

1 **ZONING BOARD OF ADJUSTMENT**
2 **Tuesday, April 9, 2024 at 7:00 p.m.**
3 **Town Council Chambers, Town Hall**
4 **8 Newmarket Road, Durham, NH**
5 **MINUTES**
6

7 **MEMBERS PRESENT:** Micah Warnock, Chair
8 Neil Niman, Vice Chair
9 James Bubar
10 Kevin Lemieux
11 Mark Morong
12 Joe Warzin, alternate

13 **OTHERS PRESENT:** Audrey Cline, Zoning Administrator

14 **I. Call to Order**

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

16 **II. Roll Call**

17 Chair Warnock introduced all members of the Board in attendance.

18 **III. Approval of Agenda**

19 Chair Warnock reported there was a request from the applicants for Public Hearing A to
20 present last.

21 *Member Bubar MOVED to approve the agenda as amended. SECONDED by Vice Chair*
22 *Niman, and PASSED unanimously 5-0-0.*

23 **IV. Seating of Alternates**

24 No alternates were seated this evening.

25 **V. Public Hearings:**

26 Chair Warnock read the procedures for public hearing.

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

33 Ms. Cline clarified that public hearing B does not need to be opened to the public, as the
34 public portion of the hearing already took place at the last meeting. She reported that the
35 property in question is not in the floodplain.

36 ***Vice Chair Niman MOVED to APPROVE the APPLICATION FOR SPECIAL***

37 ***EXCEPTION in accordance with Article XII.1 Use and Dimensional Standards,***
38 ***Section 175-53 Table of Land Uses of the Durham Zoning Ordinance to have a short-***
39 ***term rental. The property involved is shown on Tax Map 223, Lot 22, located at 10***
40 ***Juniper Lane, and is in the Rural Zoning District. SECONDED by Member Lemieux,***
41 ***and PASSED unanimously 5-0-0.*** (As Secretary Morong was not present for the public
42 hearing at the last meeting, he did not vote. As Alternate Warzin was sworn in as an
43 alternate for the public hearing at the last meeting, he voted on this motion.)

44 ***C. PUBLIC HEARING on a petition submitted by Kevin Baum Esq. on behalf of David***
45 ***and Karen Della Penta 2013 Trust, Durham, New Hampshire, for an APPLICATION***
46 ***FOR SPECIAL EXCEPTION in accordance with Article XII.1 Use and Dimensional***
47 ***Standards, Section 175-54 Table of Dimensions requiring a minimum side setback of***
48 ***50' for structures. The property involved is shown on Tax Map 239 Lot 9, located at 561***
49 ***Bay Road, and is in the Residence RC District.***

50 Secretary Morong read the above public hearing into the record. Mr. Kevin Baum spoke
51 to represent the applicants, as they are out of state and unable to attend this evening's
52 meeting. The applicants propose to build a new, advanced septic system to replace the
53 existing conventional system. The planning board determined that because the home is
54 being rebuilt and within the setbacks, the new septic system is deemed a structure and the
55 applicants need relief from the ordinance. Mr. Baum believes the applicants meet all
56 necessary criteria for the special exception. The new septic system is not detrimental to
57 the use or character of the neighborhood, will be more protective of the bay, and is 3x the
58 DES requirement. Any impacts to waste disposal will be improved over the current
59 system. Member Bubar asked if there were wetlands involved. Mr. Baum stated there are
60 wetlands on the property, but they are not involved in this project.

61 Chair Warnock invited the public to speak. No member of the public rose to speak to the
62 application.

63 ***Vice Chair Niman MOVED to close the public hearing. SECONDED by Member***
64 ***Bubar, and PASSED unanimously 5-0-0.***

65 Vice Chair Niman stated the application seems pretty straight forward.

66 ***Vice Chair Niman MOVED to APPROVE for APPLICATION FOR SPECIAL***
67 ***EXCEPTION in accordance with Article XII.1 Use and Dimensional Standards,***
68 ***Section 175-54 Table of Dimensions requiring a minimum side setback of 50' for***
69 ***structures. The property involved is shown on Tax Map 239 Lot 9, located at 561 Bay***
70 ***Road, and is in the Residence RC District. SECONDED by Member Lemieux, and***
71 ***PASSED unanimously 5-0-0.***

72 Chair Warnock informed the applicants there is a 30-day waiting period. Ms. Cline
73 confirmed the applicants can begin the process for state permitting.

74
75 ***A. PUBLIC HEARING on a petition submitted by Qiaoyan Yu, Durham, New Hampshire,***
76 ***for an APPLICATION FOR VARIANCE in accordance with Article 175-109 B (7)***
77 ***Accessory Building for Single-Family Use, of the Durham Zoning Ordinance. The***
78 ***building shall be set back at least ten (10) feet from any property line. The property***

79 ***involved is shown on Tax Map 107, Lot 67, located at 15 Cowell Drive and is in the***
80 ***Residence A District.***

81 Secretary Morong read the above into the public record.

82 The applicants explained that given the small size of the lot and the location of the
83 existing structures on the property, they need to place their new shed within the setback
84 requirement. They replaced the old chicken shed, which smelled terrible, with a new shed.

