

These minutes were approved at the June 14, 2022 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, May 10, 2022 at 7:00 p.m.
Town Council Chambers, Town Hall
8 Newmarket Road, Durham, NH
MINUTES**

MEMBERS PRESENT: Micah Warnock, Chair
Neil Niman, Vice Chair
Mark Morong, Secretary
Chris Sterndale
Leslie Schwartz, Alternate

MEMBERS ABSENT: Alex Talcott

OTHERS PRESENT: Audrey Cline, Zoning Administrator

I. Call to Order

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

II. Roll Call

The roll call was taken. Alex Talcott was absent.

III. Seating of Alternates

Leslie Schwartz was seated.

IV. Approval of Agenda

V. Public Hearings:

- A. **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 referred to the new drawings she provided to the Board and addressed the concerns that were raised in the previous meeting. She provided distances from the new setback to the pool, photos, and explained why a deck and fence would be better than a stand-alone fence. Ms. Pak stated the deck and fence would be located 12.5 ft. from the property line and 18 ft. from the house. She said the pool could not be located exactly in the center of the lot due to drainage issues. Ms. Pak let the Board know that she resubmitted new building plans to Zoning Administrator Audrey Cline, which are clearer and more legible.

Board member Neil Niman appreciated the photos and wondered how the pool would be possible without a deck. Ms. Pak explained the original pool was going to be above ground with a ladder, however, a stump graveyard discovered during excavation posed a new set of problems. They were given the choice to dig down and then flatten the base with gravel and fill or dig down and insert a portion of the pool into the ground. She said they chose to place

the pool into the ground for the safety of preventing it from collapsing into the earth and because it would be costly purchasing additional fill to bring it all level. Ms. Pak said they like the pool better with it being lower and more private, and it made sense to go with the earth as it was, rather than truck in extra fill. Mark Morong stated that an original variance was granted, and money cannot be considered a hardship since the fill or the deck would be an additional cost. Ms. Pak stated she did not include the cost of the fill as a hardship in the criteria of the application. Regarding safety, Mr. Morong did not believe a deck made the pool any safer than fencing around the pool which would not require a variance.

Chris Sterndale acknowledged that the pool is in place and given that fact, the question is whether this new variance is appropriate. Chair Warnock said aesthetically speaking, he felt Ms. Pak's proposal would make the pool look better.

Leslie Schwartz confirmed that the current issue is the pool is not entirely enclosed 4 ft. high all around. She also confirmed with Ms. Pak that the dimensions are the same as she previously presented, which includes a 2.5 ft. variance and a small distance available from the original 15 ft. variance granted, and the encroachment has not changed. Ms. Pak explained she wants to go an extra 2.5 ft. for a safe walkway and to block off the pool entrance from children, neighbors, and dogs. She also stated they are encroaching more on their own property to favor the neighbor's property. Mr. Morong did not feel the variance was a matter of safety pointing out that if someone wanted to enter the pool a deck would not prevent them, and he would have to consider the variance in other terms. Ms. Schwartz disagreed and felt the deck would provide quicker access to someone struggling verses accessing the pool from ground level. Chair Warnock felt it was reasonable to consider a deck as a safety prevention.

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

Chris Sterndale MOVED to close the Public Hearing. Leslie Schwartz SECONDED the motion and it PASSED 5-0.

Mark Morong expressed his displeasure in residents receiving a variance and coming back again for another variance and wondered why plans are not thought out thoroughly in the first place. Chair Warnock acknowledged that Ms. Pak faced variables during construction that required a change in plans. Chris Sterndale pointed out that the proposal would not bother anyone, and it is a matter of 2.5 ft. to make the pool safer overall. Neil Niman said he shared Mr. Morong's views, but on the other hand he did not think the pool was safe as it is, and he would have a hard time not allowing them to build a deck and fence to make the pool safer. Leslie Schwartz felt the excavation accounted for the problem, which was unforeseen. In considering property values and aesthetics, she felt the proposed deck would be more appealing than an above ground pool as a stand alone or with a fence. Mr. Morong agreed the pool would be better looking, but this factor did not necessitate the deck.

Neil Niman made a MOTION that the Zoning Board of Adjustment approve 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 in the Residence B Zoning District. Chris Sterndale SECONDED the motion and it PASSED 5-0 by roll call vote:

Chris Sterndale - Yes, Neil Niman – Yes, Mark Morong – Yes, Leslie Schwartz – Yes, and Micah Warnock – Yes.

