

TOWN OF DERRY
ZONING BOARD OF ADJUSTMENT MINUTES
April 3, 2008

Members Present

Allan Virr, Chairman
Christopher Lunetta, Vice Chairman
Cecile Cormier, Secretary
Albert Dimmock

Members Absent

Alternates Present

Michael Fairbanks
George Chaloux
Ernest Osborn

Alternates Absent

Dana Theokas

Staff Present

Robert Mackey, Code Enforcement Director

Mr. Lunetta called the meeting to order at 7:03 p.m. with the salute to the flag, and notice of fire and handicap exits. He explained meeting procedures and introduced the Board members

Election of Officers

Mr. Dimmock nominated Mr. Virr for the position of **Chair**.
Seconded by Mr. Lunetta.

Ms. Cormier nominated herself for the position of **Chair**.
Seconded by Mr. Lunetta.

Vote for Mr. Virr for **Chair**.
Mr. Dimmock, Mr. Lunetta, Mr. Virr

Mr. Virr nominated Mr. Lunetta for the position of **Vice Chair**.
Seconded by

Vote:
Mr. Dimmock, Mr. Virr, Ms. Cormier

Ms. Cormier nominated Mr. Dimmock for the position of **Secretary**.
Mr. Dimmock declined and nominated Ms. Cormier for the position of Secretary.

Vote:
Mr. Dimmock, Mr. Lunetta, Mr. Virr

Ms. Cormier wished to express a Thank You to Andrew Myers and Michael Demeo for their services to the Board.

It was noted for the record that Mr. Osborn would sit on the following case.

CASES

**CASE #08--103 Fiber Tower Corp.
Owner: SBA Properties, Inc.**

Special Exception to terms of Article III, Section 165-28B, 2b, to add 3 Dish Antennas & Equipment Cabinet to existing Telecommunications tower at 78A Warner Hill Rd., tax map 06089A. LMDR DISTRICT – Continued from 3-6-08.

Jennifer Lougee, representing Fiber Tower Corp. said that she was here tonight with Gary Western, RF Engineer for Fiber Tower Corp. as requested by the Board from the previous meeting. She presented the Board with a map indicating the site proposal.

Gary Western, RF Engineer, said that Fiber Tower was requesting to install 3 dish antennas on the existing 190' tower and that the proposed dishes were planned to be installed at the 150' level and that they also wished to install a small equipment cabinet inside the existing base area. Mr. Western said that Fiber Tower uses a wireless service that is a point to point service and that this installation was necessary to help prevent interruption of services. The purpose is to utilize the tower as a repeater site which will serve customers at this site area and other sites.

Ms. Cormier asked if there was also a site on Beacon Hill and asked why they were unable to utilize that site. Ms. Lougee said that there was a site located at Beacon Hill but the reason that they were unable to utilize that site was that there was no line of site available from Salem to that tower location and this type of installation required line of site.

Mr. Virr asked if the tower on Beacon Hill was topographically not feasible. Mr. Western said yes due to the hills and trees there was no line of site.

Mr. Virr asked how line of site was established. Mr. Western said that they use flash lights to visualize the lines of site and that one of their carriers is already at this site location so they are looking to upgrade the service to this location.

Mr. Virr asked which carrier the service was going to be provided to. Mr. Western said that Nextel was currently located at the site and that they have purchased services from Fiber Tower.

Mr. Virr asked if Fiber Tower only provided services to Nextel. Mr. Western said no that they were a cellular company that Nextel has purchased services from.

Mr. Virr asked if the connection at this site could be provided by a dish. Mr. Western said that the type of system that they were seeking to install was of a higher frequency fiber optic system that was provided by dish antennas.

Mr. Lunetta asked if any of the existing antennas come down. Mr. Western said no.

Mr. Lunetta asked if there would be another cabinet installed at the site. Mr. Western said that they were seeking to install a 4 x 4 equipment cabinet on the existing pad located inside of the fenced area.

Ms. Lougee said that the existing cabinet there was for other carriers and that they were requesting a small 4 x 4 cabinet for their equipment.

