

*These minutes were approved at the April 12, 2022 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, February 8, 2022 at 7:00 p.m.  
Town Council Chambers, Town Hall  
8 Newmarket Road, Durham, NH  
MINUTES**

**MEMBERS PRESENT:** Chris Sterndale, Chair  
Micah Warnock, Vice Chair  
Mark Morong, Secretary  
Neil Niman  
Alex Talcott (Remote)  
Leslie Schwartz, Alternate

**OTHERS PRESENT:** Audrey Cline, Zoning Administrator (Remote)

**I. Call to Order**

Chair Sterndale called the meeting to order at 7:00pm.

**II. Roll Call**

The roll call was taken. All Board members were present, Leslie Schwartz did not need to serve as alternate.

Alex Talcott stated his reason for remote attendance was being at the National Association of Home Builders show.

**V. Approval of Agenda**

No other business to add.

**V. Public Hearings:**

- A. **PUBLIC HEARING** on a petition submitted by Emily & Dale Braile, Durham, New Hampshire, for an **APPLICATION FOR SPECIAL EXCEPTION** in accordance with Article XX, Section 175-109(B)(4) of the Durham Zoning Ordinance to renovate a shed into a studio with heat. The property involved is shown on Tax Map 17, Lot 47-4, is located at 6 Falls Way, and is in the Rural Zoning District.

Emily Braile stated they'd like to renovate an accessory shed into a structure with heat for extra room, office space, etc.

Chair Sterndale asked Ms. Braile to speak to the variance criteria.

Ms. Braile explained the shed is pre-existing and all the renovations would be interior. They will not be adding to the exterior so the size won't change, and nothing visually will change

to impact the layout of the neighborhood. Ms. Braile said they want to install a wood stove for heat and no chemicals will be involved, just wood smoke.

Chair Sterndale asked about the intent of use and Ms. Braile replied the studio would be used for work and film editing. She said there will be no plumbing.

Chair Sterndale asked what was on the other side of the property line, and Ms. Braile said the neighbors, the Buchholz, are approximately 50-60 feet away in a single-family home.

Ms. Schwartz asked Code Enforcement Officer Audrey Cline if there were any safety concerns. Ms. Cline asked about electricity, which Ms. Braile said there was none, and asked if they could put in a battery-operated carbon monoxide detector. Ms. Braile agreed.

When asked about electricity, Ms. Braile said she is not putting in electricity right now and will be using a camping battery.

Mr. Talcott asked if they could add electricity later without a permit and Ms. Cline said they will need a permit, but it won't require any special approval.

Chair Sterndale confirmed with Ms. Braile that the studio will not be used as a living space.

There were no further comments from the Board or the public.

***Neil Niman MOVED to close the Public Hearing. Micah Warnock SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.***

Micah Warnock, Neil Niman, and Mark Morong all voiced they were fine with the proposal.

Chair Sterndale was also in support and asked Ms. Cline if it was necessary to send a note to the planning board for a studio without plumbing. She said to continue as is with heat and plumbing.

***Micah Warnock made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Emily & Dale Braile, Durham, New Hampshire, for an APPLICATION FOR SPECIAL EXCEPTION in accordance with Article XX, Section 175-109(B)(4) of the Durham Zoning Ordinance to renovate a shed into a studio with heat. Mark Morong SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.***

- B. **PUBLIC HEARING** on a petition submitted by Todd & Renee Allen, Durham, New Hampshire, for an **APPLICATION FOR SPECIAL EXCEPTION** in accordance with Article XX, Section 175-109(M)(2) of the Durham Zoning Ordinance to have an Air BNB short-term rental within the residence. The property involved is shown on Tax Map 6, Lot 4-19, is located at 28 Garden Lane, and is in the Residence A Zoning District.

The Allen's were in remote attendance and were asked to speak to the special exception criteria. Renee Allen said they are looking to fill a couple of bedrooms on the first floor of their home on a very part-time basis, potentially as a place for people to stay during sporting events, graduation and while visiting UNH. Ms. Allen said having the rental will not change the character of the house and there will be no additional vehicles than they've had in the past. She felt the rental could benefit the community as a whole. Ms. Allen said they'd be accommodating 2-4 people, including children, and that their location offers a walkable and bikeable option reducing the carbon footprint. She said house rules will be enforced and no parties will be tolerated, including drugs and alcohol, which speaks to the safety of the community.

Leslie Schwartz asked if they would be listing the rental with Air BNB or through another means, to which Ms. Allen confirmed they will use the Air BNB platform.

Audrey Cline asked about the existence of a backyard fire pit. Ms. Allen said they had one in the past, but they've since gotten rid of it.

Chair Sterndale asked if they were aware of all the town's short-term rental regulations. Ms. Allen confirmed that she was aware, they'd always be present in the home while renting a room, and they welcome the inspections.

