TOWN OF TILTON
ZONING BOARD OF ADJUSTMENT
OCTOBER 17, 2006

MEMBERS PRESENT:

Chairman Norm Boudreau
Center Sanders
Vici Virgin
Foster Peverly, Vice-Chair
Calvin Brown
Sandy Plessner, alternate

OTHERS PRESENT:

Jennie Partridge
Don & Ruby Lucier
Amy D'Abbraccio
Mark Merwin
Jerry & Maureen Davis
Joe Plessner
Bob Partridge
Susan Hare
Michele Merwin
Justin Merwin
Tim Mahoney

AGENDA:

7:00 PM Call to order
Review minutes of September 19, 2006
Correspondence and any other business

7:05 PM Continuation of Case ZBA#06-03-area variance for Robert & Kathy Partridge.

7:45 PM Continuation of Case #ZBA06-09 for an area variance for Bamford Brook Properties, LLC.

8:10 PM Case ZBA#06-10 for a use variance for the Powers Family Realty Trust. Applicant is seeking a use variance to Article VI, Section A-3 of the zoning regulations to permit a third apartment in a zoning district that permits single family residence only. Property is located at 162 Calef Hill Road, Tilton, NH 03276. Tax Map R-15 Lot 6A in the Rural Agricultural District.

8:30 PM Case #ZBA06-11 for an area variance for Mark & Michele Merwin. Applicant is seeking an area variance to Article 7, Table of Dimensional Values, setbacks as structure is encroaching into the setbacks. Property is located at 4 West Street, Tilton, NH 03276. Tax Map U-5 Lot 62 in the Village Residential District.

MEETING:

7:00 PM Call to order. Board members spent a few minutes discussing the meeting with Attorney Mark Puffer on September 26th and the changes the Board would institute regarding his recommendations. One change is the Board will no longer fill out variance
Minutes from September 19 will be considered for approval at the November meeting.

CORRESPONDENCE:

1. Continued discussion on a letter received from Donald & Linda Doucette regarding a decision for Barbara Baysinger-Guercio’s porch. Board members received a letter for September’s meeting but wanted to tour the site so they could see what Mr. Doucette was writing about.

2. Letter dated 10/10/06 from Michael Dalessio to the Zoning Board regarding a case that would be heard this evening.

3. Letter dated 10/11/06 from the Land Use office to the Delessio family regarding the letter they had sent.

7:05 PM Continuation of Case #ZBA06-03 for an area variance for Robert Partridge.

Chairman Boudreau asked if there were any disqualifications. Sandy Plessner and Calvin Brown excused themselves.

Chairman Boudreau explained to Mr. & Mrs. Partridge that there were only four members left and it was Mr. Partridge’s right to have his case heard by a full Board of 5. Mr. Partridge chose to have his case heard by the four members.

Mr. Partridge went over his plans which showed a boundary line adjustment with the Riberty lot. The Riberty lot, after a boundary line adjustment would have 2.082 acres, the front lot (Partridge house lot) would have 1.239 acres and the proposed new lot would have 1.01 acres.

7:10 PM Open to public comment.

Ruby Lucier asked to see the plans and to see where the proposed lot would be in relation to her lot and was shown.

Sandy Plessner asked how wide the easement was and was told it was 50 feet. The Riberty lot and the proposed lot would share a driveway.

7:20 PM Close to public comment.

Center Sanders asked Mr. Partridge to address the hardship criteria. Mr. Partridge had addressed all the criteria at a previous meeting. Mr. Partridge stated he felt the proposed lot would enhance the area as the lots around the proposed lot were smaller and he felt it would be a hardship to him as this was a reasonable use of his property. Mr.
Partridge also made reference to a cluster development that had been approved behind the Riberty property but Mr. Sanders explained open land was being set aside that would never be built on in exchange for smaller lots and that cluster development was a permitted use.

Hearing no further comments, Foster Peverly made a motion to grant the area variance for case #ZBA06-03 because he felt the application met the criteria for a variance. Chairman Boudreau seconded the motion. No further discussion. Voting in favor were Chairman Boudreau, Foster Peverly, Calvin Brown and Vici Virgin. Voting against was Center Sanders. Motion carried.

Mr. Partridge asked what he needed to do next and was told he would have to do a subdivision/boundary line adjustment with the Planning Board. Mr. Partridge was asked to furnish a copy of his new plan for the town’s records. Mr. Partridge agreed to do so.