Mr. Lunetta asked how tall the new cabinet would be. Mr. Western said that it would be less than 5' tall.

Mr. Virr asked how the dish antennas point their signal. Mr. Western said that it the antennas pointed a narrow focus to the next antenna at another site.

Ms. Cormier asked if it was correct to assume that they were already providing service and that they were just looking to enhance the signal. Mr. Western said yes that they were seeking to provide more service which was more reliable.

Mr. Lunetta asked if the upgrade was also for telephone lines or something else. Mr. Western said that it was a voice upgrade enhancement when speaking on cell phones.

Ms. Cormier asked if the need was necessary do to the fact that cell phones have become more sophisticated. Mr. Western said yes that was part of it.

Mr. Dimmock asked if these antennas could possibly cause cancer as during the previous meeting there had been testimony that some of the previous residents had been diagnosed with cancer and if he was qualified to make this type of determination. Mr. Western said that the power levels are very low and that the antennas were located 150' in the air. He said that there had been studies at similar sites by professional at MIT but did not have any documentation to provide that type of information with him.

Mr. Dimmock asked if the surveys done were paid for by their company. Ms. Lougee said yes and that she believed that the person that had spoken with regard to this issue had an issue with SBA. She asked if any previous carriers had been requested to submit a health report.

There was some discussion with regard to ordinance requirements and existing equipment at the tower.

Mr. Lunetta asked if the 4 x 4 cabinet would interfere with setbacks. Ms. Lougee said that the installation of the cabinet had been addressed at the previous meeting and it would be within the setbacks.

Mr. Lunetta asked what would happen to service if not installed. Ms. Lougee said that there was the possibility of more missed calls or not enough clear service to be able to dial out.

There was discussion with regard to co-location and the telecommunication ordinance. No abutters were present.

Code Enforcement

Mr. Mackey said that there were 7 existing towers and some are located in the allowed zones. He said that co-location was encouraged as stated in the zoning ordinance and that the Board needs to focus on the 3 criteria in the ordinance in order to be granted.

Ms. Cormier asked if it was safe to assume that if granted that they need to prove that the tower is structurally sound before they can install their antennas. Mr. Mackey said that was correct and part of the permitting process was to show that the tower could support the additional antennas.

Mr. Virr asked if the ordinance aims towards telecommunication companies. Mr. Western said that they were a telecommunication company and hold several FAA licenses.

Deliberative Session

Ms. Cormier said that she would like it made note that the alternates were now unable to take part in the deliberative session.

Mr. Lunetta said that he felt that the applicant has met all 3 criteria. Reason that feel that this is essential is that if not installed the phones may still work however, that if you need to make an emergency call you have the possibility of not getting on or heard clearly due to not having proper signal it might pose an issue if it were a true emergency situation.

Mr. Virr said that the cell phone has evolved from the large clunky bag phones and that technology is making leaps and bounds that he felt that this was a necessity to keep up with technology.

Mr. Osborn said that if they were unable to install then there would be the possibility of playing catch up which at that time would be required and then may lead to the installation of an additional tower.

Mr. Dimmock said that this was not the first time hearing that this tower installation needs to be installed as the Board has granted other requests for towers that have still not been installed. He questioned whether this was something that was essential or just a want and reviewed the ordinance for the Board. He said that he felt that in hearing testimony from the previous meeting that there was a possibility that the towers have been causing cancer that he could in God's name approve of granting the application if just one life might be saved by his saying no as he has had heard no testimony that the towers or antennas are not going to cause cancer.

Mr. Virr said that he believed that the drafters of the ordinance would have reviewed that information in the beginning before establishing the overlay district.

Ms. Cormier said that back in February the Board did not require the applicant to provide any health studies for this meeting just that an RF Engineer be present to provide technical

information for the Board. She said that she feels that there were civil issues between the tower company and the owner that had purchased the property.

Mr. Virr said that the applicant had been requested back to provide necessary reasons as for the installation of the new antennas and that the Board needed to stay focused on that and to the Town overlay requirements.

