

*These minutes were approved at the August 13, 2024 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, July 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  
Kevin Lemieux, Secretary  
James Bubar  
Mark Morong  
Joe Warzin, alternate

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

**I. Call to Order**

Chair Warnock called the meeting to order at 6:59 pm.

**II. Roll Call**

Chair Warnock introduced all members of the Board in attendance.

**III. Approval of Agenda**

*Member Morong **MOVED to APPROVE** the agenda as presented. **SECONDED** by Member Bubar, and **PASSED unanimously 5-0-0.***

**IV. Seating of Alternates**

No alternates were seated this evening.

**V. Public Hearings:**

- A. PUBLIC HEARING** on a petition submitted by Michael Hookailo, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article XX Standards for Specific Uses 175-109 B(2); the maximum floor area of the building shall be 200 square feet and XX Standards for Specific Uses 175-109 B(7) The building shall be set back at least ten (10) feet from any property line. The property involved is shown on Tax Map 224, Lot 43, located at 229 Packers Falls Road and is in the Rural Zoning District.

Chair Warnock reviewed the procedures for a public hearing, and Secretary Lemieux read the above public hearing into the record.

Mr. Hookailo stated he wants to replace the two existing aging sheds on his property with a new shed, which will be visible from the road and will be a vast improvement aesthetically. He explained he has a letter of support for his petition from the neighbor closest to where the shed will be. He stated removing two old and unsightly structures and replacing them with one attractive building will enhance the property values. Given the lack of storage space on his property (no cellar and small attic), the new shed will allow the applicant adequate storage space.

Chair Warnock asked if the petition should have been submitted as two separate variance petitions: one for the square footage and another for the setback. Ms. Cline explained this particular case requires both variances to be approved, making it difficult to untangle them. Member Bubar asked Mr. Hookailo if he already purchased the shed; Mr. Hookailo said he has put a down payment on the shed. He explained he desperately needs more storage space, which is why the 200 square feet he currently has is insufficient. The board asked where the applicant's two-car garage is located on the property, as it is not on the plans they have. Mr. Hookailo explained the location of the garage and where he intends to place the new shed between two large trees.

Chair Warnock noted there were no members of the public at the meeting to speak on the application.

*Vice Chair Niman **MOVED** to **CLOSE THE PUBLIC HEARING** at 7:13 pm.  
**SECONDED** by Member Morong, and **PASSED unanimously 5-0-0.***

The board discussed the application and were sympathetic to the applicant's storage needs. Vice Chair Niman stated he doesn't see it as out of proportion to the property and as the neighbors are supportive, he doesn't see why the board wouldn't approve it. Chair Warnock stated his concern is that there isn't a setback number. Ms. Cline recommended indicating a setback of 10' off each lot line so the board would only need to give a variance for the size. Chair Warnock said he is in favor of giving a variance for the size and that the applicant should keep the shed within that 10' setback.

*Chair Warnock **MOVED** to **APPROVE** the petition submitted by Michael Hookailo, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article XX Standards for Specific Uses 175-109 B(2); the maximum floor area of the building shall be 200 square feet to not exceed 252 square feet **and the board will not address** the XX Standards for Specific Uses 175-109 B(7) The building shall be set back at least ten (10) feet from any property line. **SECONDED** by Member Lemieux, and **PASSED unanimously 5-0-0.***

Chair Warnock explained there is a thirty-day appeal period.

## **VI. Other Business**

- A. Ms. Cline explained the board is being asked if there are any issues with the process from the zoning board's perspective. Member Bubar expressed concern over the language of 175-70, which states the planning board has final authority. Chair Warnock said it would be helpful if a representative from the planning board attended a zoning board meeting to review the proposed changes and answer any questions the board has. The board had questions about discrepancies between the two documents they were given and whether any of those documents were complete.

Member Bubar expressed concerns about the special variance language. Chair Warnock shared concerns about the proposed additional restrictions leading to further loss of developable land. Ms. Cline clarified that the planning board is not asking for the zoning board to comment on the changes they've decided on but rather to see if the zoning board will be able to read through the special exception criteria and understand what they need to look for in granting their approval on an application.

Chair Warnock proposed the board move discussion of the proposed new language to the next meeting to allow the board to get the appropriate documentation and to request Mr. Behrendt's presence at that meeting.

- B. Vice Chair Niman brought forward the issue of the board receiving applications that do not address the five criteria or do not have the necessary supporting documents. Ms. Cline said legally the staff cannot tell an applicant the town cannot accept an application and be placed on the agenda. Chair Warnock asked if they could say the board will not review any documentation not provided in the application, and Ms. Cline said they could do that. Member Morong stated he would like the maps provided to be to scale and include the location of the septic tank. Secretary Lemieux stated he doesn't think the plans need to be to scale but they should include the information necessary for the application. Vice Chair Niman said incomplete applications are not fair to the public, as they do not provide the public with the information necessary to determine if they should attend a zoning board meeting. Ms. Cline said there is nothing in law that states the applicant needs to speak to the five criteria. Member Bubar stated he is in favor of the board voting on whether the application is complete and ready to be heard, or whether the applicant needs to return with more information. Ms. Cline explained the public hearing would need to be opened to deny or continue a hearing, but they could decide not to hear it based on not enough information, which means the applicant would need to reapply and application would need to be renoticed, which is a difficult bar rather than a continuance. Secretary Lemieux asked Ms. Cline what the office's process is for receiving, advertising, and noticing applications. Chair Warnock asked if the board could receive both a digital and print copy of the application materials.

Vice Chair Niman asked Ms. Cline if she and Ms. Cutler could point out to the applicant the paragraph in bold on the application and let them know if that information is not

supplied, the zoning board may not be able to review their application. Ms. Cline confirmed they can do that. Chair Warnock suggested that if information is missing from an application, the board continue the hearing once. If at that point the applicant doesn't have the necessary information, the board will deny the application. The board was in agreement to move forward with that procedural change.

Member Bubar would like to see a cut off for new supporting materials of at least 24 hours before the public hearing. Since they cannot legally make that requirement, Vice Chair Niman suggested if a member of the board doesn't feel they've had enough time to review materials that were submitted too close to the hearing, the member can make a motion to continue the hearing in order for the board members to have sufficient time to review the submitted materials.

#### **VII. Approval of Minutes: June 11, 2024**

*Vice Chair Niman MOVED to approve the minutes of June 11, 2024 as presented. SECONDED by Member Bubar, and PASSED 3-2-0.* (Member Morong and Secretary Lemieux abstained as they were absent at the last meeting.)

#### **VIII. Adjournment**

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

Adjournment at 7:58 pm  
Daphne Chevalier, Minutes taker