

**ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING for –
Special Exception – Carolyn Parker/Irving Oil
Area Variance – Stephen Dunn
Area Variance – Handyman New England/James Cochran
November 14, 2005**

**APPROVED 12/5/05
1st DRAFT**

The meeting was called to order at the Town Hall at 6:30 p.m. by Chairperson Sager. Those attending were:

MEMBERS		ALTERNATES		OTHERS	
Richard Sager, Chair	X	Marge Cutter		Paul Morrill	
George Frothingham, Vice Chair	X	Doug Stewart	X	Dianne Bishop	X
Cecile Arnone	X	David Haag	X		
Marsha Lavallee-Huntoon		Robert Moholland	X		
Maggie Kennedy	X	Paul Winckler	X		

Other attendees included:

Stephen & Gianna Dunn	Patrick Stevens
Robert Schuler	Patrick Hayes
James & Libby Cochran	Bryan Berlind

The Pledge of Allegiance was recited.

Prior to beginning the hearings, Mr. Sager passed out to Board members revised copies of the ZBA Rules of Procedure, Variance Instructions and Variance Application

It was requested that those board members who attended the site walks on Saturday morning, November 12, 2005, were seated and included: Richard Sager, George Frothingham, Cecile Arnone, Robert Moholland and Paul Winckler

MOTION: To seat those board members who attended the site walks.
 Made by: Richard Sager
 Seconded by: Margaret Kennedy
 Discussion: none
 Vote: passed unanimously

**Public Hearing: Case # 2005-15, Tax Map # 17, Lot # 26
 Carolyn Parker, Irving Oil
 18 Wakefield Road (junction of Rt 153 & Rt 16)
 Special Exception – 4.03.I.3 – more than one sign per premises
 Special Exception – 4.03.I.5 – internally illuminated sign
 Special Exception – 4.03.I.7 – additional sign**

Mr. Rob Schuler, Core State Engineering, representing Ms. Parker and Irving Oil, explained the reasons for requesting these Special Exceptions to the Board and audience. He handed out additional photos showing what Irving is proposing to do. Irving is in the process of updating all their facilities to a new image which includes not only gasoline but also the renovation of their convenience stores, which are being called Blue Canoe. This renovation will also include bakery & baked goods for which the application has already been submitted to the Planning Board for this location. Mr. Sager asked if there is anything in the Planning Board application which requires ZBA approval; Mr. Schuler indicated there is nothing from the Planning Board, he is here for different aspects. He referenced the photos he handed out and pointed out the Blue Canoe signs, which are approximately 5 feet long by approximately 1.5 feet tall; the plan is to put one above the windows on the wall under the canopy and one above the door on the opposite side. The proposal is to have these two signs internally illuminated, however there is the option of having them externally illuminated by a hanging-type lamp overhead.

Another thing Irving would like to do involves the canopy and the new image for that. He referenced the picture of the canopy as it exists now as well as the one of how they would like to change it – this photo is from another location – a solid blue canopy with a red stripe and a new logo. Mr. Schuler then referenced the photo of the night-time illumination, which would be the logo and the red strip around the middle of the canopy. Regarding the under canopy lighting, he referenced the night-time photo of the current location. The fixtures used now drop down below the ceiling of the canopy and there is considerable glare; one of the parts of the proposal is that the new lighting will be recessed and the wattage will be reduced – the wattage now is 400 watts, the new ones will be 250 watts, they will add a specific focus fixture which directs light right onto the dispensers; therefore the overall lumens will be decreased by about 25%.

The pylons are already internally illuminated by fluorescent tubes and the new ones will be illuminated the same way. New pumps will be installed. The red strip on the canopy is an LED strip, not neon, just a soft red glow. The amount level of light given off by this is immeasurable. Mr. Winckler asked if the blue section of the canopy would be lit, Mr. Schuler indicated that it would not, only the red strip would be lit. Mr. Winckler commented that red carries quite a way, it really pierces the darkness. Mr. Schuler indicated that although red definitely can be seen it doesn't produce any type of glow.

There was also a discussion about the lighting on the road-side sign. The perimeter of the existing signs is solid blue, whereas the new sign has a white background with red and blue lettering. Mr. Moholland asked if Irving plans on changing the bulb size. Mr. Schuler confirmed that is so.

Mr. Schuler indicated that the building has already been painted.

Mr. Sager asked if there were any abutters present, there were none. He then reminded board members and audience that this applicant is asking for a Special Exception from Article 4.03 which deals with signs, Section I.3 which prohibits more than one sign per premises without special exception, they are also seeking a special exception from Section I.5 which prohibits without a special exception internally illuminated signs only in the Business & Commercial Districts, in which this is located, and subject to reasonable restrictions as may be imposed by the local land use board to include limiting the degree of illumination, requiring appropriate shielding and limiting hours of illumination all to minimize the intrusion of light onto adjacent properties. The other section talks about additional signs.

Mr. Sager then commented that the applicant is looking for a sign basically around the circumference of the canopy on three sides, looking to change somewhat but not significantly the standing internally illuminated sign that is there now and to add two signs to the building, preferably to be internally illuminated. Mr. Schuler confirmed that is the intent of their request.

Mr. Winckler asked about the hours the signs would be lit. Mr. Schuler indicated that it would be during the hours of operation, the lights would be turned off at closing, but he could not say what the hours of operation are for this particular location right now.

