

These minutes were approved at the May 10, 2011 meeting.

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

MEMBERS PRESENT: Vice Chair Ruth Davis; Carden Welsh; alternate Jerry Gottsacker

MEMBERS ABSENT: Chair Robbi Woodburn; Secretary Sean Starkey; alternate Edmund Harvey; alternate Matthew Savage

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

I. Approval of Agenda

ZBA member Ruth Davis served as Chair for the meeting, in place of Ms. Woodburn. She asked Mr. Gottsacker to serve as Secretary for the meeting in place of Mr. Starkey. She noted that there were only 3 ZBA members present, 2 who were regular members and one who was an alternate.

Chair Davis suggested that the Board start with the Request for Rehearing from Nancy Barrett.

Mr. Gottsacker suggested that the Board should ask if any of the applicants who were present wished to postpone being heard that evening, given the fact that there were only 3 ZBA members present. He said the Board could propose some possible alternate dates to meet before the next regularly scheduled meeting, February 8th.

Attorney Jim Schulte, representing Ms. Barrett, asked that her application be heard at a future meeting. He noted that only two of the ZBA members now present had been at the original hearing, and said having a full Board was preferred.

There was discussion about possible meeting dates.

Malcolm McNeill, an abutter to Ms. Barrett's property, noted that the Request for Rehearing was supposed to be heard in November, then in December, and it was now January. He said he would prefer that it be heard at the regular ZBA meeting on February 8th so he could be present. He said he realized there would be no public hearing involved.

Attorney Schulte said the applicant would be happy to accommodate Mr. McNeill's request.

Carden Welsh MOVED to reschedule to the regular ZBA meeting on February 8, 2011 the Request for Rehearing on an October 5, 2010 denial of 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. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 3-0.

Regarding Agenda Item B, the applicant's representative, Mike Sievert of MJS Engineering, said he would like to proceed with the application that evening, stating that what the applicant proposed was a step in the right direction.

Chair Davis noted that the applicant for Agenda Item II A was not present, and Mr. Johnson suggested that the Board could hear the other Items on the Agenda, and in the mean time wait to see if the applicant for Item II A came to the meeting.

Regarding Agenda Item II C, Attorney Peter Loughlin, representing the applicant, Capstone Development Corp, requested that this application be heard when there was a full Board present.

After discussion on possible meeting dates, John Acken of Capstone said it would work well if the application was heard on January 25th.

Jerry Gottsacker MOVED to move Item II C to a ZBA meeting on January 25, 2011. Carden Welsh SECONDED the motion, and it PASSED unanimously 3-0.

It was agreed that the Board would hear Item II B, and could then decide if it wanted to continue II A to a future meeting.

Mr. Welsh said he would be uncomfortable voting down application II A without the applicants being present. He said he would therefore prefer to delay hearing that application until a future meeting, unless Mr. Johnson could reach the applicants and they were able to get to the meeting.

Jerry Gottsacker MOVED to amend the Agenda by switching Item II A and Item II B. Carden Welsh SECONDED the motion, and it PASSED unanimously 3-0.

II. Public Hearings

- B. PUBLIC HEARING** on a petition submitted by John & Edith Lewis, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback. The property involved is shown on Tax Map 10, Lot 6-11, is located at 9 Gerrish Drive, and is in the Residence B Zoning District.

Chair Davis opened the public hearing.

Mike Sievert of MJS Engineering represented the applicants. He said the existing septic system on their property was substandard and was almost failing, and said the applicants proposed to replace it in essentially the same location with a state of the art septic system.

He said the variance was being requested because the replacement septic system was proposed to be located within the wetland setback. He noted that wetlands encircled the property, so there was virtually no location on the lot that would meet the 175-65 (F) septic setback requirements. He noted that the State's 50 ft setback requirement couldn't even be met.

Mr. Sievert said the replacement septic system would be raised up somewhat and would actually have a smaller footprint than the existing system. He said the system itself was a Clean Solutions system that included an enlarged tank where pre-treatment would take place before the effluent flowed to the leach field. He said the decision had been made to go with this system because it would be located so close to the wetland, and because of the soils there.

