

These minutes were approved at the September 13, 2022 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, August 9, 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
Chris Sterndale
Leslie Schwartz, Alternate

MEMBERS ABSENT: Mark Morong, Secretary

OTHERS PRESENT: Audrey Cline, Zoning Administrator

I. Call to Order

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

II. Roll Call

The roll call was taken.

III. Seating of Alternates

Leslie Schwartz was seated for the hearing.

IV. Approval of Agenda

There were no changes to the agenda. The applicants were notified of a four-member board and agreed to proceed with the hearing.

V. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Hongzhu Pan & Tongguo Pang, 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. The property involved is shown on Tax Map 116, Lot 10, is located at 1 Denbow Road, and is in the Residence B Zoning District.

Chair Warnock asked the applicants to review letters sent in regarding the application and to speak to the criteria for special exception. Mr. Pan and Ms. Pang acknowledged their review and agreement to the rental requirements for a short-term rental at their property, however, regarding the criteria for special exception requested clarity on what they were to speak about. They let the board know their residence is at the corner of two streets, far from neighboring houses, and is a one-bedroom rental in a large room above the garage. Zoning Administrator Audrey Cline noted that it is not a full dwelling unit since it is without a kitchen.

Chris Sterndale let the applicants and listening audience know that the requirements for obtaining a special exception for a short-term rental include the following: a ZBA hearing, provide notification letters to abutters 300 ft. away, the site must be the property owner's primary residence, the residence must have a property owner or family member living at the residence, be subject to safety inspections per state law, no recreational vehicle, tent, or shelter to be used by the occupant, and size limitations for signage.

Mr. Sterndale stated that John Parry and Shelley Mitchell on Denbow Rd. wrote an opposition letter stating concern for whether the requirements will be enforceable. Ms. Cline stated that the property is typical of one with a rental and they only check on the residence if they are alerted to the property or authorities are called, and in these instances, they confirm if the owner is home. The applicants and board members acknowledged that it is a small rental, it will not be changing traffic, and there is a spot for the renter to park. Neil Niman was concerned that the rental was listed on Airbnb as being available August 2nd, and Ms. Pang said they canceled the guests and pulled the listing.

Resident Robin Mower of 6 Britton Lane was present on Zoom and asked the board to consider delaying the public hearing until September. She felt that abutters could be on vacation and may not have seen the notice. Ms. Mower also wondered if board members should visit the property if they have not seen it. Ms. Cline stated that the abutters had been notified in a timely manner and asked the board if they were comfortable without a site visit. Board members did not voice any concerns and agreed to move forward with the hearing. Neil Niman wondered how many short-term rentals were currently allowed in Durham and Ms. Cline confirmed 6-8 in various neighborhoods. Ms. Schwartz confirmed that a short-term rental is a stay that is less than 30 consecutive days. It was presumed by board members that short-term renters in Durham are likely tourists or families of UNH students, which would not result in consecutive 30-day rebooking by a particular person, which would go against the intent of the ordinance.

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

Mr. Sterndale did not have any concerns to the specific property, stating that the residents agreed to the requirements, and it is the type of property the ordinance had in mind for short-term rentals. Chair Warnock did not believe there would be any traffic flow or parking issues for the neighborhood. Mr. Niman wondered what the criteria and circumstances would be for approving verses denying special exceptions of this type to get a sense of consistency in moving forward. Chair Warnock felt that if the community was saying no with a lot of neighbors in opposition than that would be a consideration for denial. Ms. Schwartz felt the neighbors' concerns for this property have merit in a broad respect to short-term rentals, but not in respect to this specific property and application. She favored approving the special exception in the spirit of the ordinance pointing out that other short-term rentals exist in several different neighborhoods. Administratively speaking, Ms. Cline told the members to keep in mind the difference between a special exception and variance, emphasizing that a special exception is an allowed use. Mr. Sterndale felt that reasons to deny a short-term rental could be a really unique location, unusual architectural that did not support the space, or if there was no place to park. He further stated that they would need to

demonstrate that the short-term rental is a detriment to the character and enjoyment of the neighborhood or contrary to public health, and with bars set that high there will not be a lot of denials. Mr. Niman stated neighbors might not be in favor of short-term rentals since they might not want strangers walking around his community. However, he agreed that it is a permitted use and when the council adopted the ordinance it meant this activity would be permissible.

Chris Sterndale made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Hongzhu Pan & Tongguo Pang, Durham, New Hampshire, for a 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. Neil Niman SECONDED the motion and it PASSED 4-0.

Chair Warnock let the applicants know there is a 30-day appeal window.

VI. Other Business:

In preparation for his meeting with the council, Chair Warnock asked for board comments regarding Cedar Point and structure variances for generators, including the costs associated, and members provided their thoughts. The two alternate spots open on the board will also be made known at the meeting.

VII. Approval of Minutes: July 12, 2022

Mark Morong submitted an email of changes and administrative assistant Karen Edwards made obvious corrections to the minutes.

Ms. Cline and Ms. Schwartz discussed the building permit associated with paving a space and the intended use requirement on the application. In the June hearing the discussion and decision to allow an area to be permitted for paving without an intended use was exclusive to that case.

Neil Niman MOVED to approve the amended minutes for July 12, 2022. Leslie Schwartz SECONDED the motion and it PASSED 3-0 with Micah Warnock abstaining.

VIII. Adjournment

Leslie Schwartz MOVED to adjourn the meeting. Neil Niman SECONDED the motion and it PASSED 4-0.

Adjournment at 7:50 pm
Karyn Laird, Minutes taker

Mark Morong, Secretary