

These minutes were approved at the April 9, 2024 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, March 12, 2024 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, via Zoom
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. Seating of Alternates

Alternate Warzin was seated in Secretary Morong's absence.

IV. Approval of Agenda

No amendments were requested; agenda moved forward as approved.

V. Public Hearings:

Chair Warnock read the procedures for public hearing.

- A. **PUBLIC HEARING** on a petition submitted by Kevin Baum on behalf of MD Shaad Mahmud and Erika Naumann Gaillat, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-53, Table of Uses, of the Durham Zoning Ordinance to permit multifamily use. The property involved is shown on Tax Map 108, Lot 73-1, is located at Schoolhouse Lane, and is in the Courthouse Zoning District. **Please note that this meeting is continued from the Zoning Board of Adjustment meeting held on February 13, 2024.***

Member Lemieux read the above public hearing into the record.

Mr. Baum spoke to represent the applicants, who are seeking to construct a four unit building on their currently vacant lot on Schoolhouse Lane. He explained he will present information in support of both this application as well as the second application submitted by the applicants that is up for review this evening (Public Hearing B). Mr.

Baum shared maps to illustrate the applicants' intent is to put the building as close as possible to Schoolhouse Lane. The three-story four-unit apartment building is intended to be non-student housing. The applicants live next door with their current two tenants in their 60s. Mr. Baum explained the area is currently a transition area, including Three Chimneys Inn, Tideline, and multiple multi-family domiciles. He stated it is zoned for multi-use and is a transition area in terms of uses and zoning. He stated the area gets a lot more use now with Tideline open. He explained the intent is to create a building about the size shown on the plan, which is in line with the single-family residences in the area. Therefore, the applicants are asking for use and density variances.

Ms. Gaillat introduced herself to the Board. She highlighted they want to be good neighbors, which is why they plan to build the structure closer to Schoolhouse Lane. They want the building to be in line with the area. She explained they are paying taxes on an empty property when it is zoned for development. They want to provide housing in the area close to town and a bus route.

Chair Warnock inquired how the applicants expect to keep the rentals from becoming student rentals. Mr. Baum explained the applicants cannot legally keep students from renting the apartments, but their marketing plan is for the property to be housing open to people of all ages. Member Lemieux asked for clarification as to how many units there would be per floor. Mr. Baum explained the final design is not yet complete, but the idea is for the units to be more like row houses than apartment units. Each unit will have two bedrooms. Vice Chair Niman asked Mr. Baum to speak to the criteria of the variance. Chair Warnock asked if any thought was given to selling the property instead of renting given the investment owners have in their property. Mr. Baum reiterated owners will be next door and this is an investment for the applicants to be able to use the property and provide housing in Durham.

Regarding the public interest and spirit of the ordinance criteria, Mr. Baum explained a single-family home is not applicable to this lot given the change in the neighborhood. He stated neither the health and safety nor altered neighborhood criteria would be negatively impacted, as there are other multi-family units that are much more dense than the proposed application. He said the property differs from the Old Landing neighborhood, which is more single family, as it creates more of a separation. The applicants intend to retain the back area near Old Landing and keep that undeveloped, which they are happy to have as a condition of approval for their application. Mr. Baum believes density has already been contemplated for that area, as up to 50% is allowed for elderly housing, but elderly housing doesn't make sense given the other rentals in the neighborhood and the presence of Tideline. Regarding the substantial justice criteria, Mr. Baum stated denial of the variances will result in a loss of the use of the land by the applicants that is consistent with the surrounding area and loss of additional housing to Durham. He states the land can and will eventually be developed and a single-family home could be built anywhere on the lot with no further review of a site plan; therefore, this plan is the least impactful to the general area. Mr. Baum submitted a letter from realtor Carol Camp, who indicated there will likely not be any negative impact to current housing in the area. Further, Mr. Baum stated as the road is currently being used

for rentals, additional units will not noticeably increase traffic in the area.

