

*These minutes were approved at the December 13, 2011 meeting.*

**Durham Zoning Board Minutes  
Tuesday October 11, 2011  
Durham Town Hall - Council Chambers  
7:00 P.M.**

**MEMBERS PRESENT:** Chair Robbi Woodburn; Secretary Sean Starkey; Jerry Gottsacker; Carden Welsh; alternate Kathy Bubar

**MEMBERS ABSENT:** Vice Chair Ruth Davis, alternate Edmund Harvey

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

**I. Approval of Agenda**

It was noted that Item II A (Flannery) had been withdrawn, and that II C (Hills) was also withdrawn because it turned out that the applicant didn't need a variance. It was also noted that the applicant for Item II E (Sakowski) had asked for a continuance based on the possibility that the Rehearing of the variance application might not be needed.

There was discussion on Item II D, an application from the Nevada Land and Water Company. It was noted that at the last meeting, the applicant came in to see if the variance might be needed, and that the application was continued to the next meeting because the plan wasn't adequate and the applicant was supposed to provide a new one. Mr. Johnson said this hadn't been received. Board members agreed to put this agenda item at the end of the meeting, and if the applicant wasn't present, it could be continued.

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

*Jerry Gottsacker MOVED to continue Item II E to the next ZBA meeting at the request of Attorney Tanguay on behalf of the applicant, Pamela Sakowski. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.*

**II. Public Hearings**

- A. CONTINUED PUBLIC HEARING** on a petition submitted by Bruce M. & Sarah Flannery, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Article XIII, Section 175-59 of the Durham Zoning Ordinance to allow for the construction of a garage addition with a 2<sup>nd</sup> story apartment and septic system in the wetlands and building setbacks. The property involved is shown on Tax Map 14, Lot 26-0, is located at 64 Wiswall Road, and is in the Rural Zoning District.

Withdrawn at the request of the applicants

- B. CONTINUED PUBLIC HEARING** on a petition submitted by Alexander & Alexandra Bakman, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-53 and Article XIII, Section 175-65(F) of the Zoning Ordinance to create one additional house lot from an existing residential property where one lot would not meet the required frontage, and to allow the existing septic system for one of the lots to be within 65 feet of the delineated wetland. 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.

Mr. Gottsacker noted that at the previous ZBA meeting, the public hearing on these variance applications was held and the Board partially deliberated on them. He said Board members then agreed to watch the video of the June ZBA meeting and read the Minutes of that meeting, and to then finish deliberations at this October ZBA meeting.

Chair Woodburn said the point Board members couldn't agree on at the last meeting was the issue of whether there were special conditions of the property that created hardship. It was noted that the idea had been expressed that since the Board had granted the original variance concerning the lot sizes a few months ago, they had to believe that there were special conditions of the property.

Chair Woodburn said something the Board also needed to talk about was the fact that the greenhouse foundation variance request concerning the sideyard setback exceedance hadn't been noticed on the Agenda, even though it was discussed at the previous meeting.

Attorney Scott Hogan represented the Bakmans. He said in his August 29, 2011 letter to the ZBA, he went through all of the various variance requests, including the one concerning the greenhouse foundation, so it was part of the application from the outset. He also said that in June, when the Bakmans were before the ZBA in regard to the variance application concerning the minimum lot sizes, the plan presented to the Board then was the same as the plan before the Board now. He said it was noted at that time that there were setback issues with regard to the greenhouse foundation and the wetland, and he said these things as well as the variance request concerning the frontage were on the plan, when the minimum lot size variance was approved by the Board.

He said at the time that the minimum lot size variance was granted, there had been discussion about the special conditions of the property. He also noted that this property was before the ZBA in 2007 and 2008 for two other variances. He said he'd looked at the Minutes for these meetings, and said there was general discussion by the Board at that time about the property in terms of hardship and the special conditions of the property that distinguished it from others in the area, and the fact that this was a reasonable proposition.

Attorney Hogan said the special conditions of the property were said to be related to the fact that this used to be two lots as originally approved, and that even though the lots were slightly smaller than what was allowed now, they were generally conforming so were consistent with the zone. He handed out portions of the Minutes from those meetings, which summarized the Board's discussions. He noted that Mr. Gottsacker was there for all of them.

He said one had to do with putting in a home occupation, and the other had to do with putting an addition in the back. He said the Board unanimously granted these prior variances requests, and said as part of this there was discussion on the unique nature of the lot in that there were two buildings on it and no new construction was required.

