

*These minutes were approved at the August 9, 2022 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, July 12, 2022 at 7:00 p.m.  
Town Council Chambers, Town Hall  
8 Newmarket Road, Durham, NH  
MINUTES**

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

**MEMBERS ABSENT:** Micah Warnock, Chair

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

**I. Call to Order**

Vice Chair Neil Niman called the meeting to order at 7:00 pm.

**II. Roll Call**

The roll call was taken. Chair Micah Warnock was absent.

**III. Seating of Alternates**

Leslie Schwartz was seated for the evening.

**IV. Approval of Agenda**

**V. Public Hearings:**

- A. PUBLIC HEARING** on a petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article II, Section 175-7 of the Durham Zoning Ordinance to allow conversion of office space into two hotel suites where the definition of hotel requires seven suites. The property involved is shown on Tax Map 108, Lot 69, is located at 15 Newmarket Road, and is in the Courthouse Zoning District.

Sharon Somers, lawyer from Donahue, Tucker & Ciandella, PLLC, spoke on behalf of Slipknot Properties LLC. She requested to have Public Hearing B take place first and there were no objections from the board. The applicant wished to proceed with only a four-member board.

- B. PUBLIC HEARING** on a petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XVII, Sections 175-96(G)(4) and 175-96(H) of the Durham Zoning Ordinance to allow the installation of

signage in excess of six square feet per sign within the Historic District. The property involved is shown on Tax Map 108, Lot 69, is located at 15 Newmarket Road, and is in the Courthouse Zoning District.

Attorney Sharon Somers represented the applicant and Scott Letourneau, a Principle from Slipknot Properties, was present to answer questions. Ms. Somers let the audience know that the Town Manager, Michael Behrendt, provided a letter of support for the variance on behalf of the Historic District Commission (HDC), which was submitted to the board. Ms. Somers proceeded to summarize the five criteria for variance. She referred to Exhibit C to show scale and size of the signage in relation to various portions of the building. She noted that the signage is not out of character, nor does it alter the historic look of the building. Also, she cited per Mr. Behrendt's letter, that there are similar sized signs nearby. Ms. Somers said the signage is not contrary to the public interest and it does not diminish the value of the property or abutting properties. Considering substantial justice, Ms. Somers stated there is a benefit to granting the variance since it is necessary to identify the mercantile portions of the property from various vantage points. Also, Ms. Somers stated that in granting the variance there is no known detriment to an individual or property subject to the HDC. Regarding the hardship criteria, Ms. Somers referred to exhibits B and C to show that the entire property is large, almost an acre, and that the building is situated on the southwardly side of the acreage. She said this location necessitates that the signage be on the end, and consequently needs to be visible and legible from various vantage points. From the far end of the property, signage would be hard to see at the required size. In summary, Ms. Somers stated the applicant has worked with the historic jurisdiction to approve the historical quality of the sign, the proposed size is reasonable and although it exceeds the amount in a historic district, it would blend nicely with the building and site. Ms. Somers concluded that the signage has been approved by the HDC, the design proposal meets the criteria, and the variance is a reasonable request.

Eric Lund of the HDC confirmed they unanimously approved the application since the signage is appropriate in scale and is historical in nature. Since the old town hall is setback from the street, he said the signs would need to be large enough to be legible from the street.

There were no other public comments and no further questions from the board.

***Chris Sterndale MOVED to close the Public Hearing. Mark Morong SECONDED the motion and it PASSED 4-0.***

Mark Morong felt the signage looked perfectly proportionate to the building and the site. Leslie Schwartz agreed and pointed out Mr. Behrendt's rationale and support for the signage. She felt the variance was appropriate and no board members objected to the variance.

***Chris Sterndale made a MOTION that the Zoning Board of Adjustment APPROVE a petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an***

***APPLICATION FOR VARIANCE from Article XII, Section 175-96(G)(4) and 175-96(H) of the Durham Zoning Ordinance to allow signage in excess of six square feet per sign within the Historic District. Leslie Schwartz SECONDED the motion and it PASSED 4-0.***

- A. PUBLIC HEARING** on a petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article II, Section 175-7 of the Durham Zoning Ordinance to allow conversion of office space into two hotel suites where the definition of hotel requires seven suites. The property involved is shown on Tax Map 108, Lot 69, is located at 15 Newmarket Road, and is in the Courthouse Zoning District.