Ms. Cline confirmed the applicants' current ADUs were pre-existing and there is a restriction on the number of unrelated people who can live in the units. Mr. Baum said if the zoning hasn't kept up with the area, that poses a hardship on the applicants, and there is case law to support that. He stated the plans would not overburden the lot, as there is sufficient access and sufficient parking. The applicants believe it doesn't make sense to put over 55 development housing on that lot given the character of the neighborhood, but the town has decided the land can support additional density with that exception.

Member Bubar stated the property is not in the Courthouse district; it is zoned RA. He couldn't locate any multi-unit housing on Schoolhouse Lane. He stated a residential house with ADUs would serve a much better purpose on this lot.

Mr. Baum stated the tax records don't make it clear how many units are in the area; next door is an accessory with two units and across the street there are three units (potentially up to nine, for which this Board granted relief). He believes there are three units next to that one. Lot 70 has what he estimates to be over 10 units. Member Bubar explains there is a big difference between a rooming house (which is what exists next door) and a multi-family house. Ms. Cline said all the buildings on that street have more than two units and are multi-family units. Mr. Baum said the impacts of the proposed building would be consistent with the neighborhood and fairly unnoticeable.

Chair Warnock called on those in favor to speak. Hearing none, he called those who wished to speak in opposition to the proposal.

Tom Moriarty, 15 Old Landing Road, explained Schoolhouse Lane has two sides: the south side which abuts the properties and the north side which abuts the gas stations. The south side does not have multi-family properties, while the north side does. He said Tideline has no impact on Old Landing Road, which is not a commercial area. Old Landing consists of owner-occupied homes. The applicants purchased the property with existing rules on the property. He believes changing those rules impacts those living on Old Landing.

Holly Neiweem, 13 Old Landing Road, stated she has submitted a joint letter in opposition with the signatures of eleven different residents to the proposed application. She also submitted a letter from Sheehan Phinney that details the variance requests by the criteria and a letter from Valerie Shelton of Great Bay Realty regarding the impacts on surrounding properties. Ms. Neiweem highlighted key points from her submitted documents. She stated the proposal is contrary to the public interest and disagrees with the applicants' statement that the proposal is consistent with the character of the neighborhood, as the neighborhood consists of two-story single-family homes or structures resembling single-family homes. That nearby parcels are zoned differently than the parcel in question does not mean there is no basis for enforcing applicable provisions. She stated the proposed structure is vastly different from the other structures in the area and is not consistent with existing uses in the area. She shared concerns about

an increase in traffic, a decrease of neighboring property values, and drainage and runoff due to the steep slopes. She requested that should the board decide to approve the application, a conditional of approval be made that the structure be placed to the front of the lot and require vegetation as a buffer. She submitted a letter from Fred Hochgraf in his absence.

Jim Munsey, 17 Old Landing Road, spoke to the applicants' statements about the impact Tideline has had on the character of the neighborhood. He stated there has not been an increase in the number of food trucks and it is not open until 2am. These errors make him question the rest of the application. He stated Tideline has not caused a shift away from single-family homes; that property has been used as town buildings previously. Tideline was advertised as a family gathering place. He spoke to the size of the proposed structure, which is vastly different from existing structures and will change the character of the neighborhood. He spoke to the applicant's letter from realtor Carol Camp regarding property values, which contains no statistical analysis of how property values would increase or decrease. He stated the letter's use of "can" and "potentially" indicate speculation, and noted that Carol Camp is listed as the applicants' realtor, which indicates she is obviously not a disinterested party. He asked that the variance be denied.

Mr. Baum said the footprint of the building will be consistent with those of the neighborhood; he asked his engineer to take the dimensions from the site plan and it is in line with the others. He stated this isn't Old Landing's backyard; it is his client's property on Schoolhouse Lane. He reiterated a building can and will eventually be built on the lot and stated the request for variance is a reasonable request that meets the criteria. He requested that the Board approve the application.