Mr. Dimmock reviewed Section 165-28.A8 for the Board and said that if approved that he would like to see that it be subject to Planning Board review to the health and safety requirements of the ordinance.

Mr. Mackey said that he felt that that section speaks to the actual installation of a new tower and this type of request for co-location is only required to appear before the Zoning Board.

Mr. Lunetta said that the new type of antennas shoot a direct signal to the next antenna verses the old style antennas that shot in an outward pattern and that he felt that this was not a health risk.

There was some discussion with regard to imposing a time limit for the installation.

Mr. Lunetta motioned on case #08-103, Fiber Tower Corp., Owner: SBA Properties, Inc. to Grant a Special Exception to terms of Article III, Section 165-28B, 2b, to add 3 Dish Antennas & Equipment Cabinet to existing Telecommunications tower at 78A Warner Hill Rd., tax map 06089A. LMDR DISTRICT – Continued from 3-6-08 with the following condition:

- 1. Subject to the installations being installed within 2 years or variance shall be void.**

Seconded by Ms. Cormier.

Vote:

Mr. Dimmock: No. Feel public health is at risk and as stated that he was looking out for the welfare of the people.

Ms. Cormier: Yes.

Mr. Osborne: Yes.

Mr. Lunetta: Yes.

Mr. Virr: Yes.

The application was granted by a vote of 4-1-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

It was noted for the record that Mr. Fairbanks would sit for the following case.

08-106 Wave Properties, LLC

Request an extension of an existing Variance to the terms of Article VI, Section 165-45B2D, granted on April 6, 2006, to remove existing 7-unit dwelling and replace with 6-unit condominium development with less than the 30' required rear setback at 38 Maple Street, tax map 29117, MHDR District.

Charlotte McCaul & Anthony Fonzie, Wave Properties.

Mr. Dimmock asked if the applicant wished him to step down from the case as he was an abutter to the property. Mr. Fonzie said no that he did not mind him sitting on this case.

Mr. Fonzie said that he was requesting an extension to the existing variance that was granted 2 years ago. He said that he has a potential buyer for the property who was also in attendance if there was any questions.

Mr. Dimmock asked if a 1 year extension would be enough time to complete the project. Mr. Fonzie said he believed it would be sufficient.

Ms. Cormier said that Mr. Mackey's report indicates that all the conditions with the Planning Board have not been met. Mr. Fonzie said that several conditions have been done and believed that all that is left is to establish the escrow which the potential buyer is in the progress of working with the Public Works engineers in establishing that part of the requirements.

Ms. Cormier asked if escrow could be established before the May 18th deadline. Joe Koufas said that he believes that they can meet the deadline as they were already in the process of establishing the escrow and needed this extension in order to proceed.

Mr. Lunetta asked how long the project will take to complete. Mr. Koufas said approximately 8 months.

Mr. Virr asked when the Planning Board approval would expire. Mr. Fonzie said May 18, 2008.

Ms. Cormier asked if the escrow was not established then it would need to be redone. Mr. Fonzie said that all the items on the plan have been done and now just waiting for approval from the Planning Board after the escrow is established.

Ms. Cormier asked if there was a letter of credit. Mr. Koufas said that he did not feel that was a problem.

Ms. Cormier said that the 1 year extension would mean that the project would need to be completed and that they were unable to start 3 units and stop. Mr. Koufas said that he was planning on completing the project.

Mr. Dimmock said that as an abutter to the property that trying to build a new 6 unit structure is more acceptable than as to what the 7 unit structure that is currently there now which is a hazard and a disgrace to the neighborhood.

Mr. Fairbanks asked if all the abutters had been notified. Mr. Mackey said that certified letters have gone out and have not been returned.

Favor

Mr. Dimmock said that he has a certified letter sent by the Town and know that other neighbors have received their letters. He said that he knows they wanted to know when the project would be completed and feels that the request should be granted.