Attorney Sharon Somers explained the proposed variance has to do with seeking permission to have a sub-sized hotel at 15 Newmarket Road, the site of the old town hall. Since the definition of a hotel requires seven suites, Ms. Somers said the applicant is requesting a variance to define two suites as a hotel on the upper level of the building, shown in exhibits A and B. Regarding the variance criteria, Ms. Somers stated the proposed “micro” or “boutique” hotel, located in the courthouse district, would be distinguished from other kinds of lodging since it meets the conditions of a hotel in all respects, including stays less than thirty days, on-site dining, recreation, and small function rooms. She stated that all the criteria of a hotel can be met other than the number of rooms. Regarding public interest, Ms. Somers explained the small number of suites will complement the other uses of the property, which includes a tap room and restaurants. She said the building itself is meant to revitalize that part of the town and encourage multiple usage on one property. Ms. Somers explained that since the current locality offers a variety of uses such as student housing, an auto repair, and a restaurant, that the hotel will not endanger the characteristic of the area. Regarding substantial justice, Ms. Somers explained the driving force behind the desire for the two-suite proposal is due to the liquor commission requiring upstairs bathrooms separate from the tap room and restaurants on the lower level. She explained that the applicant has determined that the most beneficial use of those bathrooms is through the creation of suites on the second floor. These upstairs bathrooms will meet the liquor commission’s requirements for drinking and eating on the first floor, and in turn the suites will include the onsite dining and function room criteria for a hotel. Ms. Somers stated there is no detriment to the public in this proposal. The applicant spoke to the neighbors, and they have no concerns. Furthermore, Ms. Somers stated the values of the surrounding properties will not diminish, while revitalization of the lot could enhance the property. Regarding hardship, Ms. Somers said the size of the lot, one acre, is a condition they must work with and denying the two-suite hotel because it is not a smaller property would constitute an unnecessary hardship. Lastly, Ms. Somers pointed out that the two hotel suites will not function as a traditional inn or any other form of lodging, rather they will be consistent with the definition of a hotel, just smaller. She felt it was a reasonable variance to request since the applicant could have asked for an Airbnb but opted for the more modest option for the market and parcel.

Chris Sterndale asked if the suites would be supervised and managed around the clock like most hotels. Scott Letourneau said they do not plan to have an onsite desk personnel and instead all check-in and check-out will be on a website, which is the evolution with hotels today. Mr. Letourneau said he cannot speak for Three Chimneys Inn, but according to hearsay, the innkeeper does not always spend the night. He said the owners of Three Chimneys Inn are extremely supportive of the project and have no objection to the variance application. Mr. Letourneau said they have found a space to provide on-site laundry services which meets another condition for a hotel. He explained the existing upstairs rooms are used as office space with no restrooms. These offices have three to five parking spaces, but with the hotel he can restrict the parking to one space for each suite. Mr. Letourneau said other options for the second floor were considered, but retail is not viable upstairs and if they continue with office space there may be a fair bit of activity during the day, possibly more than the last few years. Other professional services like yoga and massage were considered but they too would require restrooms. Members of the board asked about the amenities in the suites and Mr. Letourneau said the suites will not have a kitchenette, just a standard mini fridge and coffee bar, and on-site dining will be offered. When asked why the liquor commission would want restrooms upstairs, he explained they do not want people going from upstairs to downstairs to use a restroom in the liquor area. Ms. Schwartz asked how many occupants would be in each suite and Mr. Letourneau said the maximum occupancy would be two with a king size bed in each, but the west side suite may have room for a twin bed so in that suite it would be a maximum of three.

Chris Sterndale asked Zoning Administrator Audrey Cline if this space could reappear one day as residential, multi-units and she stated that mixed use of residential multi-units would not be permitted in the courthouse district. Furthermore, if the “micro” hotel does not work, a variance from the Zoning Board would be required for them to become multi-use units. Mr. Sterndale and Ms. Schwarz agreed that the two suites fit the definition of a “hotel” better than an “inn”.