85 Chair Warnock read an email from the applicants in which they address the criteria for
86 variance. They state the replacement of the shed serves a practical purpose and poses no
87 risk or harm to the public. Though closer to the border, the placement of the shed still
88 respects the intent of the ordinance within the small downtown lot. They have limited
89 space available to place the shed. Neighboring property values will not be diminished.
90 Enforcing the setback would limit their ability to use the property; granting the variance
91 will allow reasonable use of the small downtown lot.

92 Secretary Morong asked how large the previous shed was. Ms. Cline said the old shed
93 was half the size and within the setback; the applicants were denied the permit because it
94 didn't meet the setback. Secretary Morong stated he doesn't have a set of plans to
95 determine if there is another place on the lot where the shed could be placed. Ms. Cline
96 stated the shed is a free-standing shed. Member Lemieux asked if the shed is currently on
97 the applicants' property. Mr. Yu stated it was, as he spoke with Tracy who told him he
98 didn't need a permit if the shed was less than 200'. Member Lemieux asked how the
99 applicants came to be before the Board if they didn't believe a permit was necessary and
100 asked if it was because Ms. Cline drove by the property and saw the shed. She confirmed
101 this to be the case. Secretary Morong stated he would like to have a property walk. Mr.
102 Yu said the size of the shed is 19.5' x 7.5'. The applicants clarified the garden is on the
103 back side of the house. They replaced the old chicken raising area with the shed and stated
104 the neighbor spoke favorably of the change.

105 Chair Warnock polled the Board as to who would like a drive-by of the property before
106 voting. Secretary Morong and Member Bubar would like to drive-by and view the
107 property. Ms. Cline explained the applicants may have difficulty returning for the meeting
108 in May due to their children's piano lesson.

109 Chair Warnock invited the public to speak on the application. No member of the public
110 rose to speak.

111 ***Vice Chair Niman MOVED to close the public hearing. SECONDED by Member***
112 ***Lemieux, and PASSED unanimously 5-0-0.***

113 Ms. Cline said the ordinance states the shed can't be in front of the front door. From the
114 Cowell Roadside of the house, most of the space is in front of the front door. Secretary
115 Morong said the applicants could request a variance on that issue.

116 ***Chair Warnock MOVED to CONTINUE the PUBLIC HEARING to May 14, 2024 A***
117 ***for a petition submitted by Qiaoyan Yu, Durham, New Hampshire, for an***
118 ***APPLICATION FOR VARIANCE in accordance with Article 175-109 B (7) Accessory***
119 ***Building for Single-Family Use, of the Durham Zoning Ordinance. The building shall***
120 ***be set back at least ten (10) feet from any property line. The property involved is shown***
121 ***on Tax Map 107, Lot 67, located at 15 Cowell Drive and is in the Residence A District.***
122 ***SECONDED by Vice Chair Niman, and PASSED 5-0-0.***

123 Chair Warnock explained the applicants are welcome to come back next month to the
124 continued hearing, but they are not required to. He will place the hearing at the end of the
125 agenda to accommodate the Yus' music lesson schedule.

126 **VI. Other Business**

127 **Voting on Offices:** Chair Warnock called for nominations for secretary. Secretary Morong
128 stated he would prefer not to be secretary.

129 ***Chair Warnock MOVED to appoint Member Lemieux as secretary. SECONDED by***
130 ***Member Bubar, and PASSED unanimously 5-0-0.***

131 ***Chair Warnock MOVED for Vice Chair Niman to stay on as Vice Chair. SECONDED by***
132 ***Member Bubar, and PASSED unanimously 5-0-0.***

133 ***Vice Chair Niman MOVED to reelect Chair Warnock as Chair. SECONDED by Member***
134 ***Morong, and PASSED unanimously 5-0-0.***

135 **VII. Approval of Minutes: March 12, 2024**

136 Vice Chair Niman asked that the phrase "the special conditions of the property," which he
137 did state in the meeting, be inserted on page 5 line 163.

138 ***Vice Chair Niman MOVED to approve the minutes of March 12, 2024 as amended.***
139 ***SECONDED by Chair Warnock, and PASSED 5-0-0.*** (As Alternate Warzin was at the
140 March meeting in Secretary Morong's absence, he voted on the above motion).

141 **VIII. Adjournment**

142 ***Vice Chair Niman MOVED to adjourn the meeting. SECONDED by Member Lemieux,***
143 ***and PASSED unanimously 5-0-0.***

144 Adjournment at 7:44 pm
145 Daphne Chevalier, Minutes taker