

*These minutes were approved at the July 12, 2011 meeting.*

**Durham Zoning Board  
Tuesday May 10, 2011  
Durham Town Hall - Council Chambers  
7:00 P.M.  
MINUTES**

**MEMBERS PRESENT:** Chair Robbi Woodburn; Vice Chair Ruth Davis; Secretary Sean Starkey; Jerry Gottsacker; alternate Kathy Bubar

**MEMBERS ABSENT:** Carden Welsh; alternate Edmund Harvey

**OTHERS PRESENT** Victoria Parmele, Minutes taker

**I. Approval of Agenda**

Chair Woodburn called the meeting to order at 7:01 pm. She noted that Item III A would be continued to the next ZBA meeting at the request of the Bakmans.

*Jerry Gottsacker MOVED to continue the Bakman application to the June 14, 2011 ZBA meeting. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.*

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

**II. Election of Officers**

*Jerry Gottsacker MOVED that Robbi Woodburn continue as Chair, Ruth Davis continue as Vice Chair, and Sean Starkey continue as Secretary of the ZBA. Kathy Bubar SECONDED the motion, and it PASSED unanimously 5-0.*

**III. Public Hearings**

- A. **PUBLIC HEARING** on a petition submitted by Alexander & Alexandra Bakman, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to create one additional house lot from an existing residential property where both lots would not meet the minimum lot size requirements. The property involved is shown on Tax Map 11, Lot 24-4, is located at 118 Piscataqua Road, and is in the Residence C Zoning District.

Continued to the June 14, 2011 ZBA meeting.

- B. **PUBLIC HEARING** on a petition submitted by Zelda & David Moore, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59 of the Zoning Ordinance to build an addition within the wetlands setback. The property involved is shown on Tax

Map 6, Lot 2-33, is located at 4 Stevens Way, and is in the Residence B Zoning District.

Mr. Moore spoke before the Board. He said the house faced to the northeast, and also said the distance from the house to the property line was roughly 40 ft. He said most of the land area was wetlands, and noted that when the houses in that area were put in the 1980's, a lot of fill was put in. He said the fill on his land went almost up to the wetlands itself. He said there was quite a bit of wetland behind his house, and said he and his wife weren't proposing any extension of the house in that area. He also said that between their property and the neighbor to the east, there was some swampy land that met the definition of wetland.

There was discussion about this area, and it was noted that it was wooded. Mr. Moore said because of this swampy land, his neighbor routinely had to use a sump pump or his house would flood.

Mr. Moore said when the house was originally built, it had a 9 ft deck. He said the deck there now extended out 6 ft. He said what was proposed now was an expansion that would include a dining room with a full basement and a gable roof. He said it would go out a total of 12 ft, which would be 3 ft more than the length of the original deck. He said the distance from it to the wetland would be about 29 ft. He said the addition would be in an area that already had fill, so although the 75 ft wetland setback would be violated, the addition wouldn't affect the wetland in any way.

Ms. Woodburn determined that the current deck was narrower than the original deck. There was discussion about the fact that the current deck extended out 6 ft, while the new deck would extend out 12 ft.

Mr. Starkey noted that the area the applicants proposed to build on was flat, and said the land dropped down from there to the wetland. Mr. Moore said there was quite a bit of fill on his property before it got to the wetland.

Ms. Woodburn noted that the property was well within the 75 ft wetland setback anyway, and that it encompassed the house.

Mr. Moore said they were respecting the intent of the law with what was proposed because they weren't doing anything to the wetland. He noted that the wetland in back would still be protected.

Mr. Gottsacker determined that the house had a full basement.

Mr. Moore said there were no problems with the basement, stating that his house sat quite a bit higher than the wetland and his neighbor's house.

Mr. Gottsacker discussed the possibility that land disturbance from the proposed project could impact the wetland.

Chair Woodburn said the Board could ask for adequate erosion control and that land disturbance toward the wetland side must be minimized.

Mr. Moore said granting the variance would not have an impact on the value of surrounding properties, and said what was proposed could even enhance property values. He said the neighbors didn't have a problem with the extension.

Ms. Davis asked if there were plans for dealing with roof runoff, and Mr. Moore said there would be a gutter that connected to the existing gutter, which would drain away from the wetland.