There were no public comments and no further questions from the board.

***Chris Sterndale MOVED to close the Public Hearing. Mark Morong SECONDED the motion and it PASSED 4-0***

Chris Sterndale worried that the overall nature of the suites being unsupervised could be too similar to a short-term rental, but he did not have enough of a concern since the hotel criteria was met. Also, he was comfortable with the request being reasonable and felt there was no great benefit to the town or community for preventing it, but there would be a great loss to the owner. Mr. Sterndale gave his support for the variance stating there is no negative impact or detriment to the property values surrounding it for this scale and location. Leslie Schwartz agreed and said in looking at the definition of a hotel it will provide the usual items such as dining, recreation, housekeeping, etc., but with two rooms instead of seven. Ms. Schwartz supported the application for variance. Neil Niman felt the proposal fit closer to the definition of a hotel verses an inn and his only concern was

in the confusion it could present to the public. Mr. Niman felt the criteria was met and agreed the next best use would be office space, which would require a bathroom, so the hotel would be the most viable option.

*Chris Sterndale made a MOTION that the Zoning Board of Adjustment APPROVE a petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII, Section 175-7 of the Durham Zoning Ordinance to allow conversion of office space into two hotel suites where the definition of hotel requires seven suites. Leslie Schwartz SECONDED the motion and it PASSED 4-0.*

Vice Chair Niman told the applicants they have a 30-day waiting period and then they will have their variance.

- C. **PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a May 5, 2022, letter of the Zoning Administrator, Audrey Cline, denying a building permit application to create one additional parking space beyond the Town's right-of-way. The property involved is shown on Tax Map 109, Lot 44, is located at 15 Garden Lane, and is in the Residence A Zoning District.

Applicant Scott Winslow stated he has been trying to get an additional driveway space paved for many years. He explained his corner lot presents an issue with having enough parking space and the garage has a setback of 30ft. from the road and 29 ft. from the curb. Mr. Winslow spoke about the difficulty of parking for his household and his accessory apartment resident. He said widening the driveway is not possible and during the winter, they are presented with more parking issues. Mr. Winslow told the board he has letters from his neighbors showing support to create a paved space 25 ft. from the center of the driveway onto the sideyard. He stated a drawing and diagram submitted during an original application was denied due to the setback regulations, and a plan that proposed widening the driveway at the street, which he believed was safer, was also rejected. Since the current ordinances are meant to prevent college students from having too many vehicles in one parking space, Mr. Winslow said he felt it was most practical to request a fifth parking spot on his property. Mr. Winslow said his driveway warrants the size, it is not within 10 ft. of neighbors and the additional space does not need to have access to the garage. Mr. Winslow stated his request does not create any harm and it creates an egress for emergency. The board asked to hear from Zoning Administrator Audrey Cline on the decision to deny the building permit for the additional space.

Ms. Cline stated the residential parking requirements were rewritten 2-3 years ago, and a special exemption for a property would be based on the activity use and the number of residents. She said to have an area become paved there needs to be a defined purpose, such as being a parking spot, patio, or basketball court, but it could not be paved for no reason. She said in the application, Mr. Winslow did not want to designate the paved area as a formal parking spot. Ms. Cline stated she needed a designation for the paved

area since the special exception goes with the property rather than the owner. Ms. Cline further explained justification for paving could be a turnaround area to head out the driveway frontwards, but this was not the case for Mr. Winslow's property.

Ms. Schwartz wondered about the house being built in 1969 and since the setbacks have changed if it caused a preexisting nonconformity. Ms. Cline stated there can be no more than three cars in the front setback unless they are serving legal tenants of the property. She said if there is more room behind a house than additional cars may be parked there. Ms. Cline stated that the Winslow property has a special exception for a fourth car and if the paved area is not for a fifth car than she needs to know what it is for. Mr. Winslow told the board that the paved area is intended to be a parking spot for the accessory apartment where his father lives. Additional space would prevent better line up and remove the need to move cars back and forth. In the case of an overnight visitor, he does not want to receive a parking violation for a fifth parked car. Mr. Winslow told the board he would like to have the smallest spot on the driveway paved and that he would almost always have four cars, but he wants a fifth spot since he has twins that will one day drive. Ms. Cline asked if anyone wanted to speak to the paving of Mr. Winslow's property and the associated use with it.

