

DRAFT

**Durham Zoning Board Minutes
Tuesday December 13, 2011
Durham Town Hall - Council Chambers
7:00P.M.**

MEMBERS PRESENT: Chair Robbi Woodburn; Vice Chair Ruth Davis; alternate Kathy Bubar

MEMBERS ABSENT: Secretary Sean Starkey; Carden Welsh; Jerry Gottsacker

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

I. Approval of Agenda

Chair Woodburn called the meeting to order at 7:02 pm. She noted that there were only three ZBA members present and said there needed to be at least three affirmative votes on an application. She explained that applicants were entitled to have a board of five members, so could ask that their applications be continued to the January meeting. She noted that the Bakman application had been withdrawn.

Kathy Bubar MOVED to approve the Agenda as amended. Ruth Davis SECONDED the motion, and it PASSED unanimously 3-0.

II. Public Hearings

- A. **PUBLIC HEARING** on a petition submitted by Robert C. & Michelle Fitzhenry, Durham, New Hampshire, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a decision of the Zoning Administrator, Thomas Johnson, on October 19, 2011 that a building on a property is a duplex with one accessory apartment and, therefore, is only allowed six unrelated occupants. The property involved is shown on Tax Map 6, Lot 3-36, is located at 53-55A Mill Road, and is in the Residence A Zoning District

Attorney Kevin Baum, of the Devine Millimet law firm represented the applicants. He said they would like to have a full board review their application, so would like it to be heard at the January 10th ZBA meeting.

Chair Woodburn said the application would be continued to the January 10th meeting.

Some members of the public who had planned to speak at this public hearing asked if the hearing could be held on a date other than January 10th, since some residents might be out of town and the University would be closed.

Ms. Woodburn said it was a normal business day, and said the applicant deserved to have a fair hearing at that time. She said there was plenty of public input that would be read into the public record at that time.

- B. **PUBLIC HEARING** on a petition submitted by Alexander & Alexandra Bakman, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-53 of the Zoning Ordinance to allow a building to be used for Office/Business. The property involved is shown on Tax Map 11, Lot 24-3, is located at 118 Piscataqua Road, and is in the Residence C Zoning District.

Withdrawn

- C. **PUBLIC HEARING** on a petition submitted by Milton T. & Edda M. Martin Jr., Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-54 of the Zoning Ordinance to replace the current storage shed and garage within the rear yard setback. The property involved is shown on Tax Map 2, Lot 1-2, is located at 81 Madbury Road, and is in the Residence A Zoning District.

Mr. Martin said he and his wife would go forward with their application now, with a three member Board, and said if they then needed to appeal the Board's decision, they would go that route. He explained that he had an existing storage shed that was 2 ft. 6 in. from the rear lot line, and an existing garage that was 6 ft. 3 in from that lot line.

He said these structures had been in use for decades, and said property values had remained stable. He said the use wouldn't change with what was proposed, and said the replacement structure would enhance surrounding properties.

Mr. Martin said having to move the new garage forward on the site would require extensive blasting because there was a lot of ledge. He noted that the ledge was on the left hand side of the driveway, and followed the lot line up to the existing garage. He said he therefore wanted to stay at the same location as the existing garage, and would like to put in a 2 car garage as well as a shed area on one side where he could store a snow-blower, etc. He said the issue of the storage shed being 2 ft. 6 in. from the rear lot line would go away with what was proposed.

Chair Woodburn noted that the side property line wasn't shown on the sketch that had been provided.

Mr. Martin said there was more space than what was required on the side, and provided details on this. He said the new garage would work well in the existing location, and just needed to be expanded in size.

Chair Woodburn said the proposed footprint for the new garage was about three times the footprint of the existing garage. She asked Mr. Martin how tall the building would be.

Mr. Martin said there would be an 8 ft. ceiling, with a 12 by 12 pitched roof. He said the building would be a maximum of 22-24 ft. in height, and said the space above the garage would be used for storage.

Chair Woodburn said the proposed garage and storage area had the potential to have a lot more vertical volume and mass than what was there now.

Mr. Martin provided further details on the design for the building, and noted that the drawings for it were at home.

Chair Woodburn said the Board would need to talk about the impact of the proposed building on the property behind the Martins' property. She noted that there were no abutters present. She said it would be helpful for the Board to have drawings that show specifically what the Martins wanted to do.

