

**TOWN OF DURHAM**  
**ZONING BOARD OF APPEALS**

Regular Meeting Minutes  
Thursday, February 19, 2009  
Town Hall Meeting Room  
REVISED

Changes appear in *bold, raised italics*.

**Call to Order:** The meeting was called to order at 7:30 PM by Chairman John Hogarth at the Durham Town Hall.

**Roll Call:** Members present: Chris Flanagan, David Heer, John Hogarth and Bill Joyce. Alternates Present: Mark Jungels, Bill LaFlamme and Bill Martin. Staff: Trish Dynia.

**Seating of Alternates:** Bill LaFlamme was seated for the duration of the meeting.

**Approval of Agenda:** *A motion was made by Bill LaFlamme, seconded by David Heer, to approve the agenda as written. The motion passed unanimously with Chris Flanagan abstaining.*

**Approval of Minutes:** *A motion was made by David Heer, seconded by Bill LaFlamme, to approve the November 13, 2008 minutes as revised prior to the meeting. The motion passed unanimously.*

*A motion was made by Chris Flanagan, seconded by Bill Joyce, to approve the December 11, 2008 minutes with the following revision: page 2, 2<sup>nd</sup> paragraph, Appeal of Order section, line 2: change George Zeeb to George Eames. The motion passed unanimously.*

**Payment of Bills:** *A motion was made by Bill LaFlamme, seconded by Bill Joyce, to pay the following bills: Trish Dynia, secretarial services, \$105.00. The motion passed unanimously.*

**Public Session:** None.

**Miscellaneous:** Chairman Hogarth distributed correspondence regarding an upcoming state-wide land use committee meeting and a request for service award name submissions. He noted that no one on the board is currently eligible to receive the award because there is a minimum service requirement of twelve years.

Mr. Hogarth reported that he had submitted the agency's budget to the town with some minor reductions in meeting dues and legal ad line items, and those who wish to receive a copy can do so by e-mail.

*A motion was made by Bill Joyce, seconded by Bill LaFlamme, to adjourn the regular meeting and open the public hearing at 7:45 PM. The motion passed unanimously.*

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PUBLIC HEARING

**John Jackson, Request for Variance from the Durham Zoning Regulations, Section 13.05.05. (4)(b) "Accessory Apartments" which requires that "An owner of the structure must live in the principal or accessory unit", 303 and 305R Main Street.** Mr. Jackson stated that he thought the exemption he applied for was in Section 12.4.2.5., regarding home occupations and the necessity to live on the property for two years prior to having a home occupation.

Chairman Hogarth responded that the request was for a different section regarding an accessory apartment and asked if Mr. Jackson wished to change the nature of his request. Mr. Jackson noted that perhaps he was confused on the matter and opted to proceed with what was requested in his application.

Mr. Jackson stated that from time to time he finds it necessary to reside in the homes he has built until they are sold in order to protect the property from theft and vandalism. He stated that currently both the main house and accessory apartment are occupied but the accessory apartment would be vacant again in about one month.

In response to Chris Flanagan's questions regarding the garage, Mr. Jackson stated that several years ago he removed a five bay garage to an adjacent owner's property and in 1988 he received a permit for, and built a three bay garage with its own utilities. He also received a permit for the accessory apartment about five years ago.

In response to Bill Joyce's questions regarding his history of living on the property, Mr. Jackson replied that he moves in and out periodically as necessary, "for six months or so and then back there for awhile."

Bill Joyce asked what prompted the applicant to apply for this variance. Mr. Jackson responded that he was directed to do so by a town official.

Mr. Flanagan asked if the applicant currently resides at 394 Chauncey Road in Middletown, to which Mr. Jackson replied in the affirmative.

Mr. Flanagan asked why, if he has a house and accessory apartment in Durham, does he live in Middletown. Mr. Jackson replied that he does not reside in Middletown, he resides in Durham.

Mr. Joyce noted that according to the regulations an accessory apartment shall be reviewed periodically. He asked if the accessory apartment becomes illegal if an owner does not live there. Chairman Hogarth replied that under the courant regulations, if an owner does not reside on the property the accessory apartment does indeed become illegal. He added that the applicant had received an approval for the accessory apartment from this Commission a few years ago.

Mr. Flanagan read a letter written by Geoff Colegrove to Mr. Jackson in 2005, in which he informed the applicant that since he has relocated to Middletown, this action negates both his home occupation and accessory apartment permit. The letter had been on file in building department records.

Chairman Hogarth noted that the application sites a financial hardship, and that the Commission cannot approve a variance for financial reasons. Mr. Jackson inquired about other businesses on

Main Street. Chairman Hogarth replied that the Commission can only look at what is before them.

Mr. Flanagan asked why he rents the accessory apartment rather than living in it. Mr. Jackson replied that it was for additional income.

Bill LaFlamme asked where the applicant would live if he moved back to Durham. Mr. Jackson replied that he would live in the accessory apartment, which would be vacant in about a month.

Gene Riotte, who lives at 307 Main Street and is the adjacent property owner to the *north*, stated that although Mr. Jackson is a property owner and registered voter in Durham, he does not actually reside in Durham. Mr. Riotte further noted that Mr. Jackson came to Planning & Zoning several years ago for a home occupation permit after he had been operating a business from his home for several years without permits. Mr. Jackson received both the home occupation and accessory apartment permit with the proviso that he must reside in either the main house or the accessory apartment. Mr. Riotte stated that shortly after that the applicant moved out. Since then he has moved in and out several times and the person renting the accessory apartment had been there for the past 1 ½ years. "This is rental income, as he has said. For him to come to you with this request is specious at best and I am firmly against approving this variance."

Mr. Flanagan asked if the applicant had received letters of support from any other neighbors. He replied that he had not.

Mr. LaFlamme asked who had told him to apply to this Commission and why. Mr. Jackson replied that it was Geoff Colegrove who told him to apply, he did not know why he was asked to do so, and he wished that Mr. Colegrove was here to explain.

*A motion was made by Bill LaFlamme, seconded by David Heer, to close the public hearing. The motion passed unanimously.*

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**John Jackson, Request for Variance from the Durham Zoning Regulations, Section 13.05.05. (4)(b) "Accessory Apartments" which requires that "An owner of the structure must live in the principal or accessory unit", 303 and 305R Main Street:** *A motion was made by David Heer, seconded by Bill LaFlamme, to approve the variance from Section 13.05.05 (4)(b), Accessory Apartments, which requires that an owner of the structure must live in the principal or access unit, to allow the owner to live off-site to protect properties, hardship being, protection of those properties. The motion was denied unanimously.*

**Adjournment:** Chairman Hogarth adjourned the meeting at 8:15 PM.

Respectfully submitted,

Patricia Dynia  
Recording Secretary

RECV'D: Office of the Town Clerk  
March 20, 2009 at 9:27am

Cc: Town Clerk, Midstate Regional Planning Agency