A note of support was sent in by The Miles at 5 Hoyt which is up the street from the Allen's.

Ms. Schwartz pointed out in the application packet an acknowledgement of familiarity and agreement with the conditions in the zoning ordinance.

There were no further comments from the Board or the public.

***Micah Warnock MOVED to close the Public Hearing. Neil Niman SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.***

Board members felt this case was straightforward and easy to monitor and enforce with the short-term rental rules that are already in place.

***Neil Niman made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Todd & Renee Allen, Durham, New Hampshire, for an APPLICATION FOR SPECIAL EXCEPTION in accordance with Article XX, Section 175-109(M)(2) of the Durham Zoning Ordinance to have a short-term rental within the residence. Alex Talcott SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.***

- C. **PUBLIC HEARING** on a petition submitted by Berry Surveying & Engineering, Barrington, NH, on behalf of the Pike Family Rev Trust, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to create a sideyard setback of less than 50 feet through the process of

subdivision. The property involved is shown on Tax Map 14, Lot 10-2, is located at 279 Packers Falls Road, and is in the Rural Zoning District.

Christopher Berry a principal member of Berry Surveying & Engineering of Barrington represented South-East Land Trust (SELT) and Ms. Pike. He stated the proposal is to subdivide a property in the corner of Packers Falls Road using an ordinance called The Pork Chop lot subdivision. Using a map, he pointed out the properties affected on the project site and explained the proposal of a lot line revision to shorten an existing lot and abutting lot, to modify parcel lines of a property, subdivide a 3-acre piece with an existing structure, and make a lot using the Pork Chop Ordinance to create 35 acres of land. The new subdivision line would make the existing structure's sideline setback from the front of the lot less than 50 ft., therefore requiring a zoning variance.

Mr. Berry also stated that the larger section abuts the forest land that is owned by the town of Durham and eased by SELT, and the town planner pointed out that this property is also on a similar track for future use.

Regarding potential access to the 35 acres through the Pork Chop neck, Code Enforcement Officer Audrey Cline pointed out that the easement was oddly shaped and may not provide the best access to the neck in the future. Mr. Berry explained that in a discussion with the Technical Review Committee (TRC) if a future access to the 35 acres is required against the 50 ft. neck, the existing driveway adjacent to the current house could be slightly modified to provide a "Y" configuration with access to both properties.

Mr. Berry also spoke about a discussion he had with TRC regarding trails that access a roadway to Durham's public water supply system adjacent to the property. He said in the future this access would not likely be necessary given the restrictions that would be placed on the remaining 35 acres.

Regarding the water supply access, Chair Sterndale confirmed with Mr. Berry that the intent is for the entire newly created Pork Chop piece to be encumbered by an easement. Chair Sterndale asked if the wetlands would make it difficult for development of driveways to which Mr. Berry replied it would require a wetlands permit but it wouldn't be insurmountable.

Neil Niman wondered why they aren't going to make the property with an existing house conformable and do a variance on the 36-acre parcel. Audrey Cline had the same question.

Mr. Berry explained there are other approaches to the land, but they are proposing the conforming Pork Chop lot with a 50 ft. variance and while they could have asked for a lesser variance it would have a narrower neck. He also pointed out that the abutting lands are essentially non-developable, and you can't put a structure at the neck. Mr. Niman was concerned that a future property owner of the home would then have a non-conforming lot that would require board approval for future changes. Mr. Berry replied that they aren't creating a scenario of non-conformity because the home in its existing form is already non-conforming. Ms. Cline said her understanding is the funding agency for the conservation

piece needs a conforming lot for the funding and that's why it wouldn't be done another way. Duane Hyde, Land Conservation Director for SELT, confirmed the project is largely driven by funding from various federal agencies and they need to create a conforming lot for appraisal purposes. He also stated that regarding the existing house any changes within the setback would not require approval unless they further encroach into the 50 ft. setback.

There were no further comments from the Board.

Chair Sterndale asked Mr. Berry to speak to the variance.

An overview of the variance criteria by Mr. Berry is as follows: Granting the variance would create rural spaces in a rural zone that doesn't change the rural character of Packers Falls Road, thus preserving the public interest. The spirit of the ordinance is to create a scenic vista in a rural zone and this project would amplify and enhance that into the future, while the nonconforming lot does not undermine that. He stated the benefit is clear in that it would create one large lot that would be preserved and conserved. Mr. Berry said the values of surrounding properties would not be diminished and the variance necessary to create the neck will take development off the roadway. He said the lot is special in that it contains a structure prior to 1888 and there is no need to remove the structure to create the Pork Chop lot. It is believed that removing the structure would be a hardship and Mr. Berry pointed out that the lot doesn't permit the strip to be created in another part of the lot. He said the location is special in other various ways, such as water frontage along the river, and a sideline variance that could ensure conservation efforts. He said the variance will create a line that does not change anything about the abutting piece of property and the Pork Chop's 50 ft. neck allows the flexibility of other matters in the zoning. Mr. Berry concluded saying it is reasonable to think that these subdivisions are preferred over others, such as road construction or removing existing structures, to create buildable areas.

