

These minutes were approved at the November 14, 2023 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, September 12, 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
Mark Morong, Secretary
James Bubar
Kevin Lemieux

MEMBERS ABSENT: Joseph Warzin
Leslie Schwartz

OTHERS PRESENT: Audrey Cline, Zoning Administrator

I. Call to Order

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

II. Roll Call

Chair Warnock introduced all members of the Board in attendance.

III. Approval of Agenda

*Member Bubar **MOVED** to accept the agenda with the withdrawal of item V.C.,
SECONDED by Vice Chair Niman, and **PASSED** unanimously 5-0-0.*

IV. Seating of Alternates

As all members of the Board were present, no alternates were seated.

V. Public Hearings:

Chair Warnock read the procedures for public hearing.

- A. *On a petition submitted by Brian Miles & Erin Sigel, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XX Section 175-109-B6 to permit the location of a garden shed forward of the front façade of the house. The property involved is shown on Tax Map 236, Lot 14, is located at 89 Packers Falls Road, and is in the Rural R Zoning District.*

Secretary Morong read the above petition to open the public hearing. Chair Warnock acknowledged he knows the applicant but believes he can make an unbiased judgment. Hearing no objections from the board, Chair Warnock introduced Mr. Miles to present his petition.

Mr. Miles explained that given the topography of the parcel and the need for the shed to be close to the garden, the proposed location is the only feasible place the shed could go.

The shed would not be visible from the public road, even in the winter, thus, not creating a nuisance. The shed would be about 9 - 15' below the grade of the house and generally not visible from the driveway. The shed will not negatively impact the rural character of the neighborhood. There is a wooden buffer between the proposed shed and the road. The variance is necessary to enable reasonable full use of the property.

Mr. Lemieux asked about the private road. Ms. Cline explained the private road is a shared driveway. Member Bubar asked if the area bordering the road would be developable. Mr. Miles doesn't believe so given how steep that area is.

No members of the public rose to speak.

Vice Chair Niman MOVED to close the public hearing. SECONDED by Secretary Morong and PASSED unanimously 5-0-0. The public hearing closed at 7:12 pm.

The board discussed the application and deemed all criteria were met.

MOTION by Vice Chair Niman to APPROVE the petition for an APPLICATION FOR VARIANCE from Article XX Section 175-109-B6 to permit the location of a garden shed forward of the front façade of the house. The property involved is shown on Tax Map 236, Lot 14, is located at 89 Packers Falls Road, and is in the Rural R Zoning District. SECONDED by Member Lemieux and PASSED unanimously 5-0-0.

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

- B. *On a petition submitted by Barry Reinhold on behalf of Durham Evangelical Church, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XX Section 175-109-C6 to permit an accessory dwelling unit without an interior door. The property involved is shown on Tax Map 109, Lot 73, is located at 37 Mill Road, and is in the Residence A Zoning District.*

Secretary Morong read the above petition to open the public hearing.

Mr. Reinhold explained they are seeking to make an accessory dwelling unit within the existing single-family dwelling. The accessory dwelling will be in the dormer area above the garage. There is not a door between the living spaces of the two units, thus precipitating the requirement of a variance. He explained that the proposal is in line with state law designed to increase affordable housing without additional land development. No additional land development will be needed to establish the ADU. It is a distinct space that meets the spirit of the ordinance.

The exterior entrance goes up a stairwell, but there is no access to the garage from the stairwell. It would be free housing for the individual living there as part of the religious covenants. The person living in the ADU would likely be similar to a sextant and would be responsible for maintaining the property and doing ministry on campus.

Vice Chair Niman asked how amendable the applicant would be if a restriction was put on the approval that the occupant of the space would be someone who works closely with church leadership. Mr. Reinhold said he would need to bring that before the Durham Evangelical Church Board, but he doesn't see why that would be a problem. The proposed ADU is 450 square feet. Member Lemieux asked if the original plans for the garage included an ADU.

Member Bubar MOVED to close the public hearing. SECONDED by Chair Warnock and PASSED unanimously 5-0-0.

The board discussed the reason for the interior door in the ordinance. Vice Chair Niman explained, adding his aforementioned condition would help keep to the spirit of the ordinance by requiring a close relationship between those dwelling in the ADU and the primary dwelling. Ms. Cline explained that accessory dwellings are attached to a property and accessory apartments are not connected. The reason for the door requirement is to ensure a close relationship among the residents of the single-family dwelling and the ADU. The door is to allow you to have a second dwelling but still be seen as one unit. She further stated there needs to be a specific reason why you give a variance, otherwise the variance doesn't make sense across town. She explained the door would be considered attached if it connects living space to living space.

MOTION by Vice Chair Niman to APPROVE the APPLICATION FOR VARIANCE from Article XX Section 175-109-C6 to permit an accessory dwelling unit without an interior door with the condition that the inhabitants of that property will work closely with church leadership and have a working relationship with the church. The property involved is shown on Tax Map 109, Lot 73, is located at 37 Mill Road, and is in the Residence A Zoning District. SECONDED by Member Lemieux and PASSED unanimously 5-0-0.

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

VI. Other Business

Chair Warnock informed the board that the current statute requires the ZBA use verified mail for notifications. The notifications are moving from certified to verified, making it less expensive for applicants and easier for the secretary. The board will vote on this at the next meeting.

VII. Approval of Minutes: August 8, 2023 and August 22, 2023

No closing times were listed in the minutes due to not having DCAT footage.

Vice Chair Niman MOVED to approve the minutes of August 8, 2023, SECONDED by Secretary Morong, and PASSED unanimously 5-0-0.

Regarding the August 22, 2023 minutes, Vice Chair Niman asked for one change: page 3, third paragraph, end of second sentence - alter the sentence to read "He feels the planning board would not send it back to the zoning board."

Member Bubar MOVED to approve as amended the minutes of August 22, 2023, SECONDED by Vice Chair Niman, and PASSED unanimously 5-0-0.

VIII. Adjournment

Vice Chair Niman MOVED to adjourn the meeting, SECONDED by Member Bubar, and PASSED unanimously 5-0-0.

Adjournment at 7:55 pm
Daphne Chevalier, Minutes taker