

*These minutes were approved at the May 10, 2022 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, April 12, 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  
Leslie Schwartz, Alternate

**MEMBERS ABSENT:** Alex Talcott

**OTHERS PRESENT:** Audrey Cline, Zoning Administrator

**I. Call to Order**

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

**II. Roll Call**

The roll call was taken. Alex Talcott was absent, and Leslie Schwartz was seated as alternate.

**V. Approval of Agenda**

Officer elections were added to the end of the meeting.

**V. Public Hearings:**

- A. **PUBLIC HEARING** on a petition submitted by Bruce & Ellen Bates, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to install a generator within the sideyard setback. The property involved is shown on Tax Map 12, Lot 2-13, is located at 10 Cedar Point Road, and is in the Residence C Zoning District.

There were no audience members attending publicly or through Zoom.

Ellen Bates asked for a variance to put a small generator outside of their house to generate power in case they were without lights or heat.

Chair Sterndale confirmed the generator would be too close to the sideyard and needs a variance. He asked Ms. Bates to speak to the variance criteria.

Ms. Bates shared that her husband had a stroke in 2021 and they would like to make better adjustments for storms and wintertime. Ms. Bates explained that having an emergency generator is a matter of safety, the utilities and propane tank is located on one side of the house, that the public will not be able to see it due to a barrier between the homes, and it does not interfere with the location or beauty of the bay. Ms. Bates felt there was no other location for the generator since it should not be near the bay, there is no backyard, and it is too far away on the other side of the yard. Regarding neighbors, she said the properties to the west have trees and an 8-9 ft. fence and the properties behind and to the east are further away.

Mr. Morong asked about the generator in relation to the propane tank and it was confirmed with Ms. Cline that the generator needs to be at least 5ft. from the propane tank and from the house itself.

Mr. Morong wondered why the generator could not be on the south side of the house where there is land between the house and the water, and it would not be visible from the water. Ms. Cline stated a generator needs to be 50 ft. from the water and other items need to be 150 ft. Ms. Bates felt you would see the generator from the water, which goes against preserving the scenic view from the shore of the water. Ms. Bates pointed out the house is part of the setback, and the generator would be part of that. Ms. Bates also confirmed there is already an existing propane tank for a heater and dryer on the west side of the house in the proposed location of the generator.

Mr. Niman asked Ms. Bates if other residents nearby her have generators and she replied that at least nine residents on Cedar Point have them. Ms. Bates confirmed that other neighbors were notified of the variance and did not provide comment.

Ms. Cline determined that a trench would need to be built within the shoreland and anything not on the north, east, or west side would still require a variance.

Chair Sterndale stated there is a provision in the law that allows them to be more lenient on one or two of the criteria if someone is disabled. They would be able to make the variance for as long as Mr. Bates is living in the house and then the variance would go expire. Ms. Cline recommended a regular variance and if that fails then use the disability.

There were no comments from the public.

***Mark Morong MOVED to close the Public Hearing. Neil Niman SECONDED the motion and it PASSED 5-0.***

Mr. Warnock noted that the generator is small, and they have granted them in the past. Mr. Niman saw no problem since there is noise from other generators on the street and as far as the view goes there is already a propane tank in the location. Mr. Morong stated that they need a variance no matter the location. Chair Sterndale agreed a generator was not an unreasonable request and any other location could cause a hardship. Ms. Schwartz agreed with the points discussed.

*Micah Warnock made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Bruce & Ellen Bates, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to install a generator within the sideyard setback. Mark Morong SECONDED the motion and it PASSED 5-0.*

- B. **PUBLIC HEARING** on a petition submitted by Nicole Pak, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to permit the construction of a deck within the rear yard setback. The property involved is shown on Tax Map 10, Lot 10-1, is located at 74 Bagdad Road, and is in the Residence B Zoning District.

Nicole Pak stated she would like to add a deck to a previously approved and constructed deck to make it safer for children and animals.