- B. **PUBLIC HEARING** on a petition submitted by Chris Sterndale, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(B)(7) of the Durham Zoning Ordinance to permit the placement of an accessory shed within the 10-foot side and rear setbacks. The property involved is shown on Tax Map 6, Lot 3-4, is located at 60 Mill Road, and is in the Residence A Zoning District.

Board member Chris Sterndale recused himself from the case. Chair Warnock gave him the option of delaying the case since there was not a full board, but Mr. Sterndale wanted to proceed.

Mr. Sterndale explained that his house was typical for the neighborhood in terms of architecture and size and described the .5-acre lot as sloping in various degrees and places. He asked for a variance to put in a 12x16 ft. shed in the rear sideyard setback of his property and encroach on the 58 Mill Rd side. Mr. Sterndale stated that UNH property, including a parking lot and scrub area, abuts on two sides and Mill Road is on the other side. He stated there are not many options for the placement of the shed since there is a large amount of ledge on the lot. Mr. Sterndale provided a drawing showing the proposed location of the shed and the shed according to the required 10 yards from the property line which would put it in the middle of the backyard in the only flat area. He asked for a variance to put the shed on the driveway side of the property for access to bicycles, a snow blower, trash, etc.

Mr. Sterndale spoke to the variance criteria including the following: The proposed location is against a UNH parking lot to the north and 58 Mill Road to the east which has a tree line of hemlocks and a privacy fence. He pointed out that in the spot he is proposing the structure would not loom over a neighbor's residence, rather the space it would be encroaching is primarily scrub land and where snow is piled. Along the neighbor's property is a boulder that sits as a buffer between the proposal spot and the property line, and there would be no negative impact to that corner of the property. Mr. Sterndale stated it would be almost invisible to the neighbors at 58 Mill Rd. due to the trees and fence. In terms of substantial justice, Mr. Sterndale stated there is no great benefit to the public in having a 10 ft. gap and there is a significant loss putting the shed in the flat, center piece of his yard. He felt property values would not be affected, it would screen some of the parking and scrub area and it would provide a better view for the neighbor and from the street. Mr. Sterndale stated there is no downside to the variance and pointed out that UNH does not follow zoning. He said they could put a 9-story dorm one-foot from his property line so maintaining a setback from UNH does not apply logically to this case. Mr. Sterndale stated the hardship is a loss of backyard space and an aesthetic loss of having a shed in the middle of the yard. If the shed were to be placed on the west side, it would be too far away from the driveway and entrance to the house, and in the north side it would be tucked in the back with difficult accessibility with the need to cut forest.

Chair Warnock pointed out that the shed will be minimally encroaching on the setback. Mark Morong asked what was on the other side of the lot and Mr. Sterndale replied forest

and UNH land. Ms. Schwartz spoke to the optics of the location stating that the shed would appear as though it is in the corner whether viewing it from Mill Road or from the parking lot by UNH. She also felt that the location was a good fit due to the tree line on the neighbor's property.

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

Neil Niman MOVED to close the Public Hearing. Mark Morong SECONDED the motion and it PASSED 4-0.

Neil Niman felt due to the special nature of the property all the criteria were met and in the matter of consistency this case is similar to other past cases in which they awarded variance to allow sheds in the setback. Mark Morong did not have a problem with the shed on the line.

Neil Niman made a MOTION that the Zoning Board of Adjustment APPROVE a petition submitted by Chris Sterndale, Durham, NH, for an APPLICATION FOR VARIANCE from Article XX, Section 175-109(B)(7) of the Durham Zoning Ordinance to permit an accessory shed within the 10-foot side and rear setbacks in the Residence A Zoning District. Chair Warnock SECONDED the motion and it PASSED 4 -0 by roll call vote: Neil Niman – Yes, Mark Morong – Yes, Leslie Schwartz – Yes, and Micah Warnock – Yes.

VI. Other Business: None provided

VII. Approval of Minutes: April 12, 2022

Mark Morong made the following minor revision: The word “butted” should say “abutted” in the minutes.

Neil Niman MOVED to approve the April 12, 2022 minutes with the minor revision, Leslie Schwartz SECONDED the motion and it PASSED 5-0.

VIII. Adjournment

Chris Sterndale MOVED to adjourn the meeting, Neil Niman SECONDED the motion and it PASSED 5-0.

Adjournment at 7:41pm
Karyn Laird, Minutes taker

Mark Morong, Secretary