Having time between cases, Board members discussed Mr. Doucette’s letter asking the Board to comment on the conditions of approval for a case for Barbara Baysinger Guercio’s porch which had been constructed without a permit by the previous owner. Board members had received the letter at their September meeting but took the time to go to the site to see the finished structure before commenting on it. Board members asked Joe Plessner, the building inspector and code enforcement officer for his comments. Mr. Plessner told the Board he had gone out to inspect and found panels made out of plywood that had storm window glass sections placed in the panels and the whole panel was attached to the porch posts. Mr. Plessner stated he felt it was in compliance as the panel units were not permanent, the glass kept the weather out and there was no insulation, heat or electricity. Mr. Plessner stated that it was his opinion that what Ms. Guerico had was not a three season room which was in keeping with the ZBA decision.

After much discussion concerning the conditions of approval that included, “Structure to remain a screened porch that can be repaired but no windows or insulation or heat can be added. If desired, panels can be designed to keep out the inclement weather.” Chairman Boudreau stated he felt Ms. Guerico had complied; Foster Peverly stated he felt Ms. Guerico had complied with the Board’s decision as did Vici Virgin.

Center Sanders made a motion stating he felt Ms. Guercio seemed to have complied with the intent of the Board’s ruling which was not to make the porch a 12 month living space. Mr. Sanders continued by saying there is no heat, no insulation and no electric service on the porch. Chairman Boudreau asked if that was Mr. Sanders motion and he said it was. Foster Peverly seconded the motion. No further discussion. Motion carried. Chairman Boudreau asked that a letter be sent to the Doucett’s.

7:55 PM Continuation of Case #ZBA06-06 for Bamford Brook Properties for an area variance. Sandy Plessner told the Board she had received letters from Ideal Homes and attorney Regina Nadeau asking for a continuation for this case as they were waiting to receive new information to bring to the Board. After a brief discussion, Chairman Boudreau made a motion to continue Case #ZBA06-06 until November 21, 2006 at 7:05
PM. Vici Virgin seconded the motion. No further discussion. Chairman Boudreau, Vici Virgin, Center Sanders and Calvin Brown voted in favor; Foster Peverly abstained. Motion carried.

8:10 PM  Case #ZBA06-10 for a use variance for the Powers Family Trust.

Hearing no disqualifications, the Chairman asked the applicant to begin. Susan Hare, abutter, told the Board the original buyer for the property was the one that wanted the variance as the third apartment in the barn was not approved to be there but she did not need the third apartment and did not need the variance. Chairman Boudreau stated it sounded like Ms. Hare was saying she wanted to withdraw the application and wanted to know who was actually representing the owner of the property. Ms. Hare gave the Board a letter from the owner of the property. Chairman Boudreau read the letter into the record. It said, “I Lorraine Powers, give Susan Hare or her representative, permission to come before the Board and discuss the barn located at 162 Calef Hill Road.” Chairman Boudreau and Vici Virgin both stated Ms. Hare always had the right to discuss the barn but the letter did not give Ms. Hare the authorization to act on Ms. Power’s behalf. After much discussion, Chairman Boudreau made a motion to continue Case #ZBA06-10 until November 21, 2006 at 7:35 PM to allow the owner time to send a proper letter of authorization. Center Sanders seconded the motion. No further discussion. Motion carried.

Ms. Hare stated she wasn’t going to use the third apartment so she didn’t need the variance approval. Chairman Boudreau explained to Ms. Hare that only Ms. Powers could withdraw as she had not legally given Ms. Hare authorization to represent her at the meeting.

Ms. Plessner told Ms. Hare if the case was withdrawn, Ms. Hare should speak with the fire inspector about the violations in the buildings that needed to be addressed. Ms. Plessner stated she had given Ms. Hare a copy of the fire department’s letter discussing the items that needed to be addressed and that the fire department had jurisdiction over multi-family structures. Ms. Hare stated she would contact the fire department.

8:30 PM  Case #ZBA06-11 for an area variance for Mark & Michele Merwin.

Hearing no disqualifications, Chairman Boudreau asked the applicant to begin.

Mr. Merwin stated the deck frame had been up for three years and was recently finished. Mr. Merwin stated he had also built a railing on a concrete embankment for safety reasons as there was a drop off and Mr. Merwin stated the railing kept people from falling down the concrete embankment.