She also noted an issue the Board had to consider was that if the variance was received, it would run with the property, and said without a drawing that showed exactly what the mass was, a future owner of the property might go right up to the limit. She said the sketch would assure the Board that there wouldn't be a building that was too massive and that went right up to the property line.

Mr. Martin said the massing of the building would be on the side, and would not be in front at all.

Ms. Davis confirmed that the lot behind the garage was for sale, so that someday a house would be built there. She said the Board had to be sensitive to this.

There was discussion that there was a 20 ft. rear yard setback requirement, and that the proposed garage would be 14 ft. into that setback.

Mr. Johnson noted that an accessory apartment was not allowed in a garage in the Residence A Zoning district, so the applicant would have to come back for a variance if they wanted to do this. He said the distance to the lot line would certainly impact that decision.

Mr. Martin said he and his wife had no interest in having an accessory apartment.

Ruth Davis MOVED to close the Public Hearing. Kathy Bubar SECONDED the motion, and it PASSED unanimously 3-0.

Ms. Davis said she was sympathetic to the tribulations the Martins had been through in trying to build a house on the lot next door and hitting ledge. She said they were faced with ledge on the property now in question as well. She also said that when a nonconforming structure was removed, the ZBA was supposed to make an effort to bring the replacement structure into conformance, which in this case would be to move it further away from the property line. She

noted again that while the property behind was currently undeveloped, it would be developed at some point.

She said the ledge was a special condition of the property, noting that ledge on the north side of the house had stopped the Martins from building their dream house over there. She said there could be the same problem concerning ledge if the Board asked them to move the garage forward.

Ms. Bubar said the applicants had said they couldn't move the garage forward because of the ledge, so if the Board didn't let them build the garage as proposed, they would be confined to using the existing structures, which were non-conforming.

Chair Woodburn said that regarding the variance criteria, if the proposed architectural mass of the garage and shed wasn't out of whack, she believed the application would meet them. But she said in order to determine this, the Board needed to see the drawings before voting on the application. She noted that Mr. Martin had suggested that he could go home and get them this evening.

After further discussion, Mr. Martin agreed to get the drawings.

Ruth Davis moved to continue the case to the end of the meeting. Kathy Bubar SECONDED the motion and it PASSED unanimously 3-0.

- D. PUBLIC HEARING** on a petition submitted by Wendell P. & Pamela K. Davis, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII, Section 175-55(B)(2) of the Zoning Ordinance to build a 12'x18' accessory structure to be located 4 feet from the rear property line and 20 feet from the primary dwelling structure. The property involved is shown on Tax Map 1, Lot 4-25, is located at 11 Fairchild Drive, and is in the Residence A Zoning District.

Paul Connolly, a civil engineer and surveyor from Civilworks, Inc. said the applicants were requesting relief from the rear yard setback requirement, noting that they wanted a 4 ft. rear yard setback when 10 ft. was required. He explained that they would like to add another garage space to the property in order to house on the site a 1932 model B woody station wagon. He said this was a special vehicle that was purchased by Mr. Davis's grandfather, and said it was currently stored offsite.

He noted that as a matter of right, the applicants could add a bay on to the existing garage and house, but said this would create a commercial look on the residential structure, which would not be in keeping with the neighborhood. He said he had been unable to find any other homes in that area with a three car garage, and said most of the homes had attached 1 and 2 bay garages.

Mr. Connolly said the applicants instead would like to build another garage, which would be located in the southwest corner of the lot. He said as shown, a 20 ft. separation could be maintained between this new building and the existing house, if this was a requirement for

accessory buildings. He said he'd been told that this wasn't necessarily so, but said it was explicitly so with regard to sheds according to Section 175-109 of the Zoning Ordinance, and said it would seem that there should be this same separation for the new garage as well. He said this in part was why the variance was being requested.

There was discussion about the fact that Section 175-55 B 2 said: "Structures accessory to residential uses shall occupy no more than 30 percent of the required yard and be no closer than 10 feet to any lot line nor more than 20 ft. high." There was further discussion that this meant that the accessory structure could be no less than 14 ft. from the rear yard setback.

Chair Woodburn said if the building was slid forward another 10 ft., a variance wouldn't be needed, and the applicants would still have what they wanted.

Mr. Connolly said with this, the accessory building would now be 10 ft. off of the house, which didn't meet what he thought was the intent of Section 175-109 concerning separation of buildings for safety reasons and density reasons.