He said with these prior discussions in 2007 and 2008, and the one concerning the home occupation variance application especially, ZBA members said there might be more people on this lot as a result of approving the variance. He noted that former ZBA Chair Jay Gooze chaired the meetings where these discussions took place, and said he thought Route 4 could accommodate the additional traffic that would be created, and that there was hardship because of the uniqueness of the property.

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

Chair Woodburn said she had looked at the video of the June 14<sup>th</sup> 2011 ZBA meeting, and noted that Mr. Starkey wasn't there.

Mr. Gottsacker said what had kept the Board from approving the variance applications at the September 2011 ZBA meeting was the issue of whether there were special conditions of the property. He said after viewing the video of the June 2011 meeting, it was clear what the Board's discussion was on this issue.

Chair Woodburn said the video clearly showed Attorney Hogan describing the special conditions, in that it was once two established lots that were then joined. She said that was the crux of the argument, and other Board members agreed.

Mr. Gottsacker noted that Mr. Welsh had raised the issue of special conditions, in regard to the barn-like structure and the fact that the property had previously been subdivided. He also said the reason the lot line was drawn the way it was now was to keep the dock with the lot that had the house, so this was a special condition too. He said he was satisfied that there were special conditions of the property.

Chair Woodburn also said that with these variances, nothing physically would change, which was a special condition as well.

Mr. Welsh said Mr. Gottsacker had also noted the berm on the property and the lack of visibility of the buildings from the road, which were physical conditions of the property that had nothing to do with the drawing of the lot line.

Mr. Gottsacker noted that he'd made the comment that the applicants would have to come back for more variances once the lot was subdivided because there would be problems. It was also noted that the Bakmans hadn't been before the Planning Board yet for subdivision approval, and Mr. Gottsacker said granting the variances now should therefore be conditional upon the Bakmans receiving subdivision approval.

There was further discussion by the Board about the fact that the variance application concerning the greenhouse foundation hadn't been noticed on the Agenda. Chair Woodburn suggested granting

the variances for the two applications that had been noticed, and continuing the third to the next meeting, with the understanding that the Board had already discussed it. She said the Board had been strict about the issue of noticing of applications.

Chair Woodburn reopened the public hearing in order to hear from Attorney Hogan on this issue.

Attorney Hogan said the variance application concerning the greenhouse foundation was on the September 13<sup>th</sup> ZBA agenda.

Mr. Gottsacker said this meant that it was in fact noticed, and was continued to this meeting.

Attorney Hogan also said the applicants had reached out to the abutters concerning these variance applications, and he noted that none of them were here now. He said there hadn't been any abutters at any of the ZBA meetings, even in regard to the use variance. He also said that at the June 2011 meeting that everyone had reviewed on the DVD, the issue of the greenhouse foundation was discussed.

After further discussion, Board members agreed that they were ok with deliberating on the entire variance application, including the greenhouse foundation variance request.

Chair Woodburn closed the Public Hearing, stating that the noticing issue had been taken care.

Mr. Welsh asked if the greenhouse foundation could be used as the basis for a porch, and Chair Woodburn suggested that the Board could attach a condition concerning this.

Mr. Gottsacker said there also could be a condition that approval of the variances was conditional upon the applicants receiving subdivision approval from the Planning Board.

*Sean Starkey MOVED to grant a petition submitted by Alexander & Alexandra Bakman, Durham, New Hampshire, for an Application for Variances from Article XII, Section 175-54 and Article XIII, Section 175-65 (F) of the Zoning Ordinance to create one additional house lot from an existing residential property where one lot would not meet the required frontage, and the former greenhouse found doesn't meet the sideyard setback, and to allow the existing septic system for one of the lots to be within 65 feet of the delineated wetland, with the following conditions: that the foundation remains as it is, unless further variances are granted, and that the variances would only take effect after the Planning Board approves the subdivision of the lots. 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. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.*

- C. **PUBLIC HEARING** on a petition submitted by David E. Hills, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XXIV, Section 175-139 of the Durham Zoning Ordinance to allow for the location of a leach field. The property involved is shown on Tax Map 11, Lot 22-3, is located at 35 Piscataqua Road, and is in the Residence C Zoning District