Joe Plessner stated the deck was put up without a permit and an abutter raised the question about the fact that the deck was built into the setback area. Mr. Plessner showed the area in the photos and what represented the property line. Mr. Plessner stated the
setbacks were 20 feet in that area of town and the abutter had a legitimate gripe as the structure was in the setback area. Mr. Plessner stated Mr. Merwin should have gotten a variance to begin with but did not. Mr. Plessner stated he could have taken the position of telling the Merwin’s they would have to tear the deck down but wanted to give the Merwin’s the opportunity to see if they could get a variance for the deck. Mr. Plessner stated he felt the safety issue was justification in his mind for the railings and the area of the deck that was in the setback area. Mr. Plessner stated the area has a lot of properties that violate the setbacks as the area was developed long before the setbacks were created. Mr. Plessner added the house next to the Merwin’s was only two feet from the property line.

The Merwin’s responses to the criteria for a use variance were:

1. The proposed use would not diminish surrounding property values because:
   a. Most properties have the same conditions existing as our property.

2. Granting the variance would be of benefit to the public interest because:
   a. Safety factor relevant to a seven foot drop off behind the driveway.

3. Special conditions exist such that literal enforcement of the ordinance may result in unnecessary hardship. An area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property.
   a. A lot of homes in the area encroach into the setbacks.

   The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
   a. Compliance could be obtained by separating the deck from the house and it could be an accessory structure, which would be allowed in the setbacks but would weaken the overall structure.

4. Granting the variance would do substantial justice because:
   a. It would allow us to protect our children and pets and any other visitors to the property.

5. The use or proposed use is not contrary to the spirit of the ordinance because:
   a. It serves a valid safety purpose.
We received the abutters notice regarding an area variance for property at 4 West Street. Where the applicant is seeking an area variance to Article 7 Table of Dimensional Values, setbacks as structure is encroaching into setbacks.

I would like you to explain how an application for an area variance can be brought to the board after a structure has already been constructed. Doesn’t a variance request and scheduled area variance meeting come prior to any construction and issuance of building permits?

I have read Chapter 676:15 of the Administration and Enforcement Procedures. It is my understanding of State Law that a violations of a State Building Code is not only punishable by a fine but the structure involved must be removed before any further procedure can ensue. It appears to me that a local ordinance and State Code has been violated. I am attaching a copy of the Chapter 676:15 for your convenience.

I look forward to hearing from you prior to the October 17th 2006 zoning meeting.

Best regards,

Michael Dalessio
6 West Street
Tilton, NH 03276”

Chairman Boudreau also read a letter from the Town in response to Mr. Dalessio’s letter. It read,

“Dear Mr. Dalessio,

Thank you for your letter inquiring about the zoning procedures for meetings in town. In response to your question as to how a variance request can be brought to the Board after the fact: let me say it has always been the policy of our town to be fair and give our citizens the benefit of doubt by allowing them to see if they can obtain the needed variance instead of being hard nosed and forcing something to be removed before knowing whether or not they can get an approval. The town realizes that mistakes do happen. Wouldn’t you like to think you would be given an opportunity to try and correct things the best way you could rather than have the town take such a ridged position when it might not be necessary?

You can attend the Zoning meeting, as is your right, and be part of the process by letting your feelings be known during the public input. If, after the meeting is completed, you still feel you have been specially damaged by your neighbor, you can take your case to superior court.

Chairman Boudreau does not work here at the town hall but does come in for the meetings. I will be sure to place your letter in the zoning correspondence file for the Board to read.

If you have any questions, please feel free to call 286-7817.

Sincerely,”

Jerry and Maureen Davis, abutters, stated the Merwin home use to be in their family and years ago there was a large porch on the house that was torn down and a deck was added.
Center Sanders asked if the deck covered about the same area as the porch and Mr. Davis replied he felt it did. Mr. Davis finished by saying he thought the deck looked nice and he did not mind it being there.

Tim Mahoney, abutter stated there was a deck there before and the Merwin’s replaced it and generally improved the property and house. Mr. Mahoney added the Merwin’s had not brought anyone’s property values down as they had improved their property.

8:40 PM Close to public comment.

Calvin Brown stated that he felt, based on the abutters comments, that the new deck occupied the same area as the original porch and that part of the reason for rebuilding was for safety reasons.

Center Sanders stated all the abutters present were agreeable to the deck and the area, in general, is about the same as the applicant’s as far as buildings occupying some of the setback area. Other Board members agreed.

Hearing no further discussion, Center Sanders made a motion to grant the area variance as he felt the criteria for an area variance had been met including the safety aspect and the character of the neighborhood being primarily comprised of small lots with many of the homes already encroaching into their setbacks. Vici Virgin seconded the motion. No further discussion. Motion carried.

9:00 PM Meeting adjourned.

Minutes prepared by,
Sandy Plessner