At this point, since Mr. Schuler had completed his presentation, Mr. Sager opened the hearing to the public at 6:50 p.m. There being no one present for public comments, the public hearing was closed at 6:51 p.m. Mr. Sager indicated there may be more questions for the applicant.

Mr. Winckler indicated his main concern is the red light, how piercing it will be; he commented that there is nobody behind them or across street, but wonders how far it will be seen. Mr. Sager indicated that there are residents within view of the station. He also commented that there are no houses on the back side across the river and he doesn't feel there will ever be house there because the terrain is pretty severe. Mr. Sager agreed with Mr. Winckler about the piercing of the red strip, but it could be address further as criteria is discussed.

Mr. Sager indicated there are two ways to handle this application. The applicant is actually asking for a Special Exception from three separate portions of the ordinance although they are all within the same paragraph. His suggestion is that it be handled in unison since it's all related to signs, sections 4.03.I.

Mr. Sager asked the applicant about the previous denial of the variance of this section in 1997, sections H.1 and H.3, which now should be I.1 and I.3, which refers to the sign's height and more than one sign per premises. The applicant was granted a special exception in 1997 relative to sections D.6 and H.3, perhaps referring to a number of signs. In any event, that was eight years ago, so we'll proceed with this application as new.

SPECIAL EXCEPTION CRITERIA

Criteria 1: *The specific site is an appropriate location and of adequate size for the use, because:* The use is existing to remain only proposing modifications to existing site signage.

MOTION: To accept that the requirements of Criteria 1 have been met.
Made by: George Frothingham
Seconded by: Cecile Arnone
Discussion: none
Vote: passed unanimously

Criteria 2: *The use, as developed, will not adversely affect the character of the area in which the proposed use will be located, because:* Same use

Mr. Winckler commented that this gets to the light. He said it doesn't sound like there would be more light coming out, rather to the recessed lighting as opposed to the hanging lighting and glare; the idea of recessed lighting is a positive. Mr. Sager indicated that these should be separated, since the applicant is looking for three separate things – looking for the red light in the canopy, a minor change to the road-side sign which is currently internally illuminated, and they're looking to add the two signs to the building. He felt we should deal with each of these separately.

The first item to be considered is the road-side sign which is currently illuminated now. It is essentially the same size and the existing one, it's going to be within inches of the same size that is there now, he personally doesn't see any problem meeting all the criteria for that particular sign, with the proviso that it does not have any additional illumination to what it has right now. Mr. Winckler said it would be brighter due to the lighter background.

By the second vote of the Board:

Criteria 1: *The specific site is an appropriate location and of adequate size for the use, because:* The use is existing to remain only proposing modifications to existing site signage.

MOTION: To accept that the requirements of Criteria 1 have been met.
Made by: Cecile Arnone
Seconded by: Robert Moholland
Discussion: none
Vote: four (4) in favor one (1) opposed*
Mr. Frothingham, Ms. Arnone, Mr. Winckler, Mr. Moholland were in favor, Mr. Sager was opposed.

Criteria 2: *The use, as developed, will not adversely affect the character of the area in which the proposed use will be located, because:* Same use

MOTION: To accept that the requirements of Criteria 2 have been met.
Made by: Richard Sager
Seconded by: George Frothingham
Discussion: none
Vote: four (4) in favor one (1) opposed*
Mr. Frothingham, Ms. Arnone, Mr. Winckler, Mr. Sager were in favor, Mr. Moholland was opposed.

Criteria 3: *There will be no nuisance or serious hazard to vehicles or pedestrians, because:* There will be no moving or blinking parts. Vehicles will see site and be able to enter safely.

MOTION: to accept that the requirements of Criteria 3 have been met.
Made by: Paul Winckler
Seconded by: George Frothingham
Discussion: none
Vote: passed unanimously

Criteria 4: *The use will no place excessive or undue burden on Town services and facilities, because:* The use is to remain.

MOTION: to accept that the requirements of Criteria 4 have been met.
Made by: Cecile Arnone
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Criteria 5: There would be no significant effect resulting from such use upon the public health, safety, and general welfare of the neighborhood in which the use would be located, because: The use is to remain.

MOTION: to accept that the requirements of Criteria 5 have been met.
Made by: Cecile Arnone
Seconded by: Robert Moholland
Discussion: Mr. Winckler indicated that the light could be a problem
Vote: passed unanimously

MOTION: to **GRANT a Special Exception** to Carolyn Parker, Irving Oil regarding Wakefield Zoning Ordinance Article I.3 Section 4.03 – the road-side sign - with the following condition:
• The illumination (lumens) of the new sign will not exceed the illumination (lumens) of the existing sign.

Made by: Paul Winckler
Seconded by: Cecile Arnone
Discussion: none
Vote: passed unanimously

The next item to be considered is the canopy.

Mr. Sager said that currently there is no lighting on the canopy. He reminded the Board that the Mobil Station was recently heard and granted a special exception with the proviso that they reduce the illumination under the canopy that was glaring onto Route 16 and Route 109. The Irving applicant has offered reduce the amount of light coming off the sight and directed straight down by recessing the lenses. Mr. Sager also noted that no abutters are present. He doesn't particularly like the red stripe; however it is a gas station and it is located n the Business & Commercial District.

