

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

**ZONING BOARD OF ADJUSTMENT
Tuesday, November 14, 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
Joe Warzin, alternate

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

Vice Chair Niman MOVED to accept the agenda as presented, SECONDED by Member Bubar, 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 Henderson Family Properties, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.I Section 175-54 of the Durham Zoning Ordinance to permit the expansion of the maximum front setback from 25' to 57'. The property involved is shown on Tax Map 108, Lot 48, is located at 28 Dover Road, and is in the Courthouse Zoning District.*

Secretary Morong read the above petition into the record.

Attorney Lanzetta of Burton & Berube, PLLC, 601 Central Ave, Dover, NH, presented information in support of the application for variance. He explained the purpose of the

setback ordinance is to allow cars to park in front of a business; however, a car wash is designed such that traffic moves through the structure. The proposed plans are designed for maximum vehicular safety on the property, which will require an additional 32' for the setback. A car wash is a permitted use in the neighborhood and fits with the other businesses in the area. He argues the new construction will increase the value of neighboring properties and the ordinance doesn't account for the traffic flow necessary for the permitted use of a car wash, which is why the applicant is requesting a variance.

Vice Chair Niman asked why the variance is required to comply with the landscaping requirements. Mr. Lanzetta stated that pushing back will allow them to comply with other regulations, such as the need for landscaping to act as a buffer, which he anticipates will be required from the Durham Planning Board.

Ms. Cline said there is nothing in the zoning ordinances that would require a buffer, but the planning board may require it when it goes to site plan review. Mr. Lanzetta believes the planning board will require the buffer as part of the site plan review.

Ms. Cline stated her understanding is that the purpose of the setback ordinance is for parking to be behind the building.

Chair Warnock opened the public hearing at 7:25pm.

Lee Alexander of 32 Dover Road rose to speak on the variance. Mr. Alexander mentioned he met with a representative from Henderson Family Associates and has concerns about the proposed 6' rise in elevation from the road. Mr. Alexander said the setback variance would allow for the three trees on the property to be maintained. As an abutter, Mr. Alexander would like to submit a letter to the ZBA before a final decision is made. He recommends a brief site visit by the ZBA members would be beneficial in helping the board make an informed decision.

Mark Henderson, 12 Pendexter Road, Madbury, spoke to the buffers on the plans. He said the buffer area was added to the plan per Michael's [sic] request. Attorney Lanzetta said Article V is the ordinance that contains the language regarding buffers.

Brian Bisette, 6 Old Landing Road, rose to speak in opposition. He said allowing the variance will shift traffic away from the commercial zone and back toward the residential zone. It will have a negative impact on his property value, as it will increase noise and traffic. He visited four other nearby car washes and noticed that they all have a tree buffer behind them and the vacuums are all placed toward the front of the property; Mr. Henderson's proposal places the vacuums in the rear, closer to his property. Mr. Bisette is concerned about how the proposed plan will impact public access to the Landing. He argues that by the town ordinances, there should be up to a 70' setback to the residential zone and some sort of buffer. The scale of this plan goes against the size of the neighborhood.

Karen Sayers, 6 Bayview Road, spoke to the substantial justice criteria, stating it negatively impacts the character of the neighborhood. She is concerned about reduced walking safety, traffic increase, noise and light pollution.

Kevin O'Connell, 16 Bayview Road, spoke to say the plan is not in the public interest. He doesn't see how justice will be done given the number of neighbors opposed to the development and the subsequent decrease to their property values, as people are less likely to want to purchase a home near a car wash given the noise, lights, and pollution.

Chair Warnock reminded people that a car wash is a permitted use, and they have to speak to the criteria for the setback variance request.

Elizabeth Linsky, 10 Old Landing Road, and her daughter spoke about the impact of the variance, which would put the business closer to her home.

Serena Kow, 25 Bayview Road, spoke to say the only one benefiting from the variance is the applicant. Chair Warnock said that is the purpose of the variance. Ms. Kow said the neighboring properties will be negatively impacted. She argued if the only way he can have this car wash is if he receives the variance, then maybe the Town shouldn't give him the variance.