Mr. Johnson noted that these kinds of things were addressed instead through building and fire codes. He also said section 175-109 N 8 said: "The shed shall be separated from any principal residential building on an abutting lot by not less than 20 ft." He said the applicants could impact their own structure but not a neighboring structure by 20 ft.

He explained that this provision in the performance standards was written about five years ago because a lot of variance concerning sheds were coming before the ZBA. He said the concept with this provision was that a shed could be 10 ft. or closer to the property line if a neighbor didn't have a problem with this, but couldn't be 15 ft. from their house.

Mr. Connolly said the proposed location 4 ft. off the rear property line would not likely every see the construction of any buildings nearby on the abutting lot to the rear. He said the parcel had been called common area A in the original subdivision of Fairchild Drive, and was intended to remain open space. He said the parcel beyond that was the Boston and Main right of way, which carried daily freight and passenger trains.

He next reviewed the variance criteria and how they were met. He said placement of the accessory structure 4 ft. off of the rear property line would do nothing to diminish the value of the "common area" or any other property. He said granting the variance would not be contrary to the public interest because there was no public interest at stake that was relevant to the dimensional relief that was requested.

Concerning the hardship criterion, Mr. Connolly said strict application of the dimensional requirements of the Ordinance was a 14 ft. minimum for the rear yard setback. He said the requested relief provided for a 4 ft. rear yard and 20 ft. of separation between structures. He said the rear yard abutted the common area, and said the slight relief requested would forever be

imperceptible by the public. He said the general public purpose (safety, welfare, relief from overcrowding, morals) would remain intact despite granting of the requested variance. He said the proposed use was reasonable because it allowed for the architectural integrity of the existing dwelling to be maintained. He said if a third bay was added to the existing garage, it would cause an unbalanced appearance to the existing residence.

Mr. Connolly said by granting the variance, substantial justice would be done because the architectural integrity of the existing dwelling and garage would be preserved, with no injury to other property values or to the public interest.

He said the use would not be contrary to the spirit and intent of the ordinance because the interests of the Town in public health, safety and convenience and general welfare would in no way be compromised by the granting of the requested variance. He said the same was true with regard to the Town's goals relative to promoting orderly growth, preserving air and water quality, conserving open space and agricultural resources, protecting natural and scenic resources, etc.

He said a unique feature of this particular property was that the rear yard area was somewhat smaller than others to begin with. He said the existing garage was about 78 ft. from Fairchild Drive, and said a limitation of the land was that there was a rather large amount of ledge in the front yard. He said it would be easier to build the garage just beyond it. He said the applicants didn't want to create an unbalanced look on the property with a three car garage, and instead wanted to put an Amish built carriage shed on the property. He said it could be placed as shown, with a 20 ft. separation from the house and a 4 ft. rear yard setback that would still preserve a sense of space.

Ms. Davis asked how the applicants would be able to get to the carriage shed with the car.

Mr. Connolly said it would be accessed over the lawn, which was a high and dry area. He said they would need to do this infrequently, so no driveway of any kind was needed.

Ms. Davis asked if the applicants preferred to put the carriage house toward the back rather than bring it forward somewhat.

Mr. Connolly said getting closer than 20 ft. started to crowd the field.

Chair Woodburn asked about the 23 ft. deep side yard, and Mr. Connolly said it was a grassed area.

Mr. Davis said there was a small boundary of trees and bushes between his house and the neighbor's house. He also said there was older utility shed located in that area that would be removed and put in another part of the yard.

Chair Woodburn said right now, the shed to be moved to the other side of the property was shown as 10 ft. back, and asked if a variance was needed for this.

Mr. Johnson said no, because it was an accessory shed.

Ms. Davis noted that the common area behind the applicants' property wasn't developed, and asked if it could be developed in the future.

Mr. Johnson said the surrounding property owners all owned a piece of it, but said there was no official ownership or stewardship of the land. He said no one could provide a title for it. He said all of the lots in the subdivision had been developed, and said it would be open space forever.

Mr. Connolly explained that there was a dedicated access to this common area, and said he had never known of a common area that was able to be built upon.

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

Kathy Bubar MOVED to close the Public Hearing. Ruth Davis SECONDED the motion, and it PASSED unanimously 3-0.

