

*These minutes were approved at the February 10, 2015 meeting.*

**TOWN OF DURHAM  
ZONING BOARD OF ADJUSTMNT  
December 9, 2014  
Durham Public Library  
MINUTES**

**MEMBERS PRESENT:** Chair Sean Starkey; Vice Chair Robbi Woodburn;  
Secretary Chris Sterndale; Jim Lawson; alternate  
Mike Hoffman

**MEMBERS ABSENT:** Tom Toye; alternate Ruth Davis

**OTHERS PRESENT:** Tom Johnson, Code Enforcement Officer/Health  
Officer

**I. Call to Order**

Chair Starkey called the meeting to order at 7:01 pm.

**II. Roll Call**

The roll call was taken.

**III. Seating of Alternates**

Mr. Hoffman was seated as a regular member in place of Mr. Toye.

**IV. Approval of Agenda**

Chair Starkey said Item V. A was on hold until a future Zoning Board meeting. He also said that concerning Item V. B, the applicant's representative had requested to postpone this application until the January 15, 2015 meeting.

***Chair Starkey MOVED to approve the Agenda as amended, Mike Hoffman  
SECONDED the motion, and it PASSED unanimously 5-0.***

**V. Public Hearings:**

A. \*\*The **PUBLIC HEARINGS** on the petitions submitted by Young Drive LLC, Francis Chase, Seabrook, New Hampshire, for **APPLICATIONS FOR SPECIAL EXCEPTION AND VARIANCES** for the properties shown on Tax Map 4, Lots 42-9 thru 42-14, located on Young Drive.

On hold

**B. PUBLIC HEARING** on a petition submitted by Vince Todd & Cheryle St.Onge, Durham, New Hampshire, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from an approval of a building permit renewal with conditions on September 18, 2014 by Thomas Johnson, Building Inspector. The property involved is shown on Tax Map 14, Lot 18-0, is located at 225 Packers Falls Road; and is in the Rural Zoning District.

Postponed to the January ZBA meeting.

**C. PUBLIC HEARING** on a petition submitted by Stephen Mathis & Laura Mason, Durham, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XII, Section 175-54 and Article XIII, Section 175-59(A)(2) of the Zoning Ordinance to allow for the construction of an addition within the side yard setback and the rebuilding of a garage within the wetland setback. The property involved is shown on Tax Map 11, Lot 39-1, is located at 129 Durham Point Road; and is in the Residence C Zoning District.

Chair Starkey said it had been determined that the garage was not within the wetland setback, so just the variance application for construction of the addition within the side yard setback would be heard.

Mr. Mathis said he was trying to put an addition on the side of the house, where the dining room and kitchen used to be located. He noted that there had been a fire in March. He said their house was the original house in a pork chop subdivision. He said the visual boundary between the stone wall and the house was 115 ft, but said there was a 50 ft side yard setback, and the proposed addition was 3 ft into that setback. He said the neighbor on that side was about 800 yards back.

Ms. Woodburn asked if that 3 ft made a big difference in the addition that was proposed. Mr. Mathis said yes, and explained that he would be putting in a fireplace as well as a wood oven in the kitchen, and said the oven would project into the addition. He said it would be too small and too hot to fit both of them in without this additional 3 ft.

Mr. Lawson said the Weiss's owned the house to the left but said their house wasn't located near the side yard setback, and they accessed their house with a driveway located to the right of the Mathis property. Mr. Mathis said it was a goofy design, and said the reason for this was so that everyone had road frontage. ZBA members looked at the layout of the area on a Google map. Mr. Mathis said the visual boundary was the stone wall. Mr. Sterndale asked if some day there might be a driveway on that side, and Mr. Mathis said this wasn't allowed by the deed and covenants that were part of the pork chop subdivision.

Mr. Mathis reviewed the variance criteria and how they were met with this application. He said there would be no decrease in the value of surrounding properties as a result of granting the variance. He said the addition didn't appear like an encroachment because it didn't do anything visually. He noted that the initial intent with the pork chop

subdivision was that there wouldn't be a number of driveways to break up the land. He said the addition didn't encroach on the property line, and said it would increase the visual appeal of the property.

He said denial of the variance would result in unnecessary hardship. He said the kitchen couldn't be moved anywhere else, and said the addition couldn't be put on the other side of the house. He spoke further on this.

Mr. Mathis said substantial justice would be done in granting the variance. He said he was trying to repair and restore the house in the manner in which it was built.

He said the use would not be contrary to the spirit and intent of the Ordinance. He said the setback was meant to make the pork chop subdivision work, but said it didn't do anything other than provide access to the road so the property could be subdivided.

Chair Starkey opened the public hearing, and noted that there were no members of the public who wished to speak concerning the application.

***Robbi Woodburn MOVED to close the public hearing. Chris Sterndale SECONDED the motion, and it PASSED unanimously 5-0.***

Chair Starkey said what the applicant proposed was not close to any homes, and stayed within the intent of the Ordinance Ms. Woodburn agreed. Mr. Lawson said there was a public benefit when making an investment increased the usability of houses, and said this was key to maintaining them for decades to come.

***Chair Starkey MOVED to approve a petition submitted by Stephen Mathis & Laura Mason, Durham, New Hampshire, for an Application for Variances from Article XII, Section 175-54 of the Zoning Ordinance to allow for the construction of an addition within the side yard setback, and an attached garage that needs no variances. The property involved is shown on Tax Map 11, Lot 39-1, is located at 129 Durham Point Road; and is in the Residence C Zoning District. Robbi Woodburn SECONDED the motion, and it PASSED unanimously 5-0.***

## **VI. Approval of Minutes**

### October 14, ZBA Minutes

Mr. Sterndale noted that at the October 14<sup>th</sup> meeting, under Agenda Item VI. A, the motion to deny BAA Realty's Request for Rehearing did not receive the necessary three votes (vote was 2-0-2). There was discussion that the applicant should therefore have an opportunity for a rehearing, and might not realize this. It was noted that Attorney Mulligan was not at the October meeting. Mr. Johnson said BAA Realty's lawsuits had been dropped. There was further discussion, and ZBA members agreed that Attorney Mulligan should be contacted because the applicant had the right to be reheard.

***Chair Starkey MOVED to approve the October 14, 2014 Minutes as presented. Chris Starkey SECONDED the motion, and it PASSED 3-0-2, with Mike Hoffman abstaining because of his absence from the meeting and Robbi Woodburn abstaining because she hadn't read the Minutes.***

November 14 2014 Minutes

***Chris Sterndale MOVED to approve the November 14, 2014 Minutes as distributed. Chair Starkey SECONDED the motion, and it PASSED 4-0.***

**VII. Other Business**

No other business

**VIII. Adjournment**

***Chris Sterndale MOVED to adjourn the meeting. Chair Starkey SECONDED the motion, and it PASSED unanimously 5-0.***

Adjournment at 7:19 pm

Victoria Parmele, Minutes taker

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Chris Sterndale, Secretary