

*These minutes were approved at the November 15, 2022 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, September 13, 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

**MEMBERS ABSENT:** Leslie Schwartz, Alternate

**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**

No alternates were present.

**IV. Approval of Agenda**

There were no changes to the agenda. The applicants were notified of a four-member board and the need for three votes to receive approval.

**V. Public Hearings:**

- A. **PUBLIC HEARING** on a petition submitted by Brigitte Herz, Durham, New Hampshire, for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XX, Section 175-109(M) of the Durham Zoning Ordinance to permit a short-term rental in the owner's primary residence. The property involved is shown on Tax Map 218, Lot 15, is located at 191 Durham Point Road, and is in the Residence C Zoning District.

Ms. Herz explained that due to her personal and financial situation she is seeking permission to have a short-term rental in her home. She noted that a map and four letters of support from neighboring properties were provided to the board. Ms. Herz stated that there would be no impact to anyone since she will be living in the home, there will be no parties on the premises, and she intends for the rental to exist as a peaceful retreat for visitors.

- . Ms. Herz also spoke to the special exception criteria from her written proposal noting the rental will accommodate no more than two adults and two children for a short-term stay, there will be no additional carbon footprint as the household went from five to two residents, there is no detriment to the public health since there will be no drug or alcohol consumption, and there will be no impact on traffic or parking since parking is available on site.

Chair Warnock asked if there were questions from the board and there were none. He asked if anyone from the public wished to speak, and no one spoke in favor or in opposition.

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

Chair Warnock did not see any issues and felt the case was similar to other short stay rentals that have been presented to the board. Neil Niman noted that all the criteria were met, and Mark Morong felt the proposal fit the intent of the ordinance.

***Neil Niman made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Brigitte Herz, Durham, New Hampshire, for a SPECIAL EXCEPTION in accordance with Article XX, Section 175-109(M) of the Durham Zoning Ordinance to permit a short-term rental in the owner's primary residence. Chair Warnock SECONDED the motion and it PASSED 4-0.***

Chair Warnock let the applicant know of the 30-day period for somebody to challenge the decision.

- B. PUBLIC HEARING** on a petition submitted by Linda Conforti-Brown and Larry G. Brown, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(B)(6) of the Durham Zoning Ordinance to allow the placement of a shed forward of the front façade of the house. The property involved is shown on Tax Map 215, Lot 23, is located at 112 Piscataqua Road, and is in the Residence C Zoning District.

Mr. Brown stated his property is very steeply sloped with no flat areas behind the façade except for a small part on the east side of the property. Placing the proposed shed in that location, however, would block access to their backyard. Mr. Brown explained the only other flat piece of land on the property is located on the front corner behind an existing 8ft. privacy fence. Mr. Brown referred to a map pointing out that the tallest part of the proposed shed would be 7ft. and not visible from behind the fence. Mr. Brown spoke to the variance criteria noting the following: the proposal aligns with the spirit of the ordinance, the location allows for emergency access and snowplowing, in reference to the nearby river there would be no additional non-permeable ground, it is not contrary to the public interest and not being able to build to the front of the façade would be an unnecessary hardship.

Mark Morong stated he is familiar with the lot and agreed that it is challenging. Chair Warnock asked if there were any additional comments or questions from the board and there were none. He asked if anyone from the public wished to speak, and no one spoke in favor or in opposition.

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

Chris Sterndale asked board members if they wanted to include the condition that the shed not be visible behind or above the fence. Board members did not feel this was necessary and felt the criteria was met regardless.

***Neil Niman made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Linda Conforti-Brown and Larry G. Brown, Durham, New Hampshire, for an APPLICATION FOR VARIANCE in accordance with Article XX, Section 175-109(B)(6) of the Durham Zoning Ordinance to allow the placement of a shed forward of the front façade of the house. SECONDED the motion and it PASSED 4-0.***

Chair Warnock let the applicant know of the 30-day period for somebody to challenge the decision.

- C. **PUBLIC HEARING** on a petition submitted by Todd and Renee Allen, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** from Article XX.1, Section 175-54 and Article XX Section 175-109(B)(6, 7, & 8) of the Durham Zoning Ordinance to allow for a farmer's porch within the front yard setback; and to allow for an accessory structure forward of the front façade of the house, closer than 10 feet from the side yard setback and closer than 20 feet from the abutting residential building. The property involved is shown on Tax Map 113, Lot 64, is located at 28 Garden Lane, and is in the Residence A Zoning District.

Mr. and Mrs. Allen were present on Zoom. Chair Warnock asked the applicants to speak to the five criteria for variance. They explained their application was not accessible to them since their laptop had crashed. Mr. Allen stated that the property is on a sloping corner lot, and they would like to add a farmer's porch off the front of their house. In doing so, a corner of their porch would be over the 30 ft. setback requirement, which is why they are asking for a special exception. Speaking aesthetically, Mr. Allen stated the porch would not obstruct anyone's view and it would add a nicer and safer entrance to their house. Secretary Mark Morong read aloud their application responses, including but not limited to the following: the variance is not contrary to public interest and the porch will provide a pleasing curb appeal, the current porch has an inadequate entryway that is unsafe, the values of surrounding properties will be enhanced by the historical feature of a farmer's porch, and the grade of the property in relation to where the house sits poses limitations and hardship.