There was discussion with Mr. Moore about the fact that Mr. Johnson had had to reject the original building permit application because of wetland setback incursion, and at the time said a plot plan but not a boundary survey was needed.

Ms. Davis said the applicants had been quite thorough in referencing RSA 482 A:1 "Finding of Public Purpose", which in this instance was to protect wetlands.

There were no members of the public who spoke for or against the application.

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

Mr. Starkey said he had gone to the property, and said he couldn't see any standing water there. He said it was all trees, and also noted that there was quite a drop off from the applicants' property to the wetland. He said their property was really built up.

Ms. Woodburn said the sideyard wetland was relatively small, and was contained. She said she would call it an isolated pocket of wetland.

The Board went through the variance criteria.

Mr. Gottsacker said there was no evidence either way concerning whether granting the variance would decrease the value of surrounding properties.

Chair Woodburn noted that the applicant had talked about taking the roof runoff in the other direction from the wetlands. Ms. Davis said there would be no surface runoff going into the wetlands.

Concerning the public interest criterion, Ms. Davis noted again that Mr. Moore had quoted from the RSA in regard to the public purpose of protecting wetlands.

Chair Woodburn said the wetland had already been a part of the property, and said as long as it was protected during construction, she didn't think there would be a change to merit saying that granting the variance would be contrary to the public interest.

Mr. Starkey said the property the home sat on limited any expansion of the home, and said the hardship was there.

Board members said substantial justice would be done in granting the variance. Ms. Davis said the benefit to the homeowners from putting the addition on outweighed any possible threat to the wetlands.

Mr. Gottsacker said given the configuration of the home, the question was where else the expansion could possibly go.

Chair Woodburn said the expansion would be in the wetland setback no matter where it was put.

Mr. Starkey said granting the variance would meet the spirit and intent of the Ordinance, in that the applicants had taken care not to expand beyond the original footprint, and said there would be little additional impact to the wetland.

***Ruth Davis MOVED to approve an Application for Variance from Article XIII, Section 175-59 of the Zoning Ordinance to build an addition within the wetlands setback, according to the plan included in our packet dated May 3 2011, with the condition that the disturbance to the wetland be minimized, that appropriate erosion control be used during construction, and that roof drainage feed into the existing gutter system. The property involved is shown on Tax Map 6, Lot 2-33, is located at 4 Stevens Way, and is in the Residence B Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

- C. PUBLIC HEARING** on a petition submitted by MJS Engineering P.C., Newmarket, New Hampshire on behalf of Pam McPhee, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(C)(3) of the Zoning Ordinance to create an accessory dwelling unit in an existing accessory structure which is greater than 25% of the total floor space of the primary structure on the lot. The property involved is shown on Tax Map 19, Lot 13-2, is located at 342 Dame Road, and is in the Rural Zoning District.

Mike Sievert from MJS Engineering spoke before the Board. He said the existing parcel was about 5 acres in size, and said the applicant also owned the larger conservation easement parcel that surrounded it. He described the layout of the property as well as surrounding properties.

He pointed out the accessory structures on the applicant's 5 acre property, and said what was proposed was to convert a portion of one of them, an existing building that was used as a woodworking shop, into a dwelling unit. He said the variance was needed because the Zoning Ordinance required that an accessory dwelling unit could only be a maximum of 25% of the primary structure to which it was accessory. He said the size of the existing structure and the portion that was finished as a woodworking shop was greater than the maximum allowed area.

Mr. Sievert said there was a well and an electric heating system to service the proposed dwelling unit, but no septic system. He said the applicant would be installing a septic system in the location of the horse riding area.

Mr. Gottsacker said the 25% appeared to be based on the 1700 sf existing house, ignoring the barn.

Mr. Sievert said that was correct, and explained that accessory structures were allowed in this zone, but said the issue was that allowing a dwelling unit to be only 25% of 1700 sf would result in a very small unit. He said the 1,000 sf dwelling unit that was proposed was more than 50% over that.

Mr. Sievert next went through the variance criteria. He said granting the variance would not result in a decrease in the value of surrounding properties. He said there would be no change to the existing structure or the parking area, and said there would be no exterior change except perhaps a deck. He said the structure would be used essentially for the same thing it was used for now, but would also have a dwelling unit in it. He spoke further on this.