The criteria being the same as noted above, the board continued accordingly.

Criteria 1:

Motion: to accept that the requirements of Criteria 1 have been met.
Made by: George Frothingham
Seconded by: Cecile Arnone
Discussion: None
Vote: four (4) in favor one (1) opposed*
Mr. Frothingham, Ms. Arnone, Mr. Moholland, Mr. Sager were in favor, Mr. Winckler was opposed.

Criteria 2:

Motion: to accept that the requirements of Criteria 2 have been met.
Made by: George Frothingham
Seconded by: Cecile Arnone
Discussion: Mr. Sager commented that the red stripe, although not neon, looks really neon; Mr. Frothingham indicated it is a narrow band of red. Mr. Moholland offered that it would be seen mostly by people traveling south on Route 16, not so much from other directions.
Vote: four (4) in favor one (1) opposed*
Mr. Frothingham, Ms. Arnone, Mr. Moholland, Mr. Sager were in favor, Mr. Winckler was opposed

Criteria 3:

Motion: to accept that the requirements of Criteria 3 have been met.
Made by: Richard Sager
Seconded by: George Frothingham

Discussion: none
Vote: passed unanimously

Criteria 4:

Motion: to accept that the requirements of Criteria 4 have been met.
Made by: Cecile Arnone
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Criteria 5:

Motion: to accept that the requirements of Criteria 5 have been met.
Made by: Cecile Arnone
Seconded by: Robert Moholland
Discussion: none
Vote: passed unanimously

MOTION: to **GRANT a Special Exception** to Carolyn Parker, Irving Oil regarding Wakefield Zoning Ordinance Article I.5 Section 4.03 – the internally illuminated sign (canopy) - with the following conditions:

- The Irving logo signs will be located on the canopy on the Route 16 side and the Route 153 side, not on the river (south) side.
- The current lights under the canopy will be replaced with recessed lights and the overall lighting wattage will be reduced by 25%.
- There will be no additional lights.

Made by: Richard Sager
Seconded by: Robert Moholland
Discussion: none
Vote: passed unanimously

The next item considered was the two Blue Canoe signs to be attached to the building. The proposal is to have these signs internally illuminated. Mr. Sager commented that he does not have a problem with the signs themselves, no problem with them being externally illuminated, but he does have a problem with them being internally illuminated. Mr. Sager indicated that with internally illuminated signs, the light tends to go a considerable more distance than externally illuminated signs. Mr. Winckler asked the applicant if there was any problem putting a light on the outside, the applicant responded there was no problem with an outside light. Mr. Winckler added that it also might be safer with an external light which could shine down on the door entryway.

The criteria being the same as noted above, the board continued accordingly.

Criteria 1:

Motion: to accept that the requirements of Criteria 1 have been met.
Made by: Richard Sager
Seconded by: Cecile Arnone
Discussion: none
Vote: passed unanimously

Criteria 2:

Motion: to accept that the requirements of Criteria 2 have been met.
Made by: Cecile Arnone
Seconded by: George Frothingham
Discussion: none
Vote: passed unanimously

Criteria 3:

Motion: to accept that the requirements of Criteria 3 have been met.
 Made by: Paul Winckler
 Seconded by: Cecile Arnone
 Discussion: Mr. Sager indicated he would agree with this motion as long as it is not internally illuminated. Mr. Moholland questioned why the Blue Canoe sign needs to be on the wall of the building under the canopy. He feels it is overkill. Mr. Winckler felt it wouldn't make too much difference in the long run.
 Vote: passed unanimously

Criteria 4:

Motion: to accept that the requirements of Criteria 4 have been met.
 Made by: Richard Sager
 Seconded by: Paul Winckler
 Discussion: none
 Vote: passed unanimously

Criteria 5:

Motion: to accept that the requirements of Criteria 5 have been met.
 Made by: Cecile Arnone
 Seconded by: George Frothingham
 Discussion: none
 Vote: passed unanimously

MOTION: to **GRANT a Special Exception** to Carolyn Parker, Irving Oil regarding Wakefield Zoning Ordinance Article I.7 Section 4.03 – the two Blue Canoe internally illuminated sign - with the following condition:

- That the two Blue Canoe signs are not internally illuminated.

Made by: Cecile Arnone
 Seconded by: Paul Winckler
 Discussion: none
 Vote: four (4) in favor one (1) opposed*
 Mr. Frothingham, Ms. Arnone, Mr. Sager, Mr. Winckler were in favor, Mr. Moholland was opposed

Mr. Sager advised Mr. Schuler of the 30-day appeal period. He suggested that Mr. Schuler check with the Code Enforcement Officer to see if there is any site plan review that is required. A written decision will be send soon. Mr. Sager asked if there were any questions.

Mr. Schuler indicated he didn't want to create problems, but, with respect to the lighting under the canopy, that actually there would be directional fixtures added to the lighting under the canopy.

Therefore, the board decided to strike condition three (3) noted above and replace it with the following condition:

- Should any lights be added under the canopy, the total amount of light spilling forth under the canopy will be reduced.

MOTION: to accept this condition to replace the previous one regarding additional lights.
 Made by: Paul Winckler
 Seconded by: George Frothingham
 Discussion: none
 Vote: passed unanimously

Since Special Exceptions are not recorded with the Carroll County Registry of Deeds, Ms. Bishop gave Ms. Parker's check for the CCRD to Mr. Schuler for him to return it to Ms. Parker.