Board members confirmed with Mr. Allen that Garden Lane is along the front setback of the property and Hoitt Drive is along the side setback, with the house encroaching more into Hoitt. The back corner of the proposed porch would be within the setback while the front corner would be over. Regarding the shed, the rear of the house is steep with rocky ledge and limited flat land. According to Mr. Allen, the shed's proposed location on the front side yard would act as a barrier and provide privacy from the street.

Chris Sterndale was in favor of the porch stating it would not appear to be encroaching from the street view while looking up toward the property. However, he did wonder if the location of the shed would appear to be crowding the property. Mr. Allen stated the proposed 10' x 20' shed would sit on top of a rock wall and would not have a permanent foundation. It was acknowledged that the shed cannot go behind the front façade of the house due to the sloping property, and that a shed closer to the house would be less convenient. Still, board members felt the proposed location and size of the shed may be too imposing since the purpose of the ordinance is to prevent large masses from encroaching on the street. Chair Warnock stated he would like more rendering to the shed, including its height. Mr. Allen stated that regarding code, the size of the shed would be allowed if it were within the setback and asked if he could bring it back closer to the house.

Chair Warnock asked if anyone from the public wished to speak, and no one spoke in favor or in opposition. Code enforcer Audrey Cline showed concern for the impact between the shed and the location of the neighbor's house since it would encroach on their 20 ft. setback.

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

Chair Warnock stated he was fine with the porch. Regarding the shed, Mark Morong felt he would need a site walk due to both its size and closeness to the neighbor. Chair Warnock asked board members if they would conduct a site walk if Mr. Allen staked out the shed and provided the height. Board members agreed.

Chair Warnock briefly opened the public meeting and asked Mr. Allen if he would mark the property to show the location and size of the shed, and provide its height, before the next hearing. Mr. Allen agreed to have the property prepared for the week of October 3<sup>rd</sup>.

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

***Chris Sterndale made a MOTION that the Zoning Board of Adjustment approve a petition submitted by Todd and Renee Allen, Durham, New Hampshire, for an APPLICATION FOR VARIANCE from Article XII.1 Section 175-54 of the Durham Zoning Ordinance to allow for a farmer's porch within the front yard setback. Neil Niman SECONDED the motion and it PASSED 4-0.***

***Chris Sterndale made a MOTION to continue the hearing relative to the shed from Article XX Section 175-109 (B)(6, 7, &8) to the October 11, 2022 meeting. Neil Niman SECONDED the motion and it passed 4-0.***

Chair Warnock let the applicant know that the farmer's porch was approved and after a 30-day period he can begin construction if no one challenges the decision. He also let Mr. Allen know that the shed was extended until the next meeting and reminded him to have the property staked out for the first week of October.

- D. **PUBLIC HEARING** on a petition submitted by Joshua Meyrowitz, Martha Andersen, Michael F. Urso, and Sandra A. Ceponis, Durham, New Hampshire, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a July 13, 2022, decision of the Planning Board, that the Toomerfs principal-use parking-lot site plan of May 4, 2022 for the Church Hill District is surface parking. The property involved is shown on Tax Map 108, Lots 10, 11, 12, 13, is located at 19-21 Main Street, and is in the Church Hill Zoning District.

Representatives from both parties were in attendance. Board members received a memo on September 5th requesting a continuance from the applicant. For that reason, not all board members felt prepared to decide the case tonight. It was discussed whether to continue presenting the case for informational purposes and deciding at a later meeting or conduct the presentation and decision on the same night at a later date. Both parties favored the latter.

**Mark Morong MOVED to continue until the next month. Chris Sterndale SECONDED the motion and it PASSED 4-0.**

- VI. **Other Business:** Chair Warnock stated he would like the council to think about a better process for Air B&B's and asked board members for their thoughts. A few ideas included creating a bullet point list that would be approved by the council, giving the neighbors an opportunity to say no and if there is opposition hold a hearing with the ZBA, have the council make the decision, or replace the process with another one that does not require a ZBA special exception. Board members agreed there had been little to no reason for denying Air B&B's and felt it was appropriate at this time to discuss the possibility of a better process.

- VII. **Approval of Minutes:** August 9, 2022

On page 2, line 17 strike "Ms. Britton" and replace with "Ms. Mower".

On page 2, line 35 & 36 strike the word "broad", so it reads "have merit".

On page 3, line 3 strike the sentence and replace it with, "Mr. Niman stated neighbors might not be in favor since they might not want strangers walking around their neighborhood."

**Chris Sterndale MOVED to approve the amended minutes for August 9, 2022. Neil Niman SECONDED the motion and it PASSED 3-0 with Mark Morong abstaining.**

- VIII. **Adjournment**

Chair Warnock introduced a new alternate that will start in November.

**Neil Niman MOVED to adjourn the meeting. Chris Sterndale SECONDED the motion and it PASSED 4-0.**

Adjournment at 7:56 pm  
Karyn Laird, Minutes taker

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Mark Morong, Secretary