

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

**ZONING BOARD OF ADJUSTMENT
Tuesday, June 11, 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

OTHERS PRESENT: Audrey Cline, Zoning Administrator (via Zoom)

I. Call to Order

Chair Warnock called the meeting to order at 7:01 pm.

II. Roll Call

Chair Warnock introduced all members of the Board in attendance.

III. Approval of Agenda

Vice Chair Niman MOVED to approve the agenda as presented. SECONDED by Member Bubar, and PASSED unanimously 3-0-0.

IV. Seating of Alternates

No alternates were seated this evening.

V. Public Hearings:

Chair Warnock reminded the public that the hearing tonight is a continuance from the May 14, 2024 ZBA meeting.

- 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. **Please note that this application is continued from the May 14, 2024, Zoning Board meeting.**

Chair Warnock read the above public hearing into the record. He summarized that the Board requested a revised plot plan for the location of the shed, which has not been submitted to Ms. Cline as of yesterday. The applicants were not present for the public hearing this evening. Given the applicants have not submitted the necessary materials for the petition, Vice Chair Niman is in favor of denying the petition; if the applicants want to move forward, they can submit a new application for variance. He stated it doesn't meet the spirit of the ordinance,

which is to keep sheds in locations that will not be obvious to those in the neighborhood. Member Bubar agreed and stated he is not sure what the hardship is in regards to the shed and does believe it would have an impact on neighboring property values.

*Vice Chair Niman **MOVED to DENY** the 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 as it is not in keeping with the spirit of the ordinance, hardship clause, and effect on property evaluations. 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 Member Bubar, and **PASSED by roll call vote 3-0-0 (Bubar - aye, Niman - aye, Warnock - aye).***

Chair Warnock explained the applicants have thirty days to appeal the decision.

VI. Other Business

Chair Warnock shared that he went before the Town Council this week to share the ZBA's concerns about short-term rentals and that it seems odd that a special exception is being used to deny short term rentals (STR). A member of the council told him he should come before the council with a full proposal or go before the planning board. Vice Chair Niman thanked Chair Warnock for bringing those concerns to the council, as he doesn't think it is fair or reasonable to charge people \$500 or \$600 to have a short-term rental when the criteria to deny it is not clear. Chair Warnock stated the best point is to require the property owner be present on the property.

Ms. Cline asked to confirm if what the board would like is to put the conditions on an approval for a short-term rental through the building office so the applicants wouldn't have to come before the board and spend the money. Chair Warnock confirmed that, given that those who speak before the board typically do so with strong emotion but not a strong connection to the criteria, that might be a better option, as it is difficult for the board to do anything about those concerns. Ms. Cline shared that the difference between permitted uses and those permitted by board approval is that those permitted by board approval are announced to the public, allowing the public a chance to talk at the hearing and appeal the decision. If a STR goes only through the building department, there is no chance for the public to express concerns until there is a problem, at which point there is no opportunity to appeal the approval. Chair Warnock stated it seems to do more harm to allow the residents to come in to voice their disapproval when there isn't anything the board can do about it; their concern is something that really needs to be addressed with the Town Council. Ms. Cline said in order to change the process for STR, it would need to go through a revision process with the planning board and then before the public for a vote. When the current rules were established through this process, there was a lot of concern that this use was going to cause problems. She doesn't think it has caused problems, but the public input may be why it went to a special exception use. Chair Warnock said during his tenure on the board, they have had a number of AirBnBs come before the board, and each time a member of the public spoke against it, nothing in their statement spoke to the criteria for approval, which is why he

believes this process just allows people's emotions to be stirred up and causes more trouble than it's worth. He is not going to put anything together for the council, as he doesn't see that as in his purview as ZBA Chair. His job is to hear these petitions and if he sees something wrong, to inform the town council and let them approach it.

VII. Approval of Minutes: April 9, 2024 and May 14, 2024

Regarding the May 14, 2024 minutes, Member Bubar stated he submitted comments on how the title of secretary was listed in the minutes. He believes Secretary Lemieux was elected secretary in March.

*Member Bubar MOVED to approve the minutes of May 14, 2024 as amended.
SECONDED by Chair Warnock, and PASSED 3-0-0.*

*Chair Warnock MOVED to approve the minutes of April 9, 2024 as presented.
SECONDED by Vice Chair Bubar, and PASSED 3-0-0.*

VIII. Adjournment

*Vice Chair Niman MOVED to adjourn the meeting. SECONDED by Member Bubar,
and PASSED unanimously 3-0-0.*

Adjournment at 7:17 pm
Daphne Chevalier, Minutes taker