

These minutes were approved at the September 12, 2023 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, August 8, 2023, 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
James Bubar
Joseph Warzin, Alternate

MEMBERS ABSENT: Mark Morong, Secretary
Kevin Lemieux
Leslie Schwartz, Alternate

OTHERS PRESENT: Audrey Cline, Zoning Administrator

I. Call to Order

Chair Warnock called the meeting to order at 7:05 pm.

II. Roll Call

All members introduced themselves.

III. Approval of Agenda

No amendments were made to the agenda.

IV. Seating of Alternates

Joseph Warzin was seated as a voting member. As there were only four members present, the applicants were given the option to postpone their hearings until the next meeting. All the applicants chose to be heard this evening.

V. Public Hearings:

A. **PUBLIC HEARING** on a petition submitted by David Snider, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to permit a garage to encroach upon the side setback. The property involved is shown on Tax Map 105, Lot 50, is located at 31 Edgewood Road, and is in the Residence A Zoning District.

Vice Chair Niman read the above petition to open the public hearing.

Mr. Snider presented supporting criteria for the application.

No members of the public spoke either in favor or in opposition to the application.

Member Niman MOVED to close the public hearing. SECONDED by Member Warzin and PASSED unanimously.

MOTION by Vice Chair Niman to APPROVE the petition submitted by David Snider, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to permit a garage to encroach upon the side setback. SECONDED by Chair Warnock and PASSED unanimously 4-0-0.

Chair Warnock stated there is a thirty-day appeal process to apply for a rehearing.

- B. **PUBLIC HEARING** on a petition submitted by Asher and Callie Langton, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1 Section 175-54 to permit the side setback encroachment for a 10' x 16' mudroom, deck, and entrance stairway. The property involved is shown on Tax Map 232, Lot 62, is located at 14 Ross Road, and is in the Rural Zoning District.

Vice Chair Niman read the above petition to open the public hearing.

Mr. & Mrs. Langton presented supporting criteria for the application.

No members of the public spoke either in favor or in opposition to the application.

Vice Chair Niman MOVED to close the public hearing. SECONDED by Member Warzin and PASSED unanimously.

Member Bubar questioned whether the notifications have been proper. Should the parcel across the stream bisecting the adjacent property have been notified. There was consensus of the Board that this property did not need to be noticed.

The Board discussed the five criteria based on the information in the Langdon's application. Vice Chair Niman stated that the shape of the lot created a hardship.

MOTION by Chair Warnock to APPROVE the petition submitted by Asher and Callie Langton, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1 Section 175-54 to permit the side setback encroachment for a 10' x 16' mudroom, deck, and entrance stairway. SECONDED by Vice Chair Niman and PASSED unanimously 4-0-0.

Chair Warnock stated there is a thirty-day appeal process to apply for a rehearing.

- C. **PUBLIC HEARING** on a petition submitted by Frank Silva & Graham Camire, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article II Definitions Section 175-7 of the Durham Zoning Ordinance to allow seating on an adjacent lot as an accessory use to their principal restaurant. The property involved is shown on Tax Map 108, Lot 16, is located at 39-41 Main Street, and is in the Central Business Zoning District.

Vice Chair Niman read the above petition to open the public hearing.

Attorney John Lyons represented the applicant and handed out supplemental material which he explained. Chair Warnock asked if the basement door of the apartment building accesses the seating area. Attorney Lyons stated that, yes, it does, but apartment dwellers have no access to the basement. There will always be two employees outside. Attorney Lyons read into the record a letter from an abutter who came late.

There was discussion about the five criteria for a variance. There was discussion with the applicant on whether it was possible, should the variance be granted, to state conditions for both the parcels together.

Member Bubar MOVED to close the public hearing. SECONDED by Vice Chair Niman and PASSED unanimously

There were concerns from the Board that an approved variance would be perpetual with the property regardless of any change in ownership. There was discussion about whether conditions could be included with the variance should one of the parcels be sold. The Board decided it would be best to continue the public hearing in order to seek guidance from Town Counsel on this matter.

Vice Chair Niman MOVED to continue the discussion on the application until August 22 at 7:00 p.m. pending consultation with the Town Attorney. SECONDED by Member Bubar and PASSED unanimously.

VI. Other Business

VII. Approval of Minutes: June 13, 2023

Vice Chair Niman MOVED to approve the minutes of June 13, 2023, SECONDED by Chair Warnock, and PASSED 4-0-0.

VIII. Adjournment

Chair Warnock MOVED to adjourn the meeting, SECONDED by Member Bubar, and PASSED 4-0-0.

There was no recording of this meeting. Minutes were created by Administrative Assistant, Karen Edwards, through discussions with the Chair and the Zoning Administrator.