Chair Woodburn reviewed the variance criteria and whether they were met with the application. She said she was glad to hear about the special conditions of the property.

She also said she thought that what was proposed would not decrease the value of surrounding properties, but noted that there was no specific information concerning this.

Regarding the public interest criterion, Ms. Davis said in this case the public interest was concerning possibly being too close to the rear property line, and the potential impact of this on a neighbor. But she said there was no neighbor, so she didn't think there was a problem concerning what was proposed being in the public interest.

Chair Woodburn said substantial justice would be done in granting the variance, and said the property would look a lot better than it did now.

She also said granting the variance would not be contrary to the spirit and intent of the Ordinance. She said the question with this application was whether there was actually hardship, and if there were conditions of the property that distinguish it from others in the area, making this proposed location in the rear yard setback the right thing to do.

Chair Woodburn noted that it used to be the case that if a location was found where a proposed use could be put, there was no hardship. She said there were at least two places where the garage could be put, one of which was next to the existing garage, and the other which was bringing it forward 10 ft. and putting it 14 ft. off the property line. She said the question was whether there were in fact special conditions of the property that caused the applicant to need to put the garage where it was proposed.

Ms. Bubar said it looked like there was 42 ft. from the corner of the garage to the back fence, and said that wasn't a huge back yard. She said things were set back so far back because of the ledge.

Chair Woodburn said there was room next to the garage to do it, which was what she was having trouble with.

Ms. Davis said she could see what Chair Woodburn was saying, but said the carriage shed that was proposed wasn't that tall or wide.

Chair Woodburn said the public purpose of the rear yard setback was to avoid crowding.

Ms. Davis said this site felt different because there wasn't, and wouldn't be anything behind it. She also said the ledge in front had pushed the house to the back of the lot. She said she was still struggling with the fact that this was what the applicant had asked for as opposed to building a three car garage that would be in compliance with the Ordinance.

Chair Woodburn said there were at least two options, and one, which was the three car garage approach didn't look as good, and was not as much in keeping with the neighborhood as what the applicants proposed.

Ms. Davis said by placing the carriage shed to the rear of the property, it went to what the Ordinance setbacks were trying to achieve, by preserving space all around the house and not impacting anyone in the back.

Ms. Bubar said it would be an entirely different situation if there was someone living behind the applicants' property. She said what they proposed would not be crowding anyone, and would just allow them to un-crowd their back yard somewhat.

Chair Woodburn reviewed what the applicants had said concerning the substantial justice criterion. She also said a special condition of the property was the ledge that required that the building be put further back. In addition, she said what wasn't wanted was over imposing mass on the street, so what was proposed was a better solution.

Ms. Davis said these setbacks were meant to address the visual appearance and a feeling of crowding of a property in regard to neighbors. She said the arrangement the applicants proposed optimized the openness and kept the character of the neighborhood.

She also said granting the variance would be reasonable because there was a hardship.

Ruth Davis MOVED to approve a petition submitted by Wendell P. & Pamela K. Davis, Durham, New Hampshire, for an Application for Variance from Article XII, Section 175-55(B)(2) of the Zoning Ordinance to build a 12'x18' accessory structure to be located 4 feet from the rear property line and 20 feet from the primary dwelling structure because it meets all five variance criteria. The property involved is shown on Tax Map 1, Lot 4-25, is located at 11

Fairchild Drive, and is in the Residence A Zoning District.. Kathy Bubar SECONDED the motion.

Mr. Johnson noted for the record that Ms. Davis was not related to the applicants.

The motion PASSED unanimously 3-0.

- E. PUBLIC HEARING** on a petition submitted by Paul D. Druskat, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59 of the Zoning Ordinance to reconstruct a deck and build an additional enclosed porch within the wetlands setback. The property involved is shown on Tax Map 18, Lot 18-54, is located at 31 Ross Road, and is in the Rural Zoning District.

Mr. Druskat said there was a deck on the north side of his house that got no sun and also needed to be fixed. He said he would like to shift it and add a 14 ft. by 14 ft. porch that would go on the west side of the house, which would allow it to catch the afternoon and evening sun. He said it would be a three season porch, and said the applicants would like to keep a small section of the deck behind the house.

He explained that hydric B soil was found where the porch was proposed, which meant that a variance was required. He said the porch wouldn't be located any further within the wetland setback than the existing house, and also said footings would be used to hold up the porch. He said he didn't think this would affect the spirit and intent of the buffer area, and noted that the effective buffer area was the wall and the house.