Code Enforcement

Mr. Mackey said the applicants request is to grant an extension to the variance issued on April 6, 2006 to remove the existing 7-unit building and construct a 6-unit condominium with less than 30' to the rear setback. The Board granted the variance with a 2 year time limit or the variance would be void. The proposal received Planning Board approval November 15, 2006. Two extensions have been granted by the Planning Board in order for the conditions of approval to be completed. No work has been done on site nor have any permits been applied for at this point. The applicant (or the prospective buyer) are currently working with the Public Works Department to establish escrow for the project and meet the other conditions of approval. No changes to the property have occurred since the variance was granted other than the existing building remains vacant and continues to deteriorate. There are pictures of the existing property in the original file along with a plan of the proposal for the Board's review.

Deliberative Session

Ms. Cormier said that she believes that the Board should just vote to approve the proposal

Mr. Dimmock said that if anyone drives by the property location and sees what is currently there now would know why speaking so much in favor of this proposal.

Mr. Fairbanks said that he is in favor of approval and that the only issue is the time line.

Mr. Virr said that testimony of a 1 year time limit would be sufficient.

Mr. Dimmock motioned on Case #08-106 Wave Properties, LLC to Grant the Request an extension of an existing Variance to the terms of Article VI, Section 165-45B2D, granted on April 6, 2006, to remove existing 7-unit dwelling and replace with 6-unit condominium development with less than the 30' required rear setback at 38 Maple Street, tax map 29117, MHDR District with the following condition:

- 1. Subject to be completed within 1 year or variance shall be void.**

Seconded by: Ms. Cormier.

Vote:

Mr. Lunetta: Yes,
Ms. Cormier: Yes.
Mr. Dimmock: Yes.
Mr. Fairbanks: Yes.
Mr. Virr: Yes.

The application was granted by a vote of 5-0-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

It was noted that Mr. Chaloux would sit for the following 2 cases

08-107 Adam Mead
 Owner: Ronald F. Mead

Variance to the terms of Article VI, Section 165-32A, Article XII, Section 165-103E, to allow erection of a billboard sign at 230 Rockingham Road, tax map 03035-001, GC DISTRICT.

Mr. Virr asked if these cases could be heard together but voted on separately as they are similar in nature. Mr. Mead said that would be fine.

Adam Mead, applicant, presented the Board with a packet of information outlining his proposal. He reviewed his application for the Board.

Mr. Chaloux asked if on page 6 of his packet was where the building had just burnt down and where the proposed sign would be located with regard to the structure that had just burnt. Mr. Mead said yes and that the bill board would be located at 230 Rockingham Road. He said that he was proposing a V-type structure as shown in exhibit 2 and page 10 of his information packet shows other types of signs found on the internet. He said that the sign would be set back 25' and did not felt that it would interfere with other businesses in the area.

Mr. Fairbanks said that the applicant had stated that the ordinance did not recognize this type of structure. He did however see where it was applicable to assume that the ordinance applied.

Ms. Cormier said that she feels that where the ordinance did not state the use of billboards that the Planning Board may need to go back and review the ordinance.

Ronald Mead, owner, said that the property was located in the General Commercial zone where he believed everything was an allowed use.

Ms Cormier asked if the setbacks of 35' would still be required to be met. Mr. Mackey said that he believed that would be correct and with regard to Mr. Fairbank's question the section in the ordinance is headed "Signs and Billboards" and that the State interprets a billboard as an off premises sign with a different set of rules.

Ms. Cormier asked if the sign was proposed to be in or out of the right-of-way. Mr. Mead said that the sign would be located on the property.

Mr. Virr asked if the V-type sign was being proposed for both properties. Mr. Mead said yes and that there was approximately 600' of frontage on opposite sides of the road.

Mr. Mackey gave a brief description of where the property was located on Rockingham Road for the Board.

Ms. Cormier said that this was a use variance application but does not go into any details of Simplex case and needs to meet the Simplex test. She reviewed the Simplex requirements for the Board.

Mr. Mead said that he was seeking a variance to the sign ordinance as there were no guidelines to go by in the ordinance. He said that he designed his signs to fit the State guidelines and was told by Mr. Mackey that a variance would be required.