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

Ms. Pak provided a history of the pool construction citing an area of stumps that caused the pool to have to be dug deeper into the ground on one side. Due to the 2.5 ft. discrepancy, she would like to make the backyard safer and more aesthetically pleasing with a deck and fence that goes all the way around. Regarding the criteria, she said the deck wouldn't be seen from the road nor diminish the values of other properties, it would block off the lower side, and it would overall secure the pool better. She said the current deck wraps around a portion of the pool. There is a fence for safety, but an additional deck and fence will be taller and block off the entire pool.

Ms. Schwartz asked about the shape of the deck and fence confirming with Ms. Pak that it would provide a platform to sit and supervise, and it would match the aesthetics of the current deck that overlooks the backyard.

Ms. Schwartz confirmed the deck must be 15ft. off the setback and the proposed deck would be 12 ft. with a contour to hug the pool and provide a space with a 3 ft. platform for a chair to supervise.

Mr. Morong felt the drawing did not provide accurate dimensions and contouring. The Board discussed the plans and the validity of them. Ms. Cline felt the deck would encompass more encroaching onto the sideline with the proposed walkway and questioned where the large part of the deck would be to determine the encroachment. Members requested more measurements since the drawing did not answer why you cannot spin the whole deck, so it is not in the encroachment. Ms. Pak said it would cause the deck to go against the garage and Chair Sterndale felt that was not clear in the drawing. They felt to provide a variance they needed to know exactly what they would be granting. Ms. Schwartz acknowledged that the house deck and pool deck would provide better safety. Chair Sterndale stated that an approval is more about what is legal, and the Board felt the designs need better clarity for rendering.

Mr. Warnock wondered about a conditional approval, but Ms. Cline felt there were too many conditions to do that.

Chair Sterndale was comfortable with the concept of the proposal but needed better schematics showing the house, property line, the distance from everything and what the property deck would look like. Board members discussed continuing the hearing to next month to allow Ms. Pak to provide improved drawing plans and measurements.

***Neil Niman MOVED to continue the hearing until May 10<sup>th</sup>. Micah Warnock SECONDED the motion and it PASSED 5-0.***

- C. **PUBLIC HEARING** on a petition submitted by Iago & Erin Hale, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-53 of the Durham Zoning Ordinance to permit an accessory apartment within the Residence B Zoning District. The property involved is shown on Tax Map 6, Lot 1-4, is located at 74 Mill Road, and is in the Residence B Zoning District.

Iago Hale introduced himself and provided an informational packet. Chair Sterndale asked him to explain the background of his situation and speak to the criteria.

Mr. Hale stated he had previously proposed a variance to rebuild an out boarding structure on his property to serve as a living space for his aging mother. The variance was granted a year and half ago on the premise that the structure would be rebuilt on its current footprint with its mass and location as a ground level apartment. He learned afterward that the State made changes to the 2019 DES language and redefined an accessory structure with water service as a primary structure, which is not permitted to be built within 50 ft. of Oyster River. For state compliance, Mr. Hale said he needs to move the building 20 ft. from its current location. He could spin the current building 20 ft. from the river and come into compliance with the State, but it would be 20 ft. from the previously granted variance. Mr. Hale stated they will lose some driveway space to get it out of the 20 ft. zone.

Chair Sterndale asked for any questions on the plan while noting septic changes and overall site improvements. Mr. Hale stated the project will entail an upgrade on the septic for the entire property, as well as moving it 12 ft. further from the stream. Other improvements will be addressing overall erosion control within the driveway since water control and erosion from Mill Road have been past issues. He stated the driveway will remain as gravel with the same footprint of the house, but it will be a little bit bigger than the existing one at 20x30 ft. Ms. Cline wondered about creating a turnaround on the driveway to face forward as a benefit, but Mr. Hale said he could not find a way to change backing into the driveway because any changes would encroach on the river, and they have plenty of parking as is. He said the overall aesthetic of the building will match the house; however, the architecture will be different with the addition of a loft. It was noted that there are very similar buildings up and down Mill Road with loft living in the top.