Withdrawn

- D. CONTINUED PUBLIC HEARING** on a petition submitted by Nevada Land and Water Company, Newmarket, New Hampshire on behalf of Cumberland Farms Inc., Framingham, Massachusetts for an **APPLICATION FOR VARIANCES** from Article XXI, Sections 175-110, 175-111, 175-115 and 175-116 of the Durham Zoning Ordinance to allow for parking and loading for the potential redevelopment of a commercial property. The property involved is shown on Tax Map 4, Lot 49-0, is located at 3 Dover Road, and is in the Courthouse Zoning District
- E. PUBLIC REHEARING** on a July 12, 2011 denial of a variance on a petition submitted by Pamela Sakowski, MJS Insurance, Stratham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-53 of the Durham Zoning Ordinance to allow for a change of use of a property from commercial to residential. The property involved is shown on Tax Map 2, Lot 8-8, is located at 39 Madbury Road, and is in the Professional Office Zoning District.

Continued at the request of the applicant.

- F. PUBLIC HEARING** on a petition submitted by Valerie Shelton, Appledore Real Estate, Newmarket, New Hampshire on behalf of Peter T. Logan Rev Trust and Pamela W. Logan Rev Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIV, Section 175-74 of the Durham Zoning Ordinance to permit construction of 10-inch roof overhangs on the east and west gable ends of the house to accommodate the replacement of the vinyl siding with natural stone veneer, to remove the existing covered shed roof over the south side deck with a hip roof which will wrap around the east side of a portion of the approved deck and covered areas to be screened for season use within the 125-foot shoreland set back. The property involved is shown on Tax Map 20, Lot 1-0 is located at 595 Bay Road, and is in the Residential C Zoning District.

Valerie Shelton of Appledore Real Estate represented the applicants, and said the applicants' lot contained 1.93 acres. She provided a fairly detailed history of the property, including some previous variance applications that had come before the ZBA over the past several years. She said a previous property owner had received a special exception for a septic system for a 4 bedroom house in 2006.

She also said that in July of 2003, a variance was granted to allow construction of a three bedroom Cape and an attached two car garage. She said a condition of approval was that the original boathouse and a cottage were to be removed. She said the property changed hands in 2005, so the house and garage were not constructed.

She said Mr. Christensen, the owner prior to the Logans, received a variance to just replace the existing foundation of the camp with a newer year round single family home. She said this was done in 2005, and the certificate of occupancy was issued in April of 2011.

Ms. Shelton said in July of 2006, after two previous denials by the ZBA concerning expansion and enclosure of decks for the new residence, the ZBA allowed the construction of decks on the additions to the house, which include enclosure of a portion of the existing decked area and additional deck area. She provided photos that showed the existing conditions at the property now. She said the only covered section for the deck was the shed roof on the rear of the house, and was permitted.

She said the ZBA also granted a variance a year later to allow enclosure of part of the deck area on the east side, but said a variance request concerning the south side was denied. She said there were other variances previously granted when Mr. Christensen owned the property, concerning the garage area as well as a pavement of the driveway.

Ms. Shelton said the applicants now wanted to add 10 inch overhangs on the gable ends on the east and west sides of the house, and to remove the existing shed dormer and instead wrap a hip roof structure around a portion of the east side for security purposes and to allow three season use. She said because the property was located in the shoreland setback, a variance was needed. She noted that the applicants would like to remove the existing siding on the house and replace it with a natural stone veneer, so the overhangs were needed.

She said they wanted to remove the shed roof on the back of house because it was the only entrance to the house, and there were safety concerns. She explained that when people came to the house, they had to enter through the sliding glass doors, and said there was no entrance from the street side. She said having the hip roof coming around the side would allow an entrance to be constructed off of the existing side of the deck.

Chair Woodburn said the hip roof would be bigger than was there now.

Ms. Shelton said that was correct, stating that it would continue under the 2006 approval to the east side, and then wrap around the east side, which they believed was granted as part of the 2007 approval, also noting that this was unclear.

There was discussion on this.

Chair Woodburn asked if the area with the shed roof was screened.

Ms. Sheldon said no. She also explained that the shed roof that was constructed had a low pitch, and said there had consequently been a lot of damage to it, especially as a result of snow loads on it. She also explained that with the changes proposed now to that roof, the applicants could lift up the deck, noting that the step from the deck into the house right now was 10 inches.

Mr. Gottsacker said he remembered the site walk for the garage that didn't get built, and the fact that there was discussion on the drainage issues on the site.