Mr. Virr said that he felt that Planning Board approval would need to be required if seeking to put up a billboard.

Ms. Cormier reviewed the Attorney dissertation for the Board. She asked if there were plans to have an office at either of the locations. Mr. Mead said that he would be renting space at one of the sites for an office.

Ms. Cormier asked if there would be an office located at 230 Rockingham Road. Mr. Mead said that he would possibly have an office at either property.

Ms. Cormier asked how the Board could be assured that only Derry businesses would be advertising on the billboards. Mr. Mead said that he did not want to restrict the use of the billboards to just Derry businesses. He said that he wished to work with the Derry Economic Development Committee so as to give Derry businesses first option to rent space with a possible discount. He said that he felt that Derry businesses would also benefit from other Town businesses advertising in Derry. No abutters were present.

Code Enforcement

Mr. Mackey said that the applicant is seeking a variance to install a billboard sign on private property located at 247 Rockingham Road on a State maintained (Class II) highway located in the General Commercial District. When I was originally contacted by the applicant regarding his proposal, I researched the Zoning Ordinance with regard to billboard signs. A review of the sign provisions of the ordinance indicated that although Article XII is entitled "Signs and Billboards" it deals with "on-premise" signs, meaning signs associated with a business located on the property. I also reviewed the State DOT regulations concerning the erection of billboard signs as the State have extensive rules dealing with these signs ("Off-Premise") when located along a State highway. It was unclear to me which regulation (Town or State) would take precedence so I requested a legal opinion (copy enclosed) from Attorney Clark. It should be noted that there are a couple of existing billboard type signs in this

general area that have been there for many years. It is unclear from our records how they came into existence so I would consider them as pre-existing, non-conforming uses. The State regulations permit a much larger (750 sq. ft.) sign face than our local zoning regulations and also set limits on location, height, etc. In addition, a state permit is required which must be renewed on a yearly basis. You have a copy of Attorney Clark's opinion indicating that the more restrictive Town regulations (100 sq. ft. max) take precedence. Also at issue is whether this is a permitted use. Again, billboards are not specifically addressed in the Zoning Ordinance and are not listed as a specific permitted use in any zoning district. Since our ordinance is a "permissive" use ordinance and since this cannot be considered as "accessory use," a variance is required. The applicant has applied for a variance to allow this use on the property and also to the size provisions permitted in the Zoning Ordinance. All other Town and State requirements must be complied with. I have a copy of the State regulations should the Board wish to review them. If approved, the applicant would be required to go to the Planning Board for site plan review as this use would constitute a separate business on the property. There are pictures of the general location and area of Rockingham Road in the file as well as a couple of pictures for the Board's review.

Ms. Cormier read a letter from Sheldon Woolf for the record in opposition of the request.

Deliberative Session

Mr. Lunetta said that he was uncomfortable with approving the request. He said that the New Hampshire State Highways did not approve billboards along the highways.

Mr. Virr said that the business was a sign rental and wanted to know what the tax status would be on such a use.

Mr. Mackey said that the property at 230 Rockingham Road currently has a model home located on it and the property located at 247 Rockingham Road has a home and a trucking business located in the rear of the property.

Mr. Lunetta reviewed the requirements for the Board.

Mr. Chaloux said that Mr. Mackey had stated that there were no guidelines so he referred the applicant to the Board but if there are no guidelines to go by he questioned how the Board could deny if there were no guidelines. He said that he traveled Route 28 often and that there were a lot of billboards along the roadway.

Ms. Cormier said that it appeared that they may have to put it at the 35' setback. She said that she did not know when the other billboards were installed along the road and questioned to whether the Board wished to continue this type of activity or if this would be inviting more of this type of use.

Ms. Cormier said that the Planning Board writes the ordinance and that the Zoning Board interprets the ordinance but there is nothing written in the ordinance that pertains to this type of use and believe that the Planning Board would need to review the matter.

Mr. Dimmock said he feels that this matter needs to be referred to the Planning Board for approval. He believes that the Board has no recourse but to deny the application and refer to the Planning Board for review as there were no guidelines to go by and if granted would be setting precedence.