Chair Sterndale asked Mr. Hale to speak to the criteria.

Mr. Hale said they are replacing the current building's style and mass on essentially the same part of the property. He said it would be close to the current footprint and it would not threaten public rights, health, or safety. Regarding the spirit of the ordinance, Mr. Hale said they are retaining the old character of it being an old, elongated site with road frontage. Also, by swapping one building for another they will not be affecting the density or immediate residential abutters' views or quality of life. Overall, Mr. Hale felt the huge benefit to their family would not be at the expense of the common good. He said if they were to attach the unit to the house there would be a lot of impact, such as the sunlight, a large tree that exists there, maintaining a carriage house appearance and cutting off their access to the backyard.

Ms. Schwartz asked if there was a definition of approximate regarding the previous variance. Ms. Cline stated she felt the Hales needed a new variance because the updated plan did not fit the variance that was previously granted. Also, Chair Sterndale felt the detachment and proximation to the street provided a different access to the driveway.

Mr. Hale stated the lot is sloping, a river runs on the backside and the front of the house needs to be accessible for an aging resident. He said the issue is getting state approval while still doing what they would like.

There were no comments from the public.

***Micah Warnock MOVED to close the Public Hearing. Mark Morong SECONDED the motion and it PASSED 5-0.***

Mr. Niman acknowledged that the homeowner was looking for the next best solution since they no longer met state approval. He felt the Hales should be able to use their property and although he does not like the look of the second floor living on the garage, he did not see a better solution to meet their needs. Other board members agreed.

Chair Sterndale acknowledged the hardship and substantial justice. He felt the improvement of the septic in relation to the river was noteworthy and emphasized that the property is relatively neighbor less on views and location.

***Neil Niman made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Iago & Erin Hale, Durham, NH, for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-53 of the Durham Zoning Ordinance to permit an accessory apartment within the Residence B Zoning District. Leslie Schwartz SECONDED the motion and it PASSED 5-0.***

Mr. Hale said he is open to ideas on how to design the building to retain the charm. He asked if the variance approval included the specific design presented. Chair Sterndale stated the approval was on variance only, but the design should not be drastically different. He said it should retain the appearance of a general carriage house with garage and living space.

**VI. Other Business: Election of Officers**

It was recognized that past chairs have stepped down in the last year of their three-year term to help acclimate the new chair. Chair Sterndale stated he'd be fine serving another year, or he'd be fine passing the position to another member. He said Mr. Warnock has shown a willingness to serve and asked if anyone else was interested. There was no other interest and Mr. Warnock accepted the nomination.

***Chair Sterndale elected Micah Warnock as Chair. Vote passed 4-0 with Micah Warnock abstaining.***

***Micah Warnock elected Neil Niman as Vice Chair. Vote passed 4-0 with Neil Niman abstaining.***

***Micah Warnock made a nomination to retain Mark Morong as Secretary. Vote passed 4-0 with Mark Morong abstaining.***

The Board discussed the proposed parking lot at 19-21 Main Street. There was a first appeal that was challenged, and the design changed enough so it was not relevant anymore and the appeal did not go anywhere. For the second design they did not appeal the decision in the timeframe, design somewhat changed again, and there has been no further business on the matter.

**VII. Approval of Minutes: February 8, 2022 & March 15, 2022**

**February 8, 2022**

On page 4 strike the sentence on line 25.

On page 6 change the word "was" to "were" on line 37.

***Chair Sterndale MOVED to approve the February 8, 2022 minutes with revision and it PASSED 5-0.***

***Chair Sterndale MOVED to approve the March 15, 2022 minutes and it PASSED 3-0 with Neil Niman and Leslie Schwartz abstaining.***

**VIII. Adjournment**

***Micah Warnock MOVED to adjourn the meeting and it PASSED 5-0.***

Adjournment at 8:28 pm  
Karyn Laird, Minutes taker

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Mark Morong, Secretary