr. Savage would be a voting member for this Agenda item.

Spelling on page 1 under Members Present should be Matthew Savage
Page 11, 2nd paragraph from bottom, should read "...where there had been discussion on"

Page 18, 2nd paragraph, should read "... with the facts she had provided in mind,"

Page 19, 2nd paragraph, should read "... engaged and wrestling with"

4th paragraph, should read "...they might at times want to have guests..."

Page 30, 2nd paragraph, should read "...Chair Woodburn said substantial justice would be done..."

Sean Starkey MOVED to approve the August 10, 2010 Minutes as amended. Matthew Savage SECONDED the motion, and it PASSED unanimously 5-0.

September 14, 2010

Chair Woodburn said she wouldn't be a voting member because she hadn't yet read these Minutes. Mr. Harvey and Mr. Savage were appointed as voting members.

Spelling on page 1 under Members Present should be Matthew Savage

Page 6-7, the square footage numbers should all have commas.

Page 13, 4th paragraph, should read "...had discovered that the property line had been improperly..." Same paragraph, should read "She said because of the current property line, it would be within..."

Page 24, remove first line under Agenda Item II I.

Jerry Gottsacker MOVED to approve the September 12, 2010 Minutes as amended. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.

IV. Other Business

A.

There was discussion about the upcoming Office of Energy and Planning Conference. Mr. Starkey noted that he was serving as the ZBA rep to the Master Planning Committee, and said he would appreciate it if Board members who went to the conference would share the information from it with him.

There was discussion on whether any of the alternates on the Board wished to become regular ZBA members.

V. Adjournment

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

Adjournment at 9:36 pm

Victoria Parmele, Minutes taker

Sean Starkey, Secretary