Mr. Johnson said there had been 10 cases before the ZBA concerning this property. There was discussion about some of the previous cases.

Chair Woodburn asked Mr. Johnson if he agreed that the portion of the proposed roof covering on the east side was previously approved by the ZBA.

Mr. Johnson said he recalled that the ZBA had approved the old screen porch, and the roof was there from before. He said the ZBA gave Mr. Christensen approval for the roof area along the back wall, to create the effect of a front door facing the street, but he never took the old roof off and

rebuilt it because he couldn't figure out how to do the pitch. He said the roof area along the back wall was approved, and said the applicants now were asking to come down along the side a bit.

Mr. Gottsacker asked if whether, if the Board approved this, they needed to include what Mr. Johnson had just said, or if it was already clear in the record that it was approved a long time ago.

Mr. Johnson said he thought it was clear, and said whatever the Board approved, it could approve from this point as far as it wanted to go.

Ms. Shelton said this wasn't crystal clear in the public record. She said when the motion was made in 2007, the Board denied the variance for the south side. She said a motion was then made to grant a variance for the east side, which wasn't really the application. She said by including that tonight, it made it clear that there was a variance to enclose a portion of the east side.

Mr. Gottsacker said he remembered those discussions and the site walk, and said there was discussion about enclosing a portion of that area with a roof. But said it was very unclear even then, and said the Board should be crystal clear on all of this, if it was going to grant anything now.

Ms. Shelton said it was nice to have the 2006 plan signed by the Chair, and said it would be great if this current plan was signed and in the file, in order to provide clarity.

Chair Woodburn said she would like to see a date on the plan, as well as the proposed roof area dimensions.

Mr. Gottsacker suggested that Ms. Shelton give the Board these dimensions, so they could be included in the motion. She said they were on the 2006 plan, and could be transferred easily.

Mr. Starkey also suggested adding the deck on the gable end to the plan. It was noted that the deck currently existed.

Chair Woodburn said the plan should show the existing conditions clearly, and said they should also have the various dimensions, and the date.

Ms. Shelton next reviewed how the five variance criteria were met with the application. She said this was an area of upscale, highly taxes waterfront homes, and said the proposed modifications would dramatically improve the architecture of the structure from both the street and bay, and would remove the shed like appearance of the existing structure. She said the proposed improvements would be aesthetically appropriate for the neighborhood, and would not diminish property values.

She said granting the variance wouldn't be contrary to the public interest. She said the owners were simply seeking to change the existing vinyl siding to a more aesthetically pleasing appearance using natural materials. She said the application didn't alter the essential character of neighborhood properties, many of which had enclosed decks, screened porches or three season sunrooms.

She said the improvements would not adversely impact water quality, wildlife habitat, shoreland resources or require additional services from the Town. She said the owners would make further improvements to mitigate runoff into the bay, by planting rain gardens in existing approved culvert drainage ways, and replacing portions of the approved paved driveway closest to the bay with a laid stone product.

Ms. Shelton said that concerning the hardship criterion, no fair and substantial relationship existed between the general public purposes of the Ordinance provisions and the specific application of those provisions to the property. She said the purpose of the Ordinance was protection of water quality, and said because the structure was located within 125 ft of the shoreline, a variance was required in order to make any modifications to the structure.

She said the current architecture of the structure would not allow replacement of the vinyl siding with a stone veneer façade, due to the lack of any overhang of the roof on the gable ends to accept the new siding and shed water away from the walls. She said extension of the gable ends would not adversely impact water quality, given that the foundation footprint was not being enlarged, and that a drainage system installed under a previously approved plan was in place for roof runoff.

Ms. Shelton said the pre-existing non-conforming structure was situated on an irregularly shaped lot that sloped to the water. She noted that the Board had agreed as part of the July 2006 approval that the lot configuration and topography precluded the owner from siting a deck or porch outside of the setback area.

She said the proposed use was reasonable because the owners would like to make improvements that defined the structure to look like a small residential house, which was more aesthetically pleasing to the owners and the public. She also said it was reasonable to want to have an entry door to the structure that didn't require a delivery person or other announced person to have to come behind the building. In addition, she said it would be reasonable for a waterfront owner to want to enjoy the deck area during warm seasons, protected from mosquitoes, as well as to have protection from the weather.

Ms. Shelton said granting the variance would result in substantial justice being done because the owners would be taking additional measures to protect the water quality of Great Bay, which would dramatically improve the architecture and visual appearance of the structure to bring it close to property values of neighboring owners. She said it would also provide a more secure situation for the owners if the entry wasn't behind the house.