Chair Woodburn noted the drawing and asked if the new deck area would be located in the same place as the existing deck.

Mr. Druskat said they would probably get rid of the existing deck, and said the new deck would be 14 ft. by 10 ft., which was smaller than the existing deck 14 ft. by 12 ft. deck.

Chair Woodburn noted that everything was in the wetland setback. She said the deck could be replaced in place, but said the porch that was proposed in the setback was what the Board had to consider. She noted that if the variance was granted, the Board would want to have a drawing that showed the proposed deck and its dimensions.

Mr. Druskat said he didn't think that what was proposed would impact the wetland area at all, because they would be staying back above the rock wall. He said the only impact would be if the drainage was changed, and said this wouldn't happen.

He went through how the variance criteria were met, first stating that granting the variance would not decrease the value of surrounding properties, and instead would significantly increase their value because the value of his house would increase. He said it was common for other houses in the neighborhood to have porches, and said the hydric B area wouldn't be impacted.

He said granting the variance would not be contrary to the public interest because one of the things he proposed was to use maintenance free materials, which would limit the need for chemical stains.

He said that concerning the hardship criterion, they had to replace the deck. He said most of the houses in the area had porches, and said the proposed use was reasonable. He said it would be located above the retaining wall and back from the hydric B soil, and said drainage wouldn't be affected.

Mr. Druskat said substantial justice would be done in granting the variance. He said they didn't have a usable outside area, noting that there was no sun on the north side and that because the house was in the woods there were a lot of mosquitoes and flies. He said with the enclosed porch, they would need to spray less, which was better for the wetland.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said the porch wouldn't be closer than the existing house to the wetland, and said no additional runoff was anticipated.

Chair Woodburn said hydric B soils had an extensive buffer around them, which the Town was trying to protect in order to protect the wetlands. She said the house was already in it, and said what was proposed wouldn't be any further into it. But she said the porch would result in some additional impervious area, and said that was the concern in terms of possible impacts on the wetland buffer.

Mr. Druskat said the porch would be located above the rock wall, so half of the runoff would drain to the back. He said he didn't think there would be much impact compared to what was there now.

Ms. Davis noted the driveway going up to the garage, and said there was a good amount of paved area. She asked if this went up to the edge of the hydric B soil, and Mr. Druskat said it came within a couple of feet of it.

Chair Woodburn noted that almost all of the houses in that area were crammed in between pockets of hydric B soils, and explained that when the subdivision was originally built, the setback requirements were much less than they were now. She said half of the lots had been built on and half hadn't yet been built on when the Ordinance changed, which had resulted in a lot of variance requests.

Chair Woodburn asked if there were any members of the public who wished to speak for or against the application and there was no response.

Kathy Bubar MOVED to close the Public Hearing. Ruth Davis SECONDED the motion, and it PASSED unanimously 3-0.

Chair Woodburn said the entire back of the house was in the buffer. She summarized that there was already a deck, and said the new deck would be a little smaller. She said there would be the addition of the 14 ft. by 14 ft. porch.

She reviewed the variance criteria, and said she didn't believe that granting the variance would be contrary to the spirit and intent of the Ordinance, and Ms. Davis and Ms. Bubar agreed. She said substantial justice would be done in granting the variance because the property could be used to its fullest extent with minimal impact on anything else. She also said granting the variance would not be contrary to the spirit and intent of the Ordinance. She said the hardship was clear in that there were special characteristics of the property.

Ruth Davis MOVED to approve a petition submitted by Paul D. Druskat, Durham, New Hampshire, for an Application for Variance from Article XIII, Section 175-59 of the Zoning Ordinance to build a 14 ft. by 14 ft. enclosed porch and reconstruct a 14 ft. deep by a still determined length deck, all within the wetlands setback, because it meets all five variance criteria. The property involved is shown on Tax Map 18, Lot 18-54, is located at 31 Ross Road, and is in the Rural Zoning District. Kathy Bubar SECONDED the motion, and it PASSED unanimously 3-0.

CONTINUED DISCUSSION on Item II C – Martin Application for Variance from Article XII, Section 175-54 of the Zoning Ordinance to replace the current storage shed and garage within the rear yard setback.