Mr. Sievert next went through the variance criteria and how they were met. He said granting the variance would not result in a decrease in the value of surrounding properties. He said the new system would provide better treatment than the current system, and would fit with the lawn area that was there now. He said this would only increase property values

Regarding the public interest criterion, he said the pretreatment system that would be used was a state of the art system and would ensure that health and welfare would not be threatened. He said the new septic system would be an improvement over what was there now, although noting that it would still be within 20-30 ft of the wetland.

He pointed out that the subdivision the applicants' property was located in had municipal water, which was a plus. He said there was an abundance of wetlands on the property now, and said the new septic system would promote the purpose of the setback by protecting the wetland functions.

Mr. Sievert said denial of the variance would result in a hardship for the applicants. He said the special conditions of the property that distinguished it from other properties in the area were the fact that the wetland encircled the entire parcel. He said applying the setbacks would completely eliminate all possible construction on the site.

He noted that the parcel was created in 1972, which was prior to the current wetland provisions regulating delineation of wetlands and their setbacks. He said the use was allowed in the zone, and had been in existence prior to the current Zoning regulation. He also said the septic system was required because there was no municipal sewer service available. He said the variance was needed in order to enable a reasonable use of the land, because a septic system could not fit on the lot and meet the existing 125 ft setback from wetlands.

Mr. Sievert said substantial justice would be done in granting the variance because this would allow the applicant to construct a state of the art septic system to properly treat and

dispose of domestic wastewater on the site, while protecting the environment to a greater extent than the current failing system.

He said the spirit and intent of the Ordinance in this instance was to protect the wetlands. He said right now, the yard was mowed to the edge of the wetland, and also said the existing septic system was located only 8 inches above a restrictive layer. He said the new system would be 30 inches above it. He also said that with the pre-treatment taking place in the tank, the Zoning requirement would be met as much as possible.

Mr. Sievert said there was no other location on the property to put the system that would be further away from the wetland. He also said having to relocate the entire leach field would be more detrimental to the wetland than what was proposed. He said this was one of the more substantial instances he had seen of wetlands on a property, and said with the advanced septic system, this was the best the applicant could do.

Chair Davis asked if when the subdivision was built, any wetlands had been filled.

Mr. Sievert said no, noting that wetlands weren't delineated in 1972 the way they were now.

Mr. Johnson said in those days, the dirt that came out of the cellar hole when it was dug was probably used for the lawn.

Mr. Sievert said there was no receiving layer for the present septic system other than land brought in the 1970's, and said below that was silty clay.

Mr. Welsh asked what size family the new septic system would support, and Mr. Sievert said it was a 4 bedroom septic design. He noted that the leach field would be 200 sf, and would also have some extra depth. He said normally with 4 bedrooms, the leach field would be 100 sf.

There was discussion that the tank would hold 1600 gallons.

Mr. Welsh asked where the wetlands on the site drained to.

There was discussion that there was a long distance from open water.

Mr. Welsh asked where the sewer line ended in that area of Town, and Mr. Sievert said it went to Canney Farms, and also said he believed a sewer line had just been extended up Bagdad Road. He said it was getting closer to the subdivision where the applicants lived, and might get there at some point.

Chair Davis noted that the perc test came out to 45 minutes per inch, with 8 inches, and asked Mr. Sievert what he thought the numbers would have been if the top soil layer wasn't there.

Mr. Sievert said without the silty clay loam layer, which was fine material but wasn't clay, it could be 60 minutes per inch or slower, and would be considered impermeable. He provided details on this, and said he had called the water table at 26 inches.

He said the top of the existing leach field was at an elevation of 499 ft, and said the test pit was dug at 498 ft. He said right now, the difference between the bottom of the leach field and the impervious area was 18 inches or less, and said increasing this to 30 inches would allow a greater area for treatment of whatever still needed treatment once it left the tank, such as viruses and other pathogens. He spoke further on this.