There was some discussion with regard to allowed uses.

Mr. Lunetta motioned on case #08-107, Adam Mead, Owner: Ronald F. Mead to Grant a Variance to the terms of Article VI, Section 165-32A, Article XII, Section 165-103E, to allow erection of a billboard sign at 230 Rockingham Road, tax map 03035-001, GC DISTRICT

Seconded by Mr. Dimmock.

Vote:

Mr. Chaloux: No. Feel that the signs and billboard section of the ordinance needs to be reviewed by the Planning Board.

Mr. Dimmock: No. Do not believe the Board is in the position to write the zoning ordinance. Believe this matter needs to be referred to the Planning Board for review of the sign and billboard ordinance.

Ms. Cormier: No. Believe would be in contrary to the public interest and would cause harm to surrounding areas. No special conditions exist and believe it would diminish surrounding property values as size request is very large. No hardship has been presented and no unique settings have been presented.

Mr. Lunetta: No. Do not believe the Board is in the position to interpret this type of use and that the applicant should pursue the matter further with the Planning Board.

Mr. Virr: No. Not convinced that it would not harm surrounding areas.

The application was denied by a vote of 0-5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

**08-108 Adam Mead
 Owner: Martha Mead**

Variance to the terms of Article VI, Section 165-32A, Article XII, Section 165-103E, to allow erection of a billboard sign at 247 Rockingham Road, tax map 03036-002, GC DISTRICT.

Mr. Virr asked if the applicant wished to proceed with the case or withdraw the case. Mr. Mead said that he wished to proceed with the case so he would be able to pursue the matter.

Ms. Cormier said that if the case was withdrawn he could resubmit after the Planning Board has reviewed the ordinance.

Mr. Virr asked if there were any changes with regard to this property than the previous case. Mr. Mead said he felt that a well placed bill board would benefit Derry and would provide another medium to businesses to advertise within the area. He felt that the area is a great location for businesses to advertise their businesses and promote additional business within the Town.

Mr. Lunetta said that he commended the diligence of homework that the applicant has done and if the request is not approved then he did not recommend that the applicant give up but to pursue the matter with the Planning Board to have them review the ordinance.

Mr. Mead asked if it would be available to go by the State guidelines.

Mr. Lunetta said that the Town guidelines are more stringent and would need to adhere to the Town guidelines. He felt that the request did fall under 2 different guidelines one with the State and the other with the Town, however, the Board was required to follow Town guidelines and there was not much to interpret and that the Board was unable to assist with the request at this time.

Mr. Mead said that he believed that there was an opportunity for advertising and feels that this would be a good addition for Derry.

Mr. Dimmock said that the Board was not in a position of being able to write an ordinance and feels that this needs to be pursued with the Planning Board and have them write an ordinance that speaks with billboard requirements. He said that the applicant should pursue the matter with the Planning Board and present the case to the Board as feels that this needs to be presented to the right Board. Mr. Mead said that he was referred to this Board by Mr. Mackey.

Mr. Fairbanks said that he has read the ordinance several times and feels that this ordinance did not speak to this request in any way and did not see how the Board could make a decision on this type of use.

Mr. Mackey said that the zoning ordinance was a "permissive ordinance"

There was some discussion with regard to use and requirements for billboards.

Deliberative Session

Mr. Lunetta reviewed the 2 articles for the Board. He said that the applicant was seeking a variance request to a section of the ordinance that is to vague for the Board to interpret. He said that he felt that the section should be reviewed by the Planning Board.

Mr. Dimmock motioned on case #08-108, Adam Mead, Owner: Martha Mead to Grant a Variance to the terms of Article VI, Section 165-32A, Article XII, Section 165-103E, to allow erection of a billboard sign at 247 Rockingham Road, tax map 03036-002, GC DISTRICT.

Seconded by Mr. Lunetta.