Mr. Martin referred to the drawings he'd now provided to the Board, showing three views. He said the gable end was currently 15 ft. in height on the west side, which was against the vacant lot and would go down to 8 ft. He said on the east side, it would also be 8 ft. versus the 15 ft. because the gable end came out toward the street and went back on the west side, so went east to west.

He noted that on the south side there was an elevation change between properties, and provided details on this. He said because of a 4 ft. elevation change, a 19 ft. height was actually 14 ft. He said the back was fairly level. He said the height would be on the north side, which would be 21 ft. at the ridge pole. He said he thought that from a mass point of view, the building would seem a lot shorter. He spoke further about the design. He said the second floor would be used for storage of equipment.

Ms. Davis asked if the garage could be constructed so it wasn't 21 ft. tall.

Mr. Martin said it would be 21 ft. tall facing into his yard. He also said the building would look lousy if the gable end faced the street.

Chair Woodburn said the 12 pitch resulted in a roof that was tall.

Ms. Davis asked if there could be a flatter roof, so it wouldn't be so imposing.

Chair Woodburn told Mr. Martin that while he was gone from the meeting, an application concerning a project that was somewhat similar to his was heard by the Board. She provided details on this. She asked what would happen if the garage came 8 ft. forward from where it was proposed.

Mr. Martin said this would be difficult to do because of the ledge. He said a huge amount of blasting would be needed, which they wanted to avoid, noting that it could affect surrounding properties. He said he didn't need to go to that extreme for a project like this. He also said if the garage was pulled forward, there would be very little space to move.

Chair Woodburn asked what the pitch of the existing roof was, and Mr. Martin said it was a 12 pitch roof, with a gable on the short end. It was noted that it was about 15 ft. tall.

Chair Woodburn thanked Mr. Martin for providing the drawings, and said they had been helpful.

Mr. Martin said structurally speaking, the existing garage needed to be replaced.

Kathy Bubar MOVED to close the Public Hearing. Ruth Davis SECONDED the motion, and it PASSED unanimously 3-0.

The Board reviewed the variance criteria that Mr. Martin had provided.

Chair Woodburn said there hadn't been testimony as to whether a decrease in the value of surrounding properties would occur as a result of granting the variance. She said there would be a structure that would be further back than the shed, and not different from the existing garage and probably better looking, so one could reason that granting the variance would not result in a decrease in property values.

She said that concerning the public interest criterion, what was proposed was a big building.

Ms. Davis said the public interest regarding the backyard setback related to having space between abutting properties and the structures on them. She said she was uncertain as to whether this criterion was met.

Chair Woodburn said the applicant said there would be a two car garage, but said the drawing looked like there would be a three car garage. She said the issue concerning the public interest was the impact of this mass of building on the property to the back.

She said that regarding the hardship criterion, there were special conditions of the property that distinguished it from other properties in the area because of the ledge there, and said it constrained what the Martins could do. She said they wanted the addition off the back, and said this was the only place to go that made sense. Ms. Davis and Ms. Bubar agreed.

Also concerning the hardship criterion, Chair Woodburn said a key issue was whether the proposed use was reasonable, and she noted that Mr. Martin had said the use would remain the same. But she said she didn't necessarily agree, and said with what was proposed, there would be a much bigger space and more cars.

Ms. Davis said if the new garage was scaled in reference to the house, it was smaller but was still large, and was right up against the rear property line.

Chair Woodburn noted the Davis application that evening, which involved a small one car garage next to a property that was vacant and would not be built on. She said there would be more impact with the Martin's application compared to that one.

Ms. Davis said her concern was that the ZBA was supposed to uphold property owners' rights to their own land but also needed to be watchful concerning abutters' rights to have space between lots.

Chair Woodburn said the Martins wanted to have a two car garage and a large storage area, and said the question was whether it was reasonable to have a garage this big that close to the property line.

Regarding the substantial justice criterion, Chair Woodburn said if the application was approved, the Martins would get to do what they wanted and the proposed large building would be further away from the rear property line than the existing shed, but would be larger than the existing buildings on the property.

She said granting the variance would be contrary to the spirit and intent of the Ordinance. She said Mr. Martin had said it would not be, because the existing structures would be replaced with new structures, and the setback would change from 2 ft. 6 in. to 6 ft. 3 in. But she said in doing that, it was a big leap because of the garage that was proposed.

Ms. Davis said replacing the shed with a newer one and a modest two car garage was justified, but said the full structure that was proposed was not reasonable or justified.