She said granting the variance would not be contrary to the spirit and intent of the Ordinance, noting that the shoreland protection overlay district was intended to protect the water quality of the Town's surface waters. She said significant drainage systems were already installed around the perimeter of the house previously in order to deal with water runoff from the roofs and decks of the structure. She said if the variance was granted, the owners would be taking measures to increase the protection of water quality by replacing portions of the impervious paved driveway closest to the bay with more pervious stone materials, and replacing grassed in sections of the culvert drainage areas with rain gardens.



Chair Woodburn opened the Public Hearing, and asked if there were any members of the public who wished to speak in favor of or against the variance application.

**Richard Gallup, 594 Bay Road**, said he was absolutely in favor of what the applicants proposed. He said it was a nonconforming lot, and said as long as it conformed to State laws, it was ok with him. He noted that this was a tidal area, falling into the Bay, and said as long as the applicants addressed possible runoff and siltation issues, he thought what was proposed was great.

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

Chair Woodburn noted that this property had a long history concerning variance issues. She asked what other Board members had to say about this application.

Mr. Welsh said the whole purpose of the shoreland protection district was to protect the Bay from increasing development, and increased runoff from development. He said he remembered being an alternate when this property was before the ZBA in 2007. He said there was a lot of discussion because a more pervious structure was being added as part of what was proposed. He said the whole reason for the shoreland provisions was to prevent bigger and bigger houses from being built. He said he remembered former ZBA member John deCampi speaking about the incremental growth of properties in the shoreland. He said this property had been before the ZBA many times, for whatever reason, and said he hoped the Board wouldn't be seeing these applicants again.

Mr. Welsh said this variance application looked pretty reasonable. He said the additional impervious area proposed was just a small section, and he noted that there were other things the applicants were doing to prevent increased runoff, which would make the whole property better off than it was now. He said the decks were there now, and the applicants were just asking to be able to cover more of a portion of the deck. He said the imperviousness would be offset through other means like the pervious pavement and rain garden.

He said a big issue last time was that the applicant wanted to enclose an area with glass, and thus increase the size of the house. He said that didn't appear to be the case now, noting that there would be a screened deck with no windows. He said he didn't have any big problems with the application.

Chair Woodburn said when something happened with this property, the ZBA would always see an application because it was located in the shoreland protection district. But she said the changes being asked for now were minimal, and would make the property better.

But she noted that the pervious pavers and rain garden being proposed were not shown on the drawings. She asked Board members to think about whether to hold the applicants to doing these things, or if the Board thought the application could survive without doing them. She suggested that there could be conditions of approval to somehow quantify that these things would be done.

Chair Woodburn asked how drainage from the roof would be addressed, and she reopened the public hearing to hear from Ms. Shelton concerning this.

Ms. Shelton said there would be a drip line trench. She also spoke about the culverts that were proposed.

Mr. Gottsacker asked about the timeline for the work to be done.

Contractor Dave Grant said the idea was to start work within the next month, as the weather allowed.

Mr. Gottsacker said the reason he asked that question was that there were a lot of things that were missing from the plan. He said he would be much happier if the application was continued to the next meeting so the Board could get all of the documentation. He said another alternative was to include a lot of conditions in the motion to approve the application.

Chair Woodburn said including rain gardens and pervious pavers was a good idea, but said these things were not particularly tied to the roof question, which was what the variance application was about. She said the question for the Board to consider was whether they thought the additional impervious surface from the roof had to be offset by the pavers and rain garden, or if it was so minor that the Board could allow the variances, and encourage the applicants to do the rain garden and the pavers without having to require them to do them.

She said she was willing to allow the applicants to get the dimensions on a plan and she could then sign it, so there wouldn't need to be a continuation of the application. She noted that if the plan still looked like it did now, she wouldn't sign it.

Chair Woodburn closed the public hearing.

Mr. Starkey said Ms. Shelton had done a very good job explaining how the five variance criteria were met, so he didn't think the Board needed to go through them. He said he was comfortable with Chair Woodburn signing off on the plan with the added dimensions, etc. He also said he didn't think the rain garden and the pervious pavement were needed in order to offset the additional roof area, because there was such a small area involved.

There was discussion on conditions of approval to include in the motion.

