

*These minutes were approved at the June 11, 2024 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, April 9, 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  
Kevin Lemieux  
Mark Morong  
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**

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

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

**IV. Seating of Alternates**

No alternates were seated this evening.

**V. Public Hearings:**

Chair Warnock read the procedures for public hearing.

***B. 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.***

Ms. Cline clarified that public hearing B does not need to be opened to the public, as the public portion of the hearing already took place at the last meeting. She reported that the

property in question is not in the floodplain.

***Vice Chair Niman MOVED to APPROVE the 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 Member Lemieux, and PASSED unanimously 5-0-0.*** (As Secretary Morong was not present for the public hearing at the last meeting, he did not vote. As Alternate Warzin was sworn in as an alternate for the public hearing at the last meeting, he voted on this motion.)

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

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

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

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

Vice Chair Niman stated the application seems pretty straight forward.

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

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

- A. *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.***

Secretary Morong read the above into the public record.

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

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

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

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

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

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

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

***Chair Warnock MOVED to CONTINUE the PUBLIC HEARING to May 14, 2024 A for 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. SECONDED by Vice Chair Niman, and PASSED 5-0-0.***

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

## **VI. Other Business**

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

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

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

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

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

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

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

## **VIII. Adjournment**

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

Adjournment at 7:44 pm  
Daphne Chevalier, Minutes taker