Concerning the public interest criterion, Mr. Sievert said accessory units were allowed in the Rural Zoning District. He said the area to be used for a residential dwelling unit already existed as part of the woodworking shop. He said essentially the only change proposed was to frame out the interior. He said granting the variance would not unduly and to a marked degree violate the Zoning Ordinance because remodeling a portion of the existing structure's interior into a residential unit would not alter the character of the neighborhood, or threaten the health, safety or general welfare of the public.

Chair Woodburn noted that the only big change would be the bathroom and the septic system.

Mr. Sievert said that owing to the special conditions of the property that distinguished it from other properties in the area, denial of the variance would result in an unnecessary hardship. He said the general purpose of the Ordinance was to allow small accessory dwelling units that were secondary to the primary structure, but said given the small size of the primary dwelling unit on the existing lot, the resulting accessory unit would be too small. He said the existing accessory building would have to be reduced by 70% to meet the requirement, and said this would result in unnecessary hardship to the owner.

He also said that given the size of the parcel that the building sat on and the surrounding parcel that was also owned by the applicant, granting the variance would not result in an unnecessary hardship because the purposes of the Ordinance were met. He said there would be no crowding, and said the rural character and natural and scenic quality of the area would be maintained.

Mr. Sievert also said the proposed use was reasonable because it was an allowed use in the Rural Zone, the building already existed, and the current use of the building was no longer in operation.

He said substantial justice would be done in granting the variance because there would be little impact on the general public. He said in contrast, if the variance was not granted, the owner would have to construct a major modification to the existing structure just to bring the area of the accessory structure into compliance with the Ordinance.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance, first noting that accessory dwelling units were allowed in the Rural zone. He said the lot the dwelling

unit would be on contained 5 acres, and said the applicant also owned another 68 acres. He said with all of that land, what was proposed would be in keeping with the rural character of the zone.

Mr. Sievert said there was a lot of ledge in that area, but said the area proposed for the septic system had been filled and leveled over time. He said the system would be buried under the horse riding area, and noted that it would be a heavy duty chamber system.

There was discussion that it would be a pumped system rather than a gravity feed system because there wasn't enough elevation change on the site. It was noted that test pits had been dug, and that Mr. Johnson had witnessed them. Chair Woodburn said the applicant would be able to do the septic system without exceeding any setbacks.

Mr. Starkey said there were two letters that spoke in favor of the variance application, one from **Tammy Harvey, a direct abutter who lived at 347 Dame Road, and the other from Susan and Roy Schettini, also direct abutters who lived at 351 Dame Road.**

**Barry Ryan, 321 Dame Road,** said the applicant's conservation easement land directly abutted his own property. He said he and his wife supported the applicant's proposed accessory dwelling unit.

Chair Woodburn said there were no other members of the public who wished to speak concerning the application.

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

Chair Woodburn said the Board had seen this kind of situation before.

Mr. Starkey said Mr. Sievert had done a good job of addressing how the five variance criteria were met.

Board members agreed that the five criteria were met.

***Sean Starkey MOVED to approve an Application for Variance from Article XX, Section 175-109(C)(3) of the Zoning Ordinance to create an accessory dwelling unit in an existing accessory structure which is greater than 25% of the total floor space of the primary structure on the lot, per the plans submitted by MJS Engineering dated 4/27/2011. The property involved is shown on Tax Map 19, Lot 13-2, is located at 342 Dame Road, and is in the Rural Zoning District. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

Break from 7:55 to 8:00 pm.

#### **IV. Approval of Minutes**

January 11, 2011

***Jerry Gottsacker MOVED to approve the January 11, 2011 Minutes. Ruth Davis SECONDED the motion, and it PASSED unanimously 5-0.***

March 8, 2011

There was discussion that these Minutes had already been reviewed.

## **V. Other Business**

A.

B. Next Regular Meeting of the Board: **\*\*June 14, 2011**

Chair Woodburn noted that the ZBA's Pine Ledge Holdings decision was upheld in Superior Court.

There was also discussion that there was a letter from the NH Land Surveyors Association that noted that a certified plot plan was not the same as a land survey.

## **VI. Adjournment**

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

Adjournment at 8:04 pm

Victoria Parmele, Minutes taker

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Sean Starkey, Secretary