Chair Davis determined that there were no members of the public who wished to speak for or against the application.

Carden Welsh MOVED to close the Public Hearing. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 3-0.

Mr. Gottsacker said that like the situation for many of the properties on Cedar Point Road, there was no other place on the applicant's property for a replacement septic system to go that wouldn't violate the setbacks. He said what the applicants proposed would be a better system, and said the old footprint would be used, only somewhat less of it. He said Mr. Sievert had articulated well how the variance criteria were met.

Mr. Welsh said the ZBA had been consistent about getting the best possible septic system. He said the house was already there, and said the new system would improve the value of the property and would be consistent with the public interest. He said denial of the variance request would result in a hardship for the applicants.

He said substantial justice would be done in granting the variance, and also said granting it would not be contrary to the spirit and intent of the Ordinance. He said wetlands surrounded the property, and said the new septic system would provide as much treatment as possible before the effluent got to the wetland.

Chair Davis noted that the Board couldn't say there could not be a septic system there. She said there was one there now, and said the one proposed would be much better for the wetlands than the existing system. She said she agreed that the application met all 5 variance criteria.

Jerry Gottsacker MOVED to approve an Application for Variance submitted by John & Edith Lewis, Durham, NH from Article XIII, Section 175-65(F) of the Zoning Ordinance to construct a replacement septic system within the wetland setback., as per the plans submitted tonight and dated January 4, 2011. The property involved is shown on Tax Map 10, Lot 6-11, is located at 9 Gerrish Drive, and is in the Residence B Zoning District. Carden Welsh SECONDED the motion, and it PASSED unanimously 3-0.

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.

Mr. Johnson said he had contacted the Parsons, and they were not able to be at the meeting that evening. He said they had asked that their application be continued to the regular ZBA meeting on February 8th.

Jerry Gottsacker MOVED to continue Agenda Item II A to the ZBA meeting on February 8, 2011. Carden Welsh SECONDED the motion, and it PASSED unanimously 3-0.

- C. **PUBLIC HEARING** on a petition submitted by Capstone Development Corporation, c/o Appledore Engineering Inc., Portsmouth, New Hampshire on behalf of William & Edna Woodward Rev Trust, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-60 of the Zoning Ordinance to fill 6,956 square feet of wetlands within the Wetlands Conservation Overlay District and to place 6,720 square feet of residential buildings within the wetland setback. The property involved is shown on Tax Map 9, Lot 10-3, is located on Main Street/Technology Drive, and is in the Office Research/Light Industry Zoning District.

Postponed until the ZBA meeting on January 25, 2011.

III. Board Correspondence and/or Discussion

- A. **REQUEST FOR REHEARING** on an October 5, 2010 denial of a petition submitted by Nancy Barrett, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a July 8, 2010 letter of Zoning Administrator, Thomas Johnson, regarding the definition of a structure. The property involved is shown on Tax Map 12, Lot 18-0, is located at 38 Colony Cove Road, and is in the Residence C Zoning District.

Postponed until the ZBA meeting on February 8, 2011.

IV. Approval of Minutes

October 12, 2010
November 9, 2010

ZBA members agreed to wait to do the Minutes because of missing Board members. It was agreed that the Minutes would be done at the meeting that would be held on January 25th.

V. Other Business

- A. Mr. Johnson said the date for the Pine Ledge Holdings Court case was March 30th, and said the ZBA's attorney would like a member of the Board to be present that day.

Chair Davis offered to be there.

There was discussion on who had been the Chair of the meetings when this application was heard by the Board. Mr. Johnson said he would check on this, and said the Board could then decide who should represent the ZBA before the Court.

B. Next Regular Meeting of the Board: ****February 8, 2011**

VI. Adjournment

Carden Welsh MOVED to adjourn the meeting. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 3-0.

Adjournment at 7:52 pm

Victoria Parmele, Minutes taker

Jerry Gottsacker, Secretary