Member Warzin MOVED to close the public hearing. SECONDED by Vice Chair Niman and PASSED unanimously by roll call vote 5-0-0 (Warnock - aye, Warzin - aye, Niman - aye, Lemieux - aye, Bubar - aye). The public hearing closed at 8:09 pm.

Vice Chair Niman spoke to the history of the zoning ordinance on Schoolhouse Lane, explaining the reason the density exception was made for elderly housing is because of previous problems on Young Drive with student athletes living there. That is why the zoning is in place: to protect the families living in the area.

Member Lemieux said he understands the concern regarding the size of the proposed property. He wonders if the Board could put limitations on the size of the proposed property or limit the number of bedrooms.

Chair Warnock said there is a need for additional housing in town. In that neighborhood, there is only one house classified as a rooming house; all the others are single-family with ADUs. There is a purposeful zoning line with a physical barrier. He believes there are other ways to develop the property that would be more in line with the character of the neighborhood.

Member Bubar spoke to the public interest criteria, stating it is clear from Vice Chair

Niman's explanation of the history of zoning in that area that the intention for the area is to be single-family housing. He expressed concerns about diminished value to the Old Landing Road properties.

The Board discussed Tideline's impact on the area, with Vice Chair Niman noting that due to the special conditions of the property, the owners of the lot in question could successfully build a single-family home surrounded by other single-family homes and insulated from the noise at Tideline. Chair Warnock said Tideline is a completely different zoning area.

The Board agreed it is unclear one way or the other how property values would be impacted, given the competing realtor letters.

MOTION by Vice Chair Niman to DENY the VARIANCE on a petition submitted by Kevin Baum on behalf of MD Shaad Mahmud and Erika Naumann Gaillat, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-53, Table of Uses, of the Durham Zoning Ordinance to permit multifamily use. The property involved is shown on Tax Map 108, Lot 73-1, is located at Schoolhouse Lane, and is in the RA District, because it is not consistent with the Spirit and Intent of the Ordinance based on the intent of the ordinance to protect the Old Landing Neighborhood, which is why only single-family housing is permitted there. SECONDED by Chair Warnock and PASSED by roll call vote 4-1-0 (Warnock - aye, Warzin - aye, Niman - aye, Lemieux - nay, Bubar - aye).

Chair Warnock stated the applicants have thirty days to appeal.

- B. ***PUBLIC HEARING on a petition submitted by Kevin Baum on behalf of Shaad Mahmud and Erika Naumann Gaillat, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-54, Table of Dimensions, of the Durham Zoning Ordinance to permit 9,463 square feet of lot area per dwelling unit where 20,000 square feet is required. The property involved is shown on Tax Map 108, Lot 73-1, is located in Schoolhouse Lane and is in the Courthouse Zoning District. Please note that this meeting is continued from the Zoning Board of Adjustment meeting held on February 13, 2024.***

Attorney Baum previously presented information in support of this petition as part of the public hearing item A at tonight's meeting. Public statements were also given previously during that hearing.

The Board discussed the size of the proposed lot. Member Lemieux doesn't have an issue with the number of units but rather the size of the structure. Member Bubar doesn't see any justification for the variance.

MOTION by Chair Warnock to DENY with no prejudice Public Hearing B based upon lack of information. SECONDED by Member Bubar and PASSED by roll call vote 5-0-0 (Warnock - aye, Warzin - aye, Niman - aye, Lemieux - aye, Bubar - aye).

- C. ***PUBLIC HEARING on a petition submitted by Qiaoyan Yu, Durham, New Hampshire,***

for an APPLICATION FOR VARIANCE in accordance with Article 175-109 B (7) Accessory Building for Single-Family Use, of the Durham Zoning Ordinance. The building shall be set back at least ten (10) feet from any property line. The property involved is shown on Tax Map 107, Lot 67, located at 15 Cowell Drive and is in the Residence A District.