The Board then took a ten-minute break before proceeding with the next application.

Handyman New England/James A. Cochran
Area Variance – 1.02.B.1.c – non-conforming use
Area Variance 2.02.D. 3 – street setback
Area Variance – 2.02.D.5 – shore-front setback

MOTION: to seat the same five members who attended the site walks on Saturday, November 12, 2005.
Made by: Richard Sager
Seconded by: Paul Winckler
Vote: passed unanimously

Mr. Bryan Berlind, representative from Land Tech, addressed the Board. He referenced the plan Land Tech provided to Handyman New England and James Cochran which indicated the location of the proposed dormer as well as the proposed three-season porch.

Mr. Berlind explained that Mr. and Mrs. Cochran are requesting an Area Variance in order to turn a duplex home into a single-family home; they would like to add a dormer and a 12' x 14' three-season porch

Due to the fact that the home is located on Lovell Lake Road (NH Route 109), the state does have a 50 foot right of way which is included in the Cochran property. Consequently, the edge of the 50 foot right of way would go through a part of the Cochran's home and garage. Mr. Berlind presented a letter from the DOT which states "the proposed addition is to construct vertically on the existing footprint of the building along with a proposed porch outside the right of way, neither will interfere with the operations of the maintenance patrol section. Therefore the District Office would not object with the proposal as shown on the referenced plan."

Mr. Berlind did reference an earlier court case – and prior to that court case the right of way would be 25 feet from the center of the road, and would go around the home, back to the 25 feet easement, and then around the garage.

Mr. Sager asked about the height of the dormer. Mr. Berlind referred this question to Mr. Hayes, from Handyman New England. Mr. Hayes said it will not exceed the height of the roof line now. Mr. Hayes indicated he believe the height of the roof line now is 18 feet.

Mr. Berlind pointed out that the dormer is to allow for additional head clearance on an existing stairway. It provides a safer, more to code condition. Mr. Berlind continued that the lot is in a Residential II zone, it contains about a quarter acre, it pre-exists all zoning ordinances.

Mr. Berlind continued that this lot is approximately 100 years old. He has deeds going back to the 50's where it stays the same, then the house was built, there is an existing concrete cellar floor that has 1940 imprinted in the concrete; there have been a couple of additions. All of this happened well before any state or local land use laws. A court case in the early 80's where the DOT decided that prescriptive roads be 50 feet wide – thus it affected the property, which was there first, and then zoning ordinance came into effect indicating minimum lot sizes were 30,000 square feet, it established setbacks, then the ordinance was changed to one (1) acre with new setbacks. When all was said and done, there is now a little strip of land that is an allowable building window that is 30 feet from the shore and 20 feet from the street line.

Handyman New England and Mr. & Mrs. Cochran are seeking an area variance from Article D.3 and D.5, Section 2.02, setback from street and setback from the shore.

Mr. Winckler asked how far it is from the shore now. Mr. Berlind said he it is 20.6 feet, and the proposed three-season porch will end up being 21.7 feet. The hardship is that it gets closer to the street line. He believe is a very reasonable application for a water-front lot.

Mr. Berlind asked the Chairman if he wants to go through the five-point criteria or go directly to the closing comments. Mr. Sager replied that he preferred that Mr. Berlind not go through the five-point criteria.

Mr. Berlind then opted to highlight the role of the Zoning Board of Adjustment, because it's often confused but he's not certain that this board confuses it. He did hand out a section of RSA 674.33 – Powers of Zoning Board of Adjustment, with some paragraphs indicated in red. He did highlight that the ZBA is not policemen, it does not enforce the ordinance; if anything, the ZBA protects the public from an ordinance when it's unfairly applied to them.

Mr. Berlind continued that Zoning Boards can do basically four (4) things – Variance, Special Exceptions, Appeals of Administrative Decisions, and Equitable Waivers. All of these are a relief in protecting the public from the ordinance if certain conditions warrant. He referenced a few of the red inked sections and particularly on the second page that ‘in order to establish an unnecessary hardship for variance purposes, an applicant needed to show that the zoning interfered with the reasonable use of the property, considering its unique setting in its environment...’

Mr. Berlind commented that this is a unique setting because of the allowable building window; that everything came first, zoning ordinance came later. He then gave the floor to Mr. Hayes to explain any architectural questions.

Mr. Hayes went to the Code Enforcement Office for a building permit and was told that he needed to go before the Zoning Board of Adjustment for a Variance. He agreed that there are special circumstances, it is a unique property, he explained to Mr. Cochran that it is fair, they are improving their property and making it safer, and they are removing the duplex and making it into a single-family home. Mr. Hayes also informed the Board that Mr. Cochran is closing his business and this will be strictly residential.

Mr. Sager told the audience that the Board did walk through the house and around the property on Saturday morning and got a good feel for what’s going to happen with the property.

The public hearing was opened at 7:50 a.m.