A neighbor of Scott Winslow said he and other neighbors sent in letters of support stating the importance for him to pave an additional space for his father. He said that the section to be paved gets muddy and paving it would improve the house lot and make the whole area look nicer for their street. He also pointed out that other driveways in the neighborhood have more than four or five cars parked on them.

Robin Mower of 6 Britton Lane appreciated the comments from the family and their abutters but felt efforts have been made over the years to retain the look of single-family homes in the faculty neighborhood. She said she hopes to avoid the downtown properties looking like parking lots and felt the community should not be expected to change since people who live there have been and are willing to jockey their cars to retain the feeling of living in a small neighborhood.

Mr. Winslow stated it is his understanding that the variance for the additional parking spot would not travel with the house if it changed owners.

Ms. Mower said she would like to recall her comments for the next hearing and wondered if she needed to speak again. Vice Chair Niman said the board would consider her comments in the next hearing.

***Chris Sterndale MOVED to close the Public Hearing. Leslie Schwartz SECONDED the motion and it PASSED 4-0.***

Ms. Cline told the board she is looking for guidance on identifying the reason for paving a portion of the Winslow's driveway. Ms. Schwartz asked about designated use for parking spaces or turn arounds. The board reopened the public hearing to allow Ms. Cline to speak. She said every time someone creates a paved area it comes with a

building permit, so she wondered if she needs to approve it as “nothing” or if something needs to be written as to what it might be. Ms. Cline said needing more paved area in a generic way and not naming it as a parking space or turn around does not constitute the use. She explained to the board that the parking permit was revamped, and the first time Mr. Winslow asked to pave a portion of his driveway the definition of use did not exist on the application. Since the issue did not exist before she wondered if it should apply now.

Mr. Sterndale confirmed with Ms. Cline that paving the driveway and defining its use was not the issue before, rather the original intent of the applicant was to have an alternative use for a parking lot that would go straight to the road, which was denied. It was concluded that he could resubmit an application to pave an upper portion of the driveway and at that time it would have met the town ordinance. Since then, the ordinance has changed, and the building permit requires a reason for use. Neil Niman asked about his own property and if he had an area off to the side that he wanted to pave, and while repaving his driveway he included it would he have to specifically say what it would be for or would it be sufficient to say it could be a basketball court for future grandkids. Ms. Cline said she asks applicants to specify why something needs to exist, especially since things are not cut and dry with the faculty neighborhood. Mark Morong pointed out that there is nothing written in the zoning stating differences between one neighborhood and another.

***Chris Sterndale MOVED to close the Public Hearing. Mark Morong SECONDED the motion and it PASSED 4-0.***

Mark Morong felt that unless the variance violates a zoning ordinance that does not permit blacktop over grass than he does not support the decision to deny the application. He did not feel it was part of the ordinance to say that a particular piece of asphalt must have a designated use, and although there could be a concern for enforcement, that would not be a reason to deny it. He also said there are already plenty of restrictions in place to limit certain behaviors and felt inclined to grant the appeal. Ms. Schwartz felt there needs to be a designated use for granting an additional parking space, however, granting him to pave an area without a specified purpose is within ordinance. She agreed that Mr. Winslow cannot put a car there without special exception. Chris Sterndale said they can approve the appeal but not as written since the paved portion cannot be approved as a parking space without special exception.

***Chris Sterndale a MOTION that the Zoning Board of Adjustment, in accordance with the Administrative Decision, directs the Building Inspector to issue a permit related to application #22-173 for Map 109, Lot 44 without granting any additional parking spaces. Leslie Schwartz SECONDED the motion and it PASSED 4-0.***

The appeal was partially granted by the board. The applicant may create a paved portion of the driveway; however, they must receive special exception to use the space as a fifth parking spot.