Mr. Welsh said he thought the roof was tied together with the rain garden and pavers, because they would offset possible runoff problems.

Mr. Starkey noted that it was just a small corner of roof that the applicants were asking for, but Mr. Welsh said it was a bad location.

Chair Woodburn said if the Board was going to require replacement of impervious pavement with pervious pavers and rain gardens, then the application would have to be continued to the next meeting since a drawing would be needed that included these things.

Mr. Welsh said he thought the application should be continued for that reason.

Mr. Starkey said he didn't think this was necessary.

Mr. Welsh noted that in the past, the Board had sometimes approved variance applications subject to receiving a drawing that Chair Woodburn agreed with.

Mr. Gottsacker said there would need to be a scaled drawing, and a schematic of the rain garden and pavers.

Chair Woodburn said it could be the plan in the package, showing the rain garden with dimensions assigned, and the removal of impervious area and replacement with pavers, with dimensions included. She said she would be fine with seeing this plan sketch, and referring to that now with the motion to approve the variance.

Mr. Gottsacker explained that the Board trusted Chair Woodburn on this because she was a landscape architect.

Ms. Bubar said she thought this was a great approach.

***Sean Starkey MOVED to approve a petition submitted by Valerie Shelton, Appledore Real Estate, Newmarket, New Hampshire on behalf of Peter T. Logan Rev Trust and Pamela W. Logan Rev Trust, Durham, New Hampshire for an Application for Variance from Article XIV, Section 175-74 of the Durham Zoning Ordinance to permit construction of 10-inch roof overhangs on the east and west gable ends of the, to remove the existing covered shed roof over the south side deck with a hip roof which will wrap around the east side of a portion of the approved deck and covered areas to be screened for season use within the 125-foot shoreland set back, with the condition that :a dated plan or plans, which depicts the dimension of the roof, overhangs, all existing decks, and proposed rain gardens in regard to the existing culverts and pavers that are being suggested to replace impervious pavement will be approved and signed by ZBA Chair Robbi Woodburn. The property involved is shown on Tax Map 20, Lot 1-0 is located at 595 Bay Road, and is in the Residential C Zoning District.***

There was discussion that if Chair Woodburn didn't like what she saw on the plan, she could ask for a rehearing.

Mr. Johnson suggested that the approval date should be today and not the date the plans were signed, because the applicants couldn't get a building permit for 30 days after the approval date.

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

- D. **CONTINUED PUBLIC HEARING** on a petition submitted by Nevada Land and Water Company, Newmarket, New Hampshire on behalf of Cumberland Farms Inc., Framingham, Massachusetts for an **APPLICATION FOR VARIANCES** from Article XXI, Sections 175-110, 175-111, 175-115 and 175-116 of the Durham Zoning Ordinance to allow for parking and loading for the potential redevelopment of a commercial property. The property involved is shown on Tax Map 4, Lot 49-0, is located at 3 Dover Road, and is in the Courthouse Zoning District.

- G. **PUBLIC HEARING** on a petition submitted by Judy Archambeault Living Rev Trust, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Durham Zoning Ordinance to allow for the construction of a two-car garage within the sideyard setback. The property involved is shown on Tax Map 16, Lot 13-0, is located at 242 Durham Point Road, and is in the Residence C Zoning District.

Ms. Archambeault said the variance was needed for the garage because it was proposed to be located only 25 ft from the property line. He said this was the best place on the property for it, noting that there was a lot of ledge. She said the area they wanted to put it was pretty flat, and said only a few pines would need to be taken down.

Chair Woodburn said she had hoped they would have better mapping in order to see what the site was like. She said in lieu of having better plan materials, they should probably do a site walk.

Mr. Gottsacker said there were very few dimensions in the plan, and the five variance criteria weren't addressed very well.

Chair Woodburn said generally with sideyard setback issues, Board member had to assure themselves that the dimensions on a plan were correct, and that the proposed location for an improvement was the only place that it could be put. She said if there was a place on the property to put the improvement that wasn't within the setback, the Board wasn't likely to allow an applicant to put the improvement in the setback. She said there wasn't a lot of information provided with this application, including specifically addressing the variance criteria. She said what was proposed hadn't been fleshed out, and said because not enough mapping was provided, the Board couldn't figure this out for themselves. She said the application would need to be continued.

There was further discussion on the kinds of information the Board needed to see with this application.

Mr. Archambeault briefly described the property and what they wanted to do.