Ms. Kennedy commented that she believes the Cochrans should be allowed to do the upgrade as presented. Mr. Frothingham also feels they should be allowed to do these improvements but that they should have some type of waiver from the DES Shoreland Protection Act regarding the expansion of the footprint within the 30-foot setback from the lake. The state says that the ZBA does not have the authority to grant a variance for that unless they have granted a waiver. He suggested that they might consider the ZBA voting their approval but with the condition that the Cochrans provide a waiver from the DES before the variance is considered final.

Mr. Sager indicated he wants to address the two sections separately as was done earlier with the Irving application.

Regarding the proposed three-season porch, Mr. Berlind said he spoke with Arlene Allen, the Shoreland Coordinator; apparently she was of the opinion that the Cochrans do not need their approval and referred Mr. Berlind to section 483-B:11 of the Shoreland Protection Act which indicates “...is permitted up to a maximum of 12 feet towards the reference line.” The reference line here is 30 feet adopted by Wakefield, less the 12 feet reference in 483-B:11 leaves a distance of 18 feet – according to the proposed sketch the closest point is 20.7 feet. Part and parcel of this is that the porch is a non-permanent occupy-able structure.

Mr. Sager indicated that this seems to be a similar situation to the Arnone application. He asked Mr. Frothingham if he differentiated it somehow. Mr. Frothingham commented that the seminar at DES which they attended last spring the speaker specifically mentioned open decks as being allowed, and made the specific point that if the decks grew windows and roofs and become a room then it would not be allowed. The Arnone deck was a completely open deck, and the one proposed here is definitely closed.

Mr. Berlind referred to the Shoreland Protection Act which referenced “...the addition of a deck or open porch is permitted up to a maximum of 12 feet towards the reference line.”

Mr. Sager then commented that what it comes down to is what is the definition of deck or open porch.

Mr. Hayes said that in his experience the distinction of a three-season porch vs. a year-round home is that a three-season porch has no insulation and no heat. It can be wired, but it will not have heat or insulation.

Mr. Haag commented that he believes an open porch is a deck with a roof. Mr. Sager commented that according to the statute that Mr. Berlind distributed indicates it gives an exception to a deck – Mr. Sager thinks of a deck is something that is open without a railing; he thinks of a porch as being something that has some sort of wall around it whether they be a railing or something; so if the statute just said a deck or a porch is permitted, that would be one thing. But the statute references a deck or open porch – and we have to give meaning to every word in the statute. So his question is what’s the difference between a porch and an open porch.

The public hearing was closed at 8:00 p.m.

Mr. Moholland asked if the dormer is not violating the height and is within the footprint, what is the variance for. Mr. Sager explained that the variance is an expansion of the building within the setback. Even though the expansion is vertical, it is still within the setback. The dormer is a tough call, the setback is from the road.

Mr. Frothingham added that the state also makes the comment about what is allowed and not allowed relative to changes in vertical dimension; and as far as the DES and the Shoreland Protection Act are concerned, the dormer is allowed on the count that it is outside the 30-foot setback from the water, and it specifically says that such changes may be made to the footprint of the house that lies outside the 30-foot setback, stringent regulations apply only to the part of the house that is within the 30-foot setback.

Taking each of issues separately, the board then proceeded to address the portion of the application which refers to the dormer.

Criteria 1: *The proposed use would not diminish surrounding property values because:* The landowners are remodeling their home from a duplex to a single family residence. They also are remodeling the home to a more modern and safe condition. They propose increasing usable square footage to the home by constructing a (3-season) porch and a dormer – all of which will increase the value, comfort and safety of the home, therefore increasing the value of surrounding properties.

MOTION: to accept that the requirements of Criteria 1 have been met.
Made by: Richard Sager
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Criteria 2: *Granting the Variance would not be contrary to the public interest because:* By modernizing the home, the homeowners are improving the safety, convenience, comfort and livability of their home, which is a benefit to the public interest. Likewise, the improvement will increase the value of the home, thus increasing the assessed value and tax revenues to the municipality.

MOTION: to accept that the requirements of Criteria 2 have been met.
Made by: Cecile Arnone
Seconded by: Robert Moholland
Discussion: none
Vote: passed unanimously

Criteria 3: *Granting the variance would do substantial justice because:* It would allow this homeowner, given his specific and unique set of facts and circumstances and whose lot pre-dates current lot minimum standards (size & shape) and is legally non-conforming the ability to improve, enlarge and modernize his home, which would render substantial justice. The role of the ZBA is not to protect the ordinance (as Code Enforcement Officers do), but to protect the public from unnecessary hardship caused by the ordinance when conditions warrant, as occurs here.

MOTION: to accept that the requirements of Criteria 3 have been met.
Made by: Paul Winckler
Seconded by: George Frothingham
Discussion: none
Vote: passed unanimously

Criteria 4: *The use is not contrary to the spirit of the ordinance because:* The ordinance is to control and regulate new parcels of land and uses thereon rather than to over-regulate and preempt reasonable future uses on legally non-conforming lots. The spirit of the ordinance is not to be harmful, but to be helpful to applicants with unique circumstances similar to these. The role of the Zoning Board of Adjustment is to grant relief, when the ordinance would create hardship upon applicants with these specific conditions, whereas a hardship would otherwise result.

