

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

**Durham Zoning Board  
Tuesday November 9, 2010  
Durham Town Hall - Council Chambers  
7:00 P.M.  
MINUTES**

**MEMBERS PRESENT:** Robbi Woodburn, Chair; Sean Starkey, Secretary; Carden Welsh; Jerry Gottsacker; Matt Savage

**MEMBERS ABSENT:** Ruth Davis, Vice Chair; Ed Harvey

**OTHERS PRESENT:**

**I. Approval of Agenda**

Chair Woodburn called the meeting to order at 6:59 pm. She noted that Agenda Item II A had been postponed until the December meeting.

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

Mr. Johnson told Board members that there was a request for rehearing of the Barrett case, and said it would be heard at the December ZBA meeting.

He noted that he had to be at an Energy Committee meeting, and left the ZBA meeting at 7:03 pm.

**II. Public Hearings**

- A. **PUBLIC HEARING** on a petition submitted by Moby & Yasmine Parsons, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to construct a shed within the rearyard setback. The property involved is shown on Tax Map 11, Lot 16-9 is located at 19 Shearwater Street, and is in the Residence C Zoning District.
- B. **PUBLIC RE-HEARING** on a September 14, 2010 condition of approval on a petition submitted by Julian Smith, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A) of the Zoning Ordinance to construct a shed to support photovoltaic array within the wetland setback. The property involved is shown on Tax Map 14, Lot 13-1, is located at 246 Packers Falls Road, and is in the Rural Zoning District.

Chair Woodburn said she would recuse herself for this application, and said Mr. Starkey would serve as chair in her place.

Mr. Starkey noted that there would be only four voting members, which would mean at least three of them would need to vote in favor of the application in order for it to be approved. He said Mr. Smith had the choice of having the application heard that evening or at the next meeting.

Mr. Smith said he preferred that the application be heard that evening, in order to resolve the matter one way or the other. He thanked the ZBA for the rehearing, and noted that previously, he had failed to make it absolutely clear that although he would not be storing items like pesticides, fuel, etc., a purpose of the building was storage. He said he had a canoe, three wheelbarrows, tools, lumber, etc., and said if he couldn't get the variance to build the new shed, he would rebuild the existing shed on the same footprint.

He quoted from Mr. Kimball's letter concerning being politically well connected, and said as a member of the Town Council, he did not feel politically well connected. He said he had no idea what Mr. Kimball meant by that, and noted that he frequently voted alone, as a member of the Town Council and the Planning Board. He said he had voted to appoint and/or reappoint ZBA members over the last five years, and was sure this had not caused any problem for them.

Mr. Smith said his intention was to use the building to mount a photovoltaic array. He also said he wanted to be able to provide more extensive wildlife habitat, especially for bats. He said he understood if the Board didn't think the building should be used for storage. He then noted the wording in his original prepared statement before the ZBA, which he had not read at the time because he didn't think it would be necessary.

He said the statement asked the Board to consider in its deliberations the possibility that the variance might not be necessary because he wished to build the shed in an area that could be considered exempt from Section 175-59 A.1. b. of the Zoning Ordinance (Wetland Conservation Overlay District – Applicability), which said the provisions applied to "all wetlands except wetlands associated with currently functioning and maintained, non-abandoned, manmade ditches and swales and sedimentation and/or detention basins or ponds...".

Mr. Smith said to the extent that the pond that they created in 1970 and had maintained since then captured significant detritus and silt, and flowed through a culvert under Packers Falls Road and along a swale across his property and that of the abutter to the north, he believed it qualified for an exception. But he said he had decided to try for the variance instead.

There was discussion by the Board that what they were addressing now was a condition that Mr. Starkey had attached to the variance approval for the shed.

Mr. Gottsacker received confirmation from Mr. Smith that he would be ok with wording that stated he would not be able to store pesticides and other harmful chemicals in the shed.

Mr. Smith said he needed dry storage for mechanical items like stone bars, shovels, wheelbarrows, and come-alongs, and said he also might want to store some furniture. He said he would be happy to mount a prominent sign inside the structure stating that no gasoline, lawn mowers, etc. could be stored there. He said he would be happy to see some limits on what could be stored.

There was brief discussion by the Board on the letter from Mr. Kimball, which expressed concerns about building the shed in the wetland conservation district. It was noted that the letter wasn't read out loud at the previous hearing, and that Mr. Starkey had mentioned it after the deliberations were closed.

Mr. Starkey asked if there were any members of the public who wished to speak against the application, and there was no response.