Vote:

- Mr. Lunetta:** No. Do not believe that the Board can allow based on the current ordinance.
- Mr. Chaloux:** No. Same reasons as stipulated.
- Mr. Dimmock:** No. No guidelines in the ordinance to go by and feel the Planning Board should review the ordinance.
- Ms. Cormier:** No. Do not feel that it is in the best interest of the public. Owner has reasonable use of the property. The zoning ordinance does not allow this type of particular type of business use.
- Mr. Virr:** No. Same reasons as stated by Ms. Cormier. No hardship has been shown and feel that the Planning Board needs to be review the billboard ordinance.

The application was denied by a vote of 0-5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that the recourse would be to appeal to Superior Court.

Property Portfolio

Request Rehearing of Case #08-104, which was to Appeal the Decision of the Code Enforcement Officer in refusal to take action to require the installation of a residential buffer zone at 32 West Broadway, tax map 29195, CBD DISTRICT.

Mr. Dimmock said that he had requested that had been rescued from the meeting.

Mr. Mackey said that he had spoken with Brenda Keith with regard to whether original members had to be the only ones that reviewed the request and it was determined that it did not have to be the original voting members to decide on the request for a rehearing.

Mr. Virr said that the following members would review the request, Mr. Osborn, Mr. Fairbanks, Ms. Cormier and Mr. Lunetta. He briefly summarized the previous meetings for the members.

Mr. Lunetta said that the applicant's property was currently paved up to the property line. He thought that there had to be new evidence presented in order to grant a rehearing request and he did not see any new evidence submitted to warrant this request.

Mr. Virr said that he feels that the Board had voted right the first time and no mistake of law had been made.

Ms. Cormier said that she felt that the Board did not have jurisdiction in this matter.

Mr. Mackey said that there was a private civil case with the former owners which now an intervener from the Bank has appealed and is still pending legal action. There has been a

Planning Board case and a Zoning Board case that has gone to Supreme Court and the Town has been upheld on both cases.

Mr. Virr said that Property Portfolio Group had sent a letter to Mr. Mackey 3 years after to request to install a buffer. He felt that the board did not have jurisdiction in this matter.

There was some discussion with regard to jurisdiction.

Ms. Cormier motioned to Grant a Request Rehearing of Case #08-104, Property Portfolio, which was to Appeal the Decision of the Code Enforcement Officer in refusal to take action to require the installation of a residential buffer zone at 32 West Broadway, tax map 29195, CBD DISTRICT.

Seconded by Mr. Lunetta.

Vote:

Mr. Fairbanks:	No.
Ms. Cormier:	No.
Mr. Lunetta:	No.
Mr. Osborn:	No.
Mr. Virr:	No. Same reasons that have been discussed. Feel that the Board lacks jurisdiction in the matter. Feels the Board has made no mistake of law had been made.

The Rehearing Request was denied by a vote of 0-5-0. Recourse would be to appeal to Superior Court.

Approval of Minutes

Mr. Lunetta motioned to approve the minutes of March 20, 2008 as written.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Lunetta, Mr. Dimmock, Mr. Virr.

Correspondence

Letter from Boutin & Altieri, P.L.L.C regarding JS Office Space

Letter from Jeff & Stephanie Hooton, 14 ½ Windham Depot Road regarding Case #07-222 - 14 Windham Depot Road, Equitable Waiver.

Office of Energy Planning – April 26, 2008 in Manchester, NH

Adjourn

Motion to adjourn by Mr. Lunetta.

Seconded by Mr. Dimmock.

Vote: Unanimous.

Mr. Fairbanks, Mr. Chaloux, Mr. Osborn Mr. Dimmock, Ms. Cormier, Mr. Lunetta, Mr. Virr,

Adjourn at 10:10 pm

Minutes transcribed by:

Ginny Rioux

Recording Clerk

Approval of Minutes on May 15, 2008

Mr. Dimmock motioned to approve the minutes of April 3, 2008 as amended.

Seconded by Mr. Lunetta.

Vote: Unanimous.

Mr. Fairbanks, Mr. Osborn, Mr. Chaloux, Mr. Lunetta, Mr. Dimmock, Mr. Virr.