Mr. Gottsacker said the Board didn't have a good plan to look at, regardless of what the applicants wanted to do. He explained that the ZBA was required by State Statute to follow the five variance criteria, and could only decide on a variance application based on whether these criteria were met.

Chair Woodburn said the site walk might allow the Board to understand the variance request better. She also said the Board had to have documentation of dimensions in order to justify a decision.

Mr. Archambeault said he had a survey of the property that had been done two years, ago.

Chair Woodburn asked that he provide a copy of it for the Board, and said he should scale in where they wanted the garage to go.

Mr. Starkey suggested that the site walk be done the day of the next meeting.

Chair Woodburn described for the applicants the information the Board would need to see.

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

***Jerry Gottsacker MOVED to continue the meeting to the November 8<sup>th</sup> ZBA meeting, and to schedule a site walk for 12:00 pm on the day of that meeting. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.***

- H. **CONTINUED PUBLIC HEARING** on a petition submitted by Nevada Land and Water Company, Newmarket, New Hampshire on behalf of Cumberland Farms Inc., Framingham, Massachusetts for an **APPLICATION FOR VARIANCES** from Article XXI, Sections 175-110, 175-111, 175-115 and 175-116 of the Durham Zoning Ordinance to allow for parking and loading for the potential redevelopment of a commercial property. The property involved is shown on Tax Map 4, Lot 49-0, is located at 3 Dover Road, and is in the Courthouse Zoning District.

It was noted that the applicant was not present, and Mr. Johnson said he hadn't heard back from him. The Board agreed to continue the application for one more month.

***Sean Starkey MOVED to continue the Public Hearing to the November 8<sup>th</sup>, 2011 ZBA meeting. Jerry Gottsacker SECONDED the motion, and it PASSED unanimously 5-0.***

### III. Approval of Minutes – August 9, 2011

Page 3, 2<sup>nd</sup> full paragraph, should read "...was prohibitive due to setback issues."  
Page 10, 4<sup>th</sup> full paragraph, remove first line that starts "Chair Woodburn said usually...."

***Jerry Gottsacker MOVED to approve the August 9, 2011 Minutes as amended. Sean Starkey SECONDED the motion, and it PASSED unanimously 5-0.***

### IV. Other Business

#### A.

Mr. Welsh noted a previous variance approval for the Pasay property 3-2 to develop it further. He said for whatever reason, a sign was up as part of selling the property that said there was paper approval for further development of the property. He said this was something that the Board always worried about.

There was discussion that when an applicant said they planned to be in a property forever, and that this couldn't play into the Board's discussion.

Mr. Garden said land use lawyers advised ZBAs to ignore the character of someone who owned the property, and assume they were going to sell it the next day.

Mr. Starkey asked if there could be a condition for an approval that the improvements must be made prior to selling the property.

Chair Woodburn said it was the next person who came along that couldn't be trusted.

Mr. Starkey said he was talking about someone who got an approval and had the piece of paper, and was now selling the property.

Mr. Welsh said the property had a good record in terms of student behavior, but said there was no way to know what the next owner would do.

Mr. Gottsacker said he wasn't as concerned about this, because of Capstone. He said landlords were having a very hard time filling their properties.

Mr. Gottsacker said the next meeting would be his last meeting for six months because he and his wife were moving to Florida. He said he could either resign or request that he be made an alternate. He said the latter was his preference, and said Ms. Bubar could become a regular member. He said he would also volunteer to resign if there was a sudden influx of applicants to the ZBA.

Mr. Gottsacker said Mr. Harvey hadn't been at a ZBA meeting in a long time, which impacted the Board because sometimes they were short members. He said it also impacted the Board because his being on the Board made it look like the ZBA had more members than it actually did. He said in effect there were two vacancies.

Chair Woodburn said Mr. Harvey understood the situation, and she said perhaps they needed to ask him to resign. She also said they needed to do more recruiting. She asked anyone out there who was interested in being part of the Board to come forward.

Chair Woodburn said she would prefer Mr. Gottsacker stay as a regular member, noting that alternates could be voting members. She said given Mr. Gottsacker's history on the Board, he was valuable to have as a regular member.

There was further discussion about how to proceed. Mr. Gottsacker said he would send an email to Administrator Selig, and it was also agreed that some recruiting should be done.

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

**V. Adjournment**

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

Adjournment at 8:50 pm

Victoria Parmele, Minutes taker

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Sean Starkey, Secretary