Gwendolyn Howard, Bayview Road, asked if the fact that a car wash is permitted means you can build it anywhere in the zone. Mr. Warnock confirmed this to be true. Ms. Howard spoke to say the variance is contrary to public interest. The traffic in that area of Rt. 108 is problematic. Ms. Howard stated that though allowing the variance seems like it will be making things safer, it will not be, thus is contrary to the public interest. Additionally, Ms. Howard stated the variance is not in the spirit of the ordinance, arguing the purpose is to protect our town, but as the building will be set above the road, it will still be visible from the road. In regard to property values, she disagreed with Mr. Lanzetta that a car wash will increase the value of the nearby properties. It would negatively impact the neighborhood.

Stacey Schlender, 11 Bayview Road, spoke to say the setback is not in the timbre of the neighborhood. She asked in terms of public safety, who is the safety for? The customers or the people who live there? She said per variance criteria E, it creates an unnecessary hardship for the neighborhood.

Erik Ickes, 24 Bayview, spoke to say he sees a lot of retail space proposed on the property. The setback seems to be requested so that the parking spaces can accommodate both the car wash and parking for the retail locations.

Attorney Lanzetta addressed the concerns from the public. He said the concerns that were expressed this evening were the purview of the planning board. He said it is impossible to build a car wash on this property, which is a permitted use, without a variance to the setback requirements. It would be unreasonable to prohibit a setback for a permitted use. Putting a state-of-the-art car wash on the property will increase the value of the property.

Chair Warnock stated the question at hand is whether it would decrease the value of surrounding properties, which was one of the major concerns of the public. The other was public safety. He explained the safety concerns for ingress and egress are concerns for the planning board. Attorney Lanzetta said to allow for a turning radius that

wouldn't choke up traffic on Rt. 108, the setback is required.

Mr. Bissette rose to say that the car washes he visited show that it is possible to flip the layout and still be able to build a car wash without the variance.

Attorney Lanzetta said the plan was prepared by a certified engineer who assessed the property to create the best design for the property. There is no basis to say there is another design that reorients the design.

Ms. Cline stated the Zoning Board is only reviewing a small portion of the plan. They are not reviewing the plan as a surveyed plan.

Member Bubar MOVED to close the public hearing. SECONDED by Secretary Morong and PASSED unanimously 5-0-0. The public hearing closed at 8:23 pm.

The board discussed the application. Regarding criteria one, Member Bubar has concerns about vehicle and pedestrian safety, which is in the public interest. Chair Warnock doesn't see the relationship between the setback and traffic. He would argue that the setback will actually increase vehicular traffic. Vice Chair Niman said allowing more space would increase safety. The applicant has the legal right to build a car wash. It's the purview of the planning board to determine the traffic impact.

In order to prevent parking between the building and the road, Ms. Cline stated the Zoning Board could make a condition of approval to say no parking can occur between the building and the road in the future should the business change. Regarding the spirit of the ordinance, Vice Chair Niman stated the original intent of the ordinance was to require a minimum of 15' but no more than 25' in order to maximize the use of the property but balance that with the desire not to have businesses right on the road. He said the variance would meet the justice criteria; in that it would allow the applicant an authorized use of his property. The Board discussed whether the applicant could propose a different configuration on the property to meet the setbacks. Chair Warnock stated for him it comes down to the hardship clause; the applicant has not done due diligence to prove there is absolutely nothing that can be done to prevent the setback variance.

MOTION by Chair Warnock to DENY the APPLICATION FOR VARIANCE from Article XII.I Section 175-54 of the Durham Zoning Ordinance to permit the expansion of the maximum front setback from 25' to 57' based upon the hardship clause. The property involved is shown on Tax Map 108, Lot 48, is located at 28 Dover Road, and is in the Courthouse Zoning District. SECONDED by Member Lemieux and PASSED 4-1-0 via roll call vote: Chair Warnock - yes, Vice Chair Ninan - no, Secretary Morong - yes, Member Lemieux - yes, Member Bubar - yes.