There were no questions from the Board about the criteria.

Chris Skoglund, the abutter at 283 Packers Falls Rd located next to the Pork Chop portion, spoke in support of the project seeing an upside to granting the variance. He believed it's a uniquely valuable property that should be set aside and conserved. He stated it allows an existing structure that has not been inhabited to be upgraded and made beautiful and he welcomed the improvement. He pointed out that the houses does not comply with the 50 ft. compliance since they were built prior to regulations. Mr. Skoglund believed the overall neighborhood would improve and favored the prospect of another family moving into the uninhabited house. He spoke to the wetland portion of his property where it is wet all the time and felt having a large parcel of land set aside would welcome the opportunity to use the Thompson land with a longer stretch of property.

Chair Sterndale asked if Mr. Skoglund was comfortable with the risk that if the easement didn't happen something else could be developed on the parcel. He explained it's a scenario that needs to be considered since easements can fall apart and it could result in a house lot with a driveway next to him. Mr. Skoglund didn't favor this situation but understood the risk.

Michael Behrendt, the Durham Town Planner, stated he was speaking in favor as the planner and not for the town. He said there's a lot going on with this proposal, including working with conservation projects, the owner, half a dozen funders to satisfy different demands, the planning board for a lot adjustment and the ZBA for the variance.

Mr. Behrendt spoke to the variance criteria. He stated the variance will allow the project to go forward with significant public value since the 35 acres will become valuable conservation land, as well as have the ecological value presented by SELT. It will create a larger block of land with the existing Thompson land and help protect the town's water supply. He explained the purpose of a Pork Chop subdivision is having a large parcel of land with good acreage that does not have a lot of frontage, and this situation highlights the unfair position of having 3.5 acres that is unable to be subdivided. Mr. Behrendt pointed out that the 50 ft. variance gives flexibility for a driveway, utilities, and a drainage ditch. He said if someone was not able to subdivide and get a variance, it wouldn't be fair to not get a second lot out of 40 acres. Mr. Behrendt felt the values of surrounding properties are not diminished and whoever does buy the lot with the setback will know the situation, the conservation land and have an option of putting in a driveway. He pointed out that Mr. Skoglund, an abutting neighbor, doesn't object and furthermore, the conservation land will enhance their properties. He stated it's a unique situation, it meets the requirement of a Pork Chop lot, and all those factors set it up for it for the type of variance that it's intended for.

Bonny Pike, the owner of the two properties, says she would like to proceed to keep the land clear and pure, and to allow it to be used by people.

Regarding the risk scenario, Mr. Hyde said this property is under agreement and he has secured most of the funding and has yet to have a project fall through and not proceed to closing while under agreement.

Chair Sterndale asked whether the applicant would be willing to ask for the variance under the condition that it be in conservation. They said they could not do that due to the funding sources.

***Micah Warnock MOVED to close the Public Hearing. Neil Niman SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.***

Alex Talcott commented that this was the best explanation, thanked everyone who spoke and stated he is a yes based on the education he got tonight.

Mark Morong felt it was one of the clearer cases of hardship that has come before the Board and that it is clearly a hardship to have all this property and not be able to use it without the variance.

Neil Niman said he is in favor and all the criteria was met.

Chair Sterndale agreed that all the criteria were met and questioned where you shrink the land, whether it's the easement or the 50ft side setback. He stated from a conservation

standpoint they need a clean assessment to make the numbers work and a legitimately developable lot is required. He also stated that taking away the 50 ft access could potentially negatively affect the 35 acres of conservation land.

*Neil Niman made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Berry Surveying & Engineering, Barrington, NH, on behalf of the Pike Family Rev Trust, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to create a sideyard setback of less than 50 feet through the process of a subdivision. Micah Warnock SECONDED the motion and it PASSED 5-0 by call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.*

**VI. Other Business:** Nothing reported.

**VII. Approval of Minutes:** January 11, 2022

*Mark Morong MOVED to approve the January 11, 2022 minutes. Micah Warnock SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.*

**VIII. Adjournment**

*Micah Warnock MOVED to adjourn the meeting. Mark Morong SECONDED the motion and it PASSED 5-0 by roll call vote: Neil Niman – Yes, Micah Warnock – Yes, Alex Talcott - Yes Mark Morong – Yes, Chair Sterndale – Yes.*

Adjournment at 8:03pm  
Karyn Laird, Minutes taker

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Mark Morong, Secretary