Chair Woodburn agreed.

Ms. Davis said she didn't know if she would approve such a garage if her neighbor next door wanted to put one in, because it would create a significant wall. But she said she was also thinking of what the Martins had been through already concerning their properties.

Chair Woodburn said she thought the project could be in compliance with some modifications, and suggested that the Martins could go with a 14 ft. setback. She also said while a three bay building was proposed, this could be modified so that the two bay portion was pulled forward and the storage was made less, which could probably fit outside of the ledge area. She said there would be a big impact from the massing from three bays, and said it was like building a second house on the property and doing this within the rear yard setback.

Ms. Davis said this made her uncomfortable, but said there was probably a configuration that would work.

Chair Woodburn summarized that the application didn't meet 3 b of the hardship criterion, the substantial justice criterion, and the spirit and intent of the ordinance criterion.

Ms. Bubar and Ms. Davis agreed.

Chair Woodburn said with some manipulation, the project could either meet the criteria for a variance, or could meet the original Zoning criteria. She said she realized the existing garage and shed were in the setback, but said it was a different situation when there was a garage with three bays.

Ruth Davis MOVED to deny a petition submitted by Milton T. & Edda M. Martin Jr., Durham, New Hampshire, for an Application for Variance from Article XII, Section 175-54 of the Zoning Ordinance to replace the current storage shed and garage within the rear yard setback, because the application doesn't meet the hardship, substantial justice and spirit and intent of the Ordinance criteria. The property involved is shown on Tax Map 2, Lot 1-2, is located at 81 Madbury Road, and is in the Residence A Zoning District. Kathy Bubar SECONDED the motion, and it PASSED unanimously 3-0.

Mr. Martin said if the new structure was moved forward and he got rid of the storage bay, the only place to put storage would be behind the building. He said it sounded like the massing of the proposed building was the biggest issue for the Board, and said he thought he could cut down

the mass. But he said putting the garage further forward compounded the problem of having enough depth to put a car in the garage. He asked the Board for guidance on what they would like to see.

Chair Woodburn said if the garage wasn't as tall and as wide, there was a possibility that a variance would be approved if it was needed. She said the 6 ft. 3 in. distance from the rear property line wasn't bad, but the building proposed there was big and tall. She said if the Martins stayed with the 6 ft. 3 in. distance, the building needed to get shorter and smaller. She said another alternative was moving the building further away from the property line. She said there was a balance, and said she couldn't say anything specifically unless she saw another plan.

Mr. Martin said he could take a look at the pitch on the house, noting there were two different pitches on it, and could see how that could be utilized as a roof line and to bring the height down. He said that would allow him to go down to a 7 pitch, and Chair Woodburn said that would help a lot. Mr. Martin also said he could then see if he could narrow down the third bay but still have enough storage space.

III. Approval of Minutes

October 11, 2011

Page 12, bottom line, should say "...site walk done the day of the next meeting."

Same page, 2nd paragraph from the bottom, should say "...and said he should scale in where they wanted the garage to go."

Chair Woodburn MOVED to approve the October 11, 2011 Minutes as amended. Kathy Bubar SECONDED the motion, and it PASSED unanimously 2-0.

November 8, 2011

Page 14, 1st full paragraph, should read "...the applicants for making a good faith effort..."

Page 22, 4th paragraph from bottom, should read "...and Mr. Gottsacker said maybe they did need it, because of the ambiguity of the Ordinance."

Page 24, 2nd paragraph from bottom, should read "...didn't want the benefits of the three unrelated rule..."

Page 31, the motion on that page should say "*Sean Starkey MOVED to deny...*"

Ruth Davis MOVED to approve the November 8, 2011 Minutes as amended. Chair Woodburn SECONDED the motion, and it PASSED unanimously 2-0.

IV. Other Business

Chair Woodburn noted two emails from Valerie Shelton concerning the fact that the decision page for the Appledore Trust variance application had an incorrect reference to a Zoning provision. She said the correction would be made to this.

Chair Woodburn said the ZBA needed some new members and asked people to come forward to serve on the Board.

V. Adjournment

Kathy Bubar MOVED to adjourn the meeting, Ruth Davis SECONDED the motion and it PASSED unanimously 3-0.

Adjournment at 9:00 pm.

Victoria Parmele, Minutes taker