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

- B. ***PUBLIC HEARING on a petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XVII Sections 176-96.G.4 & 175-96.H to permit the installation of signage in the Historic District in excess of 6 square feet. The property involved is shown on Tax Map 108, Lot 69, is located at 15 Newmarket Road and is in the Courthouse Zoning District.***

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

Scott Letourneau, 26 Newmarket Road, rose to present his case for the requested variance to place a ground-mounted sign so the nature and name of his business can be seen more easily by pedestrians and motorists on Rt. 108. He had a preliminary discussion with the Historic District Commission, as he will need final approval from them for the sign. The sign is just over 15 square feet. The objective of the ordinance is to ensure signage won't be excessively large. The property next door, though not in the historic district, has very large signage, so the sign will not deter from the character of the neighborhood, nor will it threaten public health, safety, or welfare. The benefit to the public is that the business will be easily identified. The size, historic nature, and location of business activity in the back of the property make it distinctive. None of the current signage facing Newmarket Road has the name Tideline on it.

The Board asked Mr. Letourneau about his conversation with the Historic District Commission. Mr. Letourneau said they had a couple of concerns. One was with the upward facing lighting, which he will reconfigure to be on a gooseneck and downward facing. He initially reported the sign would be vinyl wrapped posts; however, he is considering granite, cedar treated wood, or pressure treated lumber with an azak wrap instead.

Vice Chair Niman MOVED to close the public hearing. SECONDED by Secretary Morong and PASSED unanimously 5-0-0. The public hearing closed at 9:03 pm.

The board determined all criteria for the variance were met in the proposal.

MOTION by Chair Warnock to APPROVE the petition submitted by Slipknot Properties LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XVII Sections 176-96. G.4 & 175-96.H to permit the installation of signage in the Historic District in excess of 6 square feet. The property involved is shown on Tax Map 108, Lot 69, is located at 15 Newmarket Road and is in the Courthouse Zoning District. SECONDED by Member Bubar and PASSED unanimously.

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

- C. ***PUBLIC HEARING on a petition submitted by Milton T Jr. & Edda M. Martin, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Articles XII.1 Section 175-54 Table of Dimensions & Section 175-53 Table of Land Uses Accessory Structure to permit the location of a garden house on an existing foundation on a separate lot of record. The property involved is shown on Tax Map 105, Lot 108, is located at 83 Madbury Road, and is in the Residence A Zoning District.***

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

Mr. Martin presented his application for variance. The proposed garden house will contain tools and materials to maintain the property. Half of the garden house will not be visible from the road due to the large stone wall and wooded lot. The placement is the site of an old summer house. The original foundation base is 12' x 16' and backs up to the stone wall. Leaving equipment under the tarp, as it is now, is a hardship for the owners, who

have been advised to store the equipment outside of the elements. He explained if they followed the setback rules, the garden house would be much more visible from the road.

The board discussed giving a variance on the existing foundation. Mr. Martin explained the previous structure on that footprint was removed about eight years ago.

MOTION by Vice Chair Niman to GRANT the APPLICATION FOR VARIANCE from Articles XII.1 Section 175-54 Table of Dimensions & Section 175-53 Table of Land Uses Accessory Structure to permit the location of a garden house on an existing foundation on a separate lot of record. The property involved is shown on Tax Map 105, Lot 108, is located at 83 Madbury Road, and is in the Residence A Zoning District. SECONDED by Member Lemieux and PASSED unanimously.

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

VI. Other Business

Chair Warnock provided an update from the discussion at the last meeting regarding the move from certified to verified mail, as the State only requires verified mail, which is much less expensive. The Town believes that is a better route to go. Ms. Cline suggested the Board leave the option for either or depending on the application.

MOTION by Chair Warnock to leave the mailing type of certified or verified up to the Zoning Administrator based upon the need of the application at hand. SECONDED by Vice Chair Niman and PASSED unanimously.

VII. Approval of Minutes: September 12, 2023

Secretary Morong requested the following amendments:

- Change “Member Morong” to “Secretary Morong”
- On pg 2, bold type “public meeting closed at” - change to “public hearing.”
- On pg 2, in the paragraph that begins with Mr. Reinhold, third line - Change “There is not a door between the living spaces of the two units, requiring a variance” to “There is not a door between the living spaces of the two units, thus precipitating the requirement of a variance.”

Vice Chair Niman MOVED to adopt the minutes of September 12, 2023 as amended, SECONDED by Chair Warnock, and PASSED unanimously 5-0-0.

The Board would like numbers added to the margins of the minutes. Mr. Warnock would like to have an official copy of plans sent to the Board so they are readable.

VIII. Adjournment

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

Adjournment at 9:22 pm
Daphne Chevalier, Minutes taker