**D. PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XXI, Section 175-111(B)(2) of the Durham Zoning Ordinance to create one additional parking space beyond the Town's right-of-way. The property involved is shown on Tax Map 109, Lot 44, is located at 15 Garden Lane, and is in the Residence A Zoning District.

Scott Winslow gave his permission to continue with a four-member board. The board determined that the applicant is permitted to park four cars on a regular basis and five cars on an occasional basis. The applicant chose to move forward with his application for special exception to have a fifth parking spot.

Mr. Winslow explained to the board that their household has three generations living on the property and both domestic partners are working and using their own vehicle. He said the property's accessory apartment is inhabited by a family member who has their own vehicle, and someday their two children will have their own cars. Mr. Winslow stated that he and his wife also have scooters they use during the summer. He said they want to stay in Durham and have no intention of moving or selling their house. Mr. Winslow believed that special exceptions were for the residents only and any exceptions granted would not travel with the property. He also said he has no intention of going up to six cars or putting in another driveway. Mr. Winslow emphasized that he would like to start the permit process now, so they are prepared for when they are likely to have five cars to prevent being in violation.

Robin Mower of Britton Lane shared her thoughts during the previous hearing, and they were considered for this hearing too. She said she was unaware if approved conditions can be removed after the fact, such as with selling the house. Ms. Mower felt there is a certain degree of choice involved with living in the faculty neighborhood since it is compact and there is a sense of community to adhere to. She stated if everyone increased their number of cars it would have a different look and feel. Mr. Winslow agreed he does not want to have people parking in the grass or putting down gravel, but he also felt there were plenty of driveways in the neighborhood where there are multiple cars parked. He reiterated they are a family household, and he is doing his best to make the property look professional and can understand the worry of it becoming future college rentals, but that is not his intention.

A next-door neighbor of the applicant spoke in support of the special exception stating the Winslow's are wonderful people. She said students were living at the property prior and she loves having the family next door. She told the board she supports granting them permission for a fifth parking spot.

There were no public comments and no further questions from the board.

***Chris Sterndale MOVED to close the Public Hearing. Leslie Schwartz SECONDED the motion and it PASSED 4-0.***



Chris Sterndale stated his opposition to the special exception since the property is permitted to park four cars plus two in the garage and felt that was suffice in a small neighborhood. He said in that neighborhood there is not widespread permission for five car parking at family homes. Mr. Sterndale pointed out that things could change, the applicant's children are young, and people move for unforeseeable reasons. He would prefer the property to not become student housing with five parking spots. Mark Morong felt it was too premature to grant five spots and encouraged Mr. Winslow to come back when his children are older if they still need those spaces. Regarding Mr. Winslow's argument that society is changing, board members felt it would be important for the ordinance to change globally and not just at the ZBA level. Neil Niman shared his concern for when properties change hands and would not want to send the message that five cars mean five unrelated people could live there. Leslie Schwartz agreed with the board comments and does not support the increase in cars within the tight quarters of the faculty neighborhood.

***Chris Sterndale made MOTION that the Zoning Board of Adjustment DENY a petition submitted by Scott J. Winslow, Durham, New Hampshire for an APPLICATION FOR SPECIAL EXCEPTION from Article XXI, Section 175-111(B)(2) of the Durham Zoning Ordinance to create one additional parking space beyond the Town's right-of-way. Mark Morong SECONDED the motion and it PASSED 4-0.***

Chris Sterndale stated for the record that the special exception failed for not meeting criteria #1, which is "the use will not be detrimental to the character or enjoyment of the neighborhood [...]."

**VI. Other Business:** None provided

**VII. Approval of Minutes:** June 14, 2022

On page 3, line 29 change "institution" to "installation".

***Chris Sterndale MOVED to approve the June 14, 2022 minutes with the revision, SECONDED by Leslie Schwartz and it PASSED 3-0-1 with Mark Morong abstaining.***

**VIII. Adjournment**

***Leslie Schwartz MOVED to adjourn the meeting, SECONDED by Chris Sterndale and it PASSED 4-0.***

Adjournment at 9:04 pm  
Karyn Laird, Minutes taker

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Mark Morong, Secretary