***Jerry Gottsacker MOVED to close the Public Hearing. Carden Welsh SECONDED the motion, and it PASSED 4-0.***

Mr. Starkey said his recollection was that when the original application was heard, he had started referring to a non-storage shed, based upon concerns, but then later had seen what Mr. Smith was asking for in his application.

He noted a letter from Mr. Kimball that expressed concerns about the request for rehearing. Mr. Starkey explained that he was the person who had requested the rehearing based on new information and because he had created the condition they were now discussing.

He said Mr. Kimball also questioned the fact that the application was approved in the first place, but said the Board now was only addressing the condition that went with the variance approval.

Mr. Gottsacker said the letter had been received long beyond the 30-day appeal period. He also questioned Mr. Kimball's statement about solar panels being installed on poles.

Mr. Starkey said it was clear to him that Mr. Smith had asked to be able to keep nontoxic storage materials in the shed, and said this was the reason to he had asked that this be reheard. He said he had no problem with what Mr. Smith was asking for.

There was detailed discussion on how to rewrite the condition of approval.

***Jerry Gottsacker MOVED to revise the September 14, 2010 condition of approval on a petition submitted by Julian Smith, Durham, New Hampshire for an APPLICATION***

***FOR VARIANCE from Article XIII, Section 175-59(A) of the Zoning Ordinance to construct a shed to support a photovoltaic array within the wetland setback to read "...that he not be allowed to store anything that could potentially contaminate the property soils and water". The property involved is shown on Tax Map 14, Lot 13-1, is located at 246 Packers Falls Road, and is in the Rural Zoning District. Matt Savage SECONDED the motion, and it PASSED unanimously 4-0.***

### **III. Approval of Minutes**

#### August 17, 2010

Page 2, 4<sup>th</sup> paragraph from bottom, should read "...only 60 ft from the shoreline. He said while the system would be..."

Page 4, 7<sup>th</sup> paragraph, should read "...so the view from that road wasn't as large."

Page 8, 3<sup>rd</sup> full paragraph, should read "...including regarding the parking area..."

Page 16, 3<sup>rd</sup> paragraph from bottom, should read "...other side of the page, regarding..."

Page 17, 2<sup>nd</sup> paragraph, should read "...a more rational basis for..."

5<sup>th</sup> paragraph should read "...wouldn't have been able to get out of the garage."

***Sean Starkey MOVED to approve the August 17, 2010 Minutes as amended. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

#### September 14, 2010 Minutes

Page 5, 2<sup>nd</sup> paragraph, should read "...would address the septic issue first. He said ..."

3<sup>rd</sup> paragraph, should read "...by eliminating using both the second floor and..."

Page 15, 2<sup>nd</sup> full paragraph, remove the word "CHECK"

2<sup>nd</sup> paragraph from bottom, should read "but said at some point the Board had to..."

Page 18, 4<sup>th</sup> paragraph, should read "Mr. Sievert said he didn't think there..."

2<sup>nd</sup> paragraph from bottom, should read "Chair Woodburn said she understood..."

Same paragraph, should read "...also said nothing had been built yet, and said..."

Page 19, 7<sup>th</sup> paragraph, should read "...was always the case with existing buildings."

Page 24, 1<sup>st</sup> paragraph under Agenda Item I. should be removed.

Page 26, 3<sup>rd</sup> paragraph from bottom, should read "The contractor, Kim Dalzell, said it..."

***Sean Starkey MOVED to approve the September 14, 2010 Minutes as amended. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

Page 1, last two paragraphs on page should be separated with a space.

Page 5, 4<sup>th</sup> paragraph from bottom, should read "...He said he was in favor of..."

Page 7, 2<sup>nd</sup> paragraph, should read "...based on a flexible surface was located there..."

Page 11, 5<sup>th</sup> paragraph, should read "He noted that Mr. McNeill..."

6<sup>th</sup> paragraph, should read "six years ago, reaffirmed twice..."

Page 23, 3<sup>rd</sup> paragraph from bottom, should read "...He said Mr. Smith had asked to have..."

Page 24, under Other Business, should read "...was heard the same day as the Pine..."  
***Sean Starkey MOVED to approve the October 5, 2010 ZBA Minutes as amended.  
Carden Welsh SECONDED the motion, and it PASSED unanimously 5-0.***

**IV. Other Business**

- A.
- B. Next Regular Meeting of the Board: **\*\*December 14, 2010**

**V. Adjournment**

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

Adjournment at 7:41 pm

Victoria Parmele, Minutes taker

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Sean Starkey, Secretary