MOTION: to accept that the requirements of Criteria 4 have been met.
Made by: Cecile Arnone
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Area Variance:**5B: Denial of the variance would result in unnecessary hardship to the owner because:**

- a. ***The following special conditions of the property make an area variance necessary in order to allow the development as designed:*** Because of the size and width of the lot, and the placement of existing buildings thereon, an area variance is necessary to modernize the home and to add the 3-season porch. Note that the lot pre-exists land use ordinances and does not meet current lot size standards, thus necessitating the need for a variance.

MOTION: to accept that the requirements of Criteria 5B.a have been met.
Made by: Richard Sager
Seconded by: George Frothingham
Discussion: none
Vote: passed unanimously

- b. ***The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:*** Because the buildings exist in their current placement (where buildings wouldn't normally exist because of today's setbacks) there is no other reasonable feasible method for the applicants to achieve their goal. The inability of the applicants to modernize their home (thereby increasing the safety, value, comfort and convenience of the home) because of zoning setbacks does impose an undue financial burden. Note that the property is unique to the current zoning ordinance because of its shape and locale as it was created prior to any land use ordinances in the town of Wakefield. Today's ordinance and setbacks are based upon the presumption that lots within this zone will be one acre in size, whereas this lot is far less due to its creation prior to the ordinance. Because of the size and geometry of the lot, being narrow with front and shore-land setbacks, this lot is unique in light of the ordinance. Denial of this application would result in an unnecessary hardship to the owner because denial would preclude the owner from improving the home to a modern condition.

MOTION: to accept that the requirements of Criteria 5B.b have been met.
Made by: Cecile Arnone
Seconded by: George Frothingham
Discussion: none
Vote: passed unanimously

Mr. Sager asked the applicant to verify that all commercial use of this property is done, it's now just going to be residential. Mr. Cochran commented that he has another property where he stores boats, he does winterize a few boats on this property and then stores them on the other property. Mr. Sager asked if Mr. Cochran has abandoned the use of the duplex for business purpose, and when was the last time gas was pumped at this location. Mrs. Cochran said it had been at least two (2) years.

MOTION: to **GRANT** an Area Variance to Handyman New England/James A. Cochran regarding Wakefield Zoning Ordinance Article 2.02 Section D.3 for the dormer subject to the following conditions:

- That the height of the dormer be no higher than the existing roof line.

Made by: Cecile Arnone
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

The board then moved on to discussion of the three-season porch.

Mr. Sager has concerns about the porch as designed – it looks to him like a room that just happens to not be heated and they're calling it a porch. He would have less of a problem if it were a deck with a railing around it and no roof. He feels that would clearly be allowable under the Shoreland Protection Act. He feels that the way it is designed it doesn't fit under the exception of 483-B:11. Mr. Berlind offered that to him a deck with no railing to him is a patio. To him a deck is something that does have a railing. To him, a porch clearly does have a roof.

Mr. Frothingham commented that the applicant didn't address the issue of the windows. Mr. Winckler asked what Mr. Hayes' plans are for starting the construction of these two additions. Mr. Hayes said that the dormer was major issue right now, and he probably wouldn't be starting the porch until perhaps January.

Mr. Sager asked if Mr. Hayes would like to continue the hearing for 60 days on the portion of the deck to see if he could get some sort of determination from the state as to the definition of an open porch. Mr. Sager would also like to speak with some state personnel for an explanation of what is an open porch.

The applicant agreed that they would be willing to continue the hearing for the section of this application referring to the three-season porch until the next meeting, by that time they should have some answers from the state.

MOTION: to continue the portion of this application regarding the three-season porch to the next meeting, December 5, 2005.

Made by: Robert Moholland

Seconded by: Cecile Arnone

Discussion: none

Vote: passed unanimously

Handyman New England / James Cochran will be first on the agenda of the December 5, 2005, meeting.

Mr. Berlind asked if it would be possible to get the building permit from the Code Enforcement Office right away so that Handyman New England can start the construction of the dormer. Mr. Sager told the applicant that the Code Enforcement Office will get a copy of the Decision by the end of the week; anytime after that the applicant can apply for the building permit.

The board took another five (5) minute break before continuing to the next application.

**Public Hearing: Case # 2005-14 – Tax Map #10, Lot 15
Stephan & Gianna Dunn, 363 Davis Road, Wakefield, NH
Area Variance – 1.02.B.1.c – non-conforming structure
Area Variance – 2.02.D.5 – shore-front setback**

Mr. Dunn took the floor, introduced his wife, Gianna, and Patrick Stevens from Patrick Stevens Contracting. He then explained the reasons for his request for a variance to the Board. In 1999 the Dunns purchased a camp/cottage and were drawing water from the lake in order to supply their cottage with water for the summer. They are looking to upgrade their house by putting a foundation around the existing home. They do not want to excavate under the house for a full basement, they simply want to put a foundation under the perimeter of the house. Mr. Dunn has no original documentation, but the house was built before 1965 – the original size was 35' x 24'. His source of this information is a Mr. Vitale who lives at 381 Davis Road, who is approximately 70 years old and his best recollection is that the addition of 28' x 20' was put on in the late 60's / early 70's. With this addition, it gives a frontage of only 10 feet from the lake and the code calls for 30 feet. The original house is situation about 35 feet from the lake.

They are looking to upgrade the cottage to a house to be able to use it in the winter. They would like to have a well dug and a pump installed.

Mr. Sager commented that this is not a terribly complicated application – the applicant simply wants to replace the piers with a concrete foundation. There are two parts to the house which is the original house and the addition part. He asked for any discussion among the board members.