Member Lemieux read the above public hearing into the record.

The applicant was not present for the meeting. As the Board thinks it may not have been clear to the applicant that they should be present, they opted to continue this public hearing to the next meeting.

Chair Warnock MOVED to CONTINUE the meeting until the April 9, 2024 meeting. SECONDED by Vice Chair Niman and PASSED by roll call vote 5-0-0 (Warnock - aye, Warzin - aye, Niman - aye, Lemieux - aye, Bubar - aye).

- D. *PUBLIC HEARING on a petition submitted by Celie and Jennings Boley, Durham, New Hampshire, for an APPLICATION FOR SPECIAL EXCEPTION in accordance with Article XII.1 Use and Dimensional Standards, Section 175-53 Table of Land Uses of the Durham Zoning Ordinance to have a short-term rental. The property involved is shown on Tax Map 223, Lot 22, located at 10 Juniper Lane, and is in the Rural Zoning District.*

Member Lemieux read the above public hearing into the record.

The applicants explained they've rebuilt the pre-existing cabin on the river and would like to offer that space up as a short-term rental. They've been in conversations with their neighbors. They have no set plans yet but are exploring their options and hoping to supplement their income. There would be no changes necessary as the building already exists, no signage, and no parking issues. They stated the capacity would be capped at four people, creating a low-likelihood of noise issues. The cabin cannot be seen from the road. The nearest abutting property is 400 ft away and barely visible when the trees are bare. They do not intend to maximize rental use of the property, as they continue to use the cabin themselves.

Member Bubar asked if the septic was outside of the floodplain. The applicants explained there is a pre-existing outhouse on the property. Member Bubar expressed concerns should the Lamprey increase in volume. Chair Warnock clarified the property is completely in the floodplain. Member Lemieux shared concerns about there being an outhouse in that area. The applicants said there is no running water at the cabin. Ms. Cline explained she neglected to determine if the property was in the existing floodplain when she approved the application, so she needs to review the application further before the board moves forward. Chair Warnock said an incinerator toilet could potentially be used. The applicants said the cabin's only power source is a solar panel to operate a few lights. Member Bubar asked about the cooking facilities. The applicant said the cooking facilities would be a propane camp stove or possibly an induction range hooked up to the solar panel.

Chair Warnock MOVED to CONTINUE to April 9, 2024 the PUBLIC HEARING on a petition submitted by Celie and Jennings Boley, Durham, New Hampshire, for an APPLICATION FOR SPECIAL EXCEPTION in accordance with Article XII.1 Use and Dimensional Standards, Section 175-53 Table of Land Uses of the Durham Zoning Ordinance to have a short-term rental. The property involved is shown on Tax Map 223, Lot 22, located at 10 Juniper Lane, and is in the Rural Zoning District. SECONDED by Vice Chair Niman and PASSED by roll call vote 5-0-0 (Warnock - aye, Warzin - aye, Niman - aye, Lemieux - aye, Bubar - aye).

Chair Warnock explained the applicants do not necessarily need to be present; if they prefer, they can send an email to the Board saying they are ok with the Board making a decision without them present.

VI. Other Business

No other business was discussed.

VII. Approval of Minutes: January 9, 2024 & February 13, 2024

Vice Chair Niman MOVED to approve the minutes of January 9, 2024 as written, SECONDED by Chair Warnock, and PASSED unanimously 5-0-0.

Correction to the Feb 13th minutes: regarding Public Hearing B, there were enough members present for a quorum; however, the applicants decided to continue the hearing until a full board was present.

Vice Chair Niman MOVED to approve the minutes of February 13, 2024 as amended, SECONDED by Chair Warnock, and PASSED 4-0-1.

VIII. Adjournment

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

Adjournment at 8:55 pm
Daphne Chevalier, Minutes taker