Mr. Winckler stated that his only concern is the addition to the house that ends about 10 feet from the shore. He doesn't know how a footing can be put in without impacting the shoreline severely.

Mr. Stevens indicated that before it was excavated out, a silt fence and hay bales would be put up so it won't disturb the banking. Mr. Winckler asked how it would be dug out. Mr. Stevens said he would use a small excavator and dig just wide enough to install the footings and walls. Mr. Winckler asked how deep the digging would have to be. Mr. Stevens said it would be about a four (4) foot frost wall.

Mr. Sager asked if there were any more comments from the board before opening up to the public.

The public hearing was opened at 8:20; there were no abutters or other members of the public in attendance.

Mrs. Dunn said they are interested in using the home year-round; they do belong to an association and would like to be able to use their home year round which they cannot do now.

Mr. Dunn said that the front of the house, the addition, has no water in it whatsoever. Mr. Sager asked if he is referring to the addition, the lake-side section, when he mentions the front of the house. Mr. Dunn confirmed this. Mr. Dunn indicated that the foundation technically is needed on the original house, which does meet the 30-foot setback. He offered that if they were to be allowed to put the foundation under the existing original house, and not under the addition, they would accept that. It would serve the purpose, and they would put a wood foundation around the addition.

Mr. Moholland commented that he would have no problem with the Dunns extending the foundation out to the fireplace, that's still within the 30-foot setback.

Mr. Frothingham once again quoted the state regulations. For buildings that are non-conforming built before 1994, the DES does not consider the addition of a foundation an expansion – a waiver from the state is not needed to be able to do that, even if it is closer to the water.

Mr. Haag asked if it would be necessary to dig under the house. Mr. Stevens indicated there are sauna tubes under the house; the addition would have to be framed in with wood on three sides and there could be heating problems. Mr. Stevens doesn't see the excavating as an issue. Mrs. Dunn commented that they are up from the water. Mr. Stevens indicated that excavating at the right time of year, when the water level is dropping, and taking the proper precautions, there would be no erosion problems.

Mr. Sager said he does not understand how an excavator can be brought in on the short-front. Mr. Stevens indicated it would be a mini-excavator. Mr. Sager asked about the size of the mini-excavator. Mr. Stevens said it is about five (5) feet wide by about eight (8) feet long. Mr. Stevens said he would dig out just enough material to install the footings for the foundation wall. Mr. Sager asked about the size of the wall. Mr. Stevens said it would be about four (4) feet underground with about five (5) feet of cement blocks above ground.

The public hearing was then closed at 8:30 p.m.

Mr. Winckler commented that he is still concerned about the possible erosion problems. Mr. Sager said he has no problem with the foundation going around the main part of the house, but he is skeptical about the foundation around the addition. He did mention that Mr. Moholland brought up an interesting issue about bring the foundation to the chimney.

Mr. Sager asked if the Code Enforcement Officer told the Dunns that they cannot do what they want to do. Mr. Dunn said he applied to the Building Officer for Mr. Stevens to pour the foundation and it was denied.

Mr. Sager asked the applicants to confirm that the reason they're looking to put the foundation is not to gain living space under the house but rather to put in a well and have a pump to bring water into the house. He commented that having an excavator sitting right on the shore line and work being done so close to the lake, would certainly present a problem. Mr. Dunn said another reason he would like to have the foundation is to make the home as stable and livable as possible.

Mr. Moholland again suggested going to the chimney line which would provide support to the addition, and the chimney itself extends into the ground and offers additional support. Perhaps adding lattice work to the addition from the chimney out would be an option and might add a little support to the addition. Mr. Sager offered that another way of doing it is saying as long as the foundation work is 30 feet or more from the high-water mark, wherever that comes to.

Mr. Stewart asked if it was possible for him to make a comment. Mr. Sager asked if there was any objection to re-opening the public hearing – with no objections, the public hearing was re-opened at 8:40 p.m. Mr. Stewart said the only problem he has is that they want to put the foundation under the house; is there any work needed to be done to make it more structurally sound. Mr. Stevens indicated there is nothing more to be done other than just the foundation under the house, they are just replacing the existing sauna tubes and they will be digging in the same spot. The public hearing was then closed at 8:43 p.m.

The board then addressed the criteria and used the new criteria for an Area Variance.

Criteria 1: *The proposed use would not diminish surrounding property values because:* A permanent concrete block foundation would all to the surrounding property values.

MOTION: to accept that the requirements of Criteria 1 have been met.
Made by: Richard Sager
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Criteria 2: *Granting the Variance would not be contrary to the public interest because:* Upgrading your home in the neighborhood is always in the public's best interest.

MOTION: to accept that the requirements of Criteria 2 have been met.
Made by: Paul Winckler
Seconded by: Cecile Arnone
Discussion: none
Vote: passed unanimously

Criteria 3: *Granting the Variance would do substantial justice because:* It will make my house structurally sound and at the same time improve the neighborhood's values.

MOTION: to accept that the requirements of Criteria 4 have been met.
Made by: Cecile Arnone
Seconded by: Robert Moholland
Discussion: none
Vote: passed unanimously

Criteria 4: *The use is not contrary to the spirit of the ordinance because:* It does not change the configuration of the house in any way.

MOTION: to accept that the requirements of Criteria 5 have been met.
Made by: Robert Moholland
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Area Variance:

5B: *Denial of the variance would result in unnecessary hardship to the owner because:*

a. *The following special conditions of the property make an area variance necessary in order to allow the development as designed:*

MOTION: to accept that the requirements of Criteria 5B.a have been met.
Made by: Richard Sager
Seconded by: Cecile Arnone
Discussion: none
Vote: passed unanimously

b. *The same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because:*

MOTION: to accept that the requirements of Criteria 5B.b have been met.
Made by: Paul Winckler
Seconded by: Richard Sager
Discussion: none
Vote: passed unanimously

MOTION: to GRANT an Area Variance to Stephen & Gianna Dunn regarding Wakefield Zoning Ordinance Article 1.02 Section B.1.c and Wakefield Zoning Ordinance Article 2.02 Section D.5 to allow them to erect a foundation under their existing home to the chimney on the East side of the house and to extend on the west side no closer than 30 feet to the lake; this is granted without prejudice to allow Mr. & Mrs. Dunn to return to the Zoning Board of Adjustment to request that the foundation be placed to within 30 feet of the high-water mark.

Made by: Richard Sager
Seconded by: Paul Winckler
Discussion: none
Vote: passed unanimously

Mr. Sager advised the board that he has received a letter of resignation from Marsha Lavallee-Huntoon for personal reasons.

MOTION: to accept the resignation of Mrs. Lavallee-Huntoon with regret
Made by: Cecile Arnone
Seconded by: Margaret Kennedy
Vote: passed unanimously

Mr. Sager then reminded the board that we now have a vacancy for a full member of the board, and any one interested in becoming a full member should let him know within one (1) week; and since it is the Selectmen who appoint board members, he would like to submit that person's name to the Selectmen by their next meeting on Wednesday, November 23. He also reminded board members that there will not be an alternate vacancy and if they know anyone who is interested, please have them contact Mr. Sager.

APPROVAL OF MINUTES

MOTION: to accept the minutes of October 10, 2005, and October 19, 2005, as presented
Made by: George Frothingham
Seconded by: Cecile Arnone
Discussion: none
Vote: passed unanimously

Mr. Sager then asked the Board to review the new variance application and corresponding instructions which make special notation of the distinction between the Use Variance and the Area Variance, which is shown on page 3 of the application.

Ms. Bishop requested that they discuss the fee schedule. Mr. Sager agreed and said that he would prefer to discuss this when reviewing the new Rules of Procedure.

Mr. Frothingham also has a problem with the instructions portion of the new application procedure. He brought up some questions about the Plan/Sketch requirements on page 3 of the instructions. He referred to the Board of Adjustment in New Hampshire, a Handbook for Local Officials, January 2005, page 28 – at the bottom of the first column and continuing over to the second column, he is most interested in the part which says “zoning ordinances, subdivision regulations and building codes may require that a plot plan be prepared by a licensed engineer or a land surveyor . . . judgment should be used in applying this requirement - it may not be necessary in simple situations.”

He feels that the bottom section is extremely burdensome, unnecessarily expensive, causing undue delays and he feels we should get rid of it. Mr. Sager said he doesn't think it is his language. Mr. Winckler asked if Mr. Frothingham might be willing to re-write that section to something more appropriate. Mr. Frothingham indicated he would be happy to do that, he suggested that he would probably take the first paragraph is fine. It does include a reference that the more information provided on the plan or sketch, the better the board will understand the appeal. The first paragraph advises applicants that the plan could be hand-drawn, it encourages them to put in as much detail as possible; but then, by listing the items on the bottom, it goes on and takes all of that back. He feels that the ZBA retains the right that we can require, when we have a hearing, that they submit additional information that we feel is necessary. He feels that the effect of this regulation is to set entrance for getting into to the ZBA at a very high level.

The second paragraph was then revised to read as follows:

“For all appeals seeking Dimensional Relief, a stamped, certified survey may be required. However, all plans submitted should include as much of the following information as is reasonable.” And then the numbered listing will remain.

MOTION: to accept the changes to the Variance Application and Variance Instructions as amended.
Made by: David Haag
Seconded by: Robert Moholland
Vote: passed unanimously

Mr. Sager reminded the board of the joint meeting with the Planning Board on Thursday, November 17. He requested that those members who sat on the first hearing also plan on being seated for this hearing. Ms. Lavallee-Huntoon sat for the first hearing, and after submitting her resignation, is no longer a board member. Mr. Sager asked Mr. Stewart if he would be willing to sit in her place – Mr. Stewart agreed.

Ms. Bishop advised the board that there will be a joint ZBA and Planning Board hearing on Monday, December 5, 2005 for a combination subdivision and variance.

OLD BUSINESS

Mr. Sager advised the board that there has been a settlement regarding the Arnone case. The Arnones have agreed to remove a portion of their deck to within the 12-foot limit.

The remainder of the Old Business and the New Business, as well as the revised Rules of Procedure, will be discussed at the next meeting.

MOTION: to adjourn the meeting at 9:25 p.m.
Made by: Paul Winckler
Seconded by: Margaret Kennedy
Vote: passed unanimously

Respectfully submitted,

Dianne Bishop, ZBA Secretary