

These minutes were approved at the February 11, 2025 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, October 8, 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
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 7:00 pm.

II. Roll Call

Chair Warnock introduced all members of the Board in attendance.

III. Approval of Agenda

As there were no objections to the agenda, the board approved it as written.

IV. Seating of Alternates

No alternates were seated.

V. Public Hearings:

*A. **PUBLIC HEARING** on a petition submitted by Cheri & Robert McManus, 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 within the residence. The property involved is shown on Tax Map 209, Lot 87, located at 26 Old Piscataqua Road, and is in the Residence A Zoning District.*

Chair Warnock reviewed the procedures for a public hearing, and Secretary Lemieux read the above public hearing into the record. Member Bubar recused himself, as he knows the applicant.

Mr. McManus stated he doesn't believe there will be any detriment to the neighborhood. His approved ADU is a studio that will be used as a short-term rental with a dedicated parking space. The intent is not to have loud guests. The purpose is to have a place available to friends who visit while still being able to earn income on the unit via short-term rentals. The applicants live on site and don't plan on renting the house. They will be on the property whenever someone is renting the unit. No recreational vehicles will be allowed and there is no signage. Ms. Cline said the applicant will need to contact the fire department to have a short-term rental inspection completed.

No members of the public rose to speak in favor or in opposition to the proposal.

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

In discussion, the board did not see any reason to deny the special exception given the location or characteristics of the property.

*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 within the residence. The property involved is shown on Tax Map 209, Lot 87, located at 26 Old Piscataqua Road, and is in the Residence A Zoning District. **SECONDED** by Secretary Lemieux, and **PASSED unanimously 5-0-0 by roll call vote (Lemieux - aye, Niman - aye, Morong - aye, Warzin - aye, Warnock - aye).***

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

B. PUBLIC HEARING on a petition submitted by Qing Lin, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article XIII Wetland Conservation Overlay District, Use and Dimensional Standards, Section 175-59. Applicability A.2.d. Setback/Upland buffer strip Residence B zone is 75 feet. The property involved is shown on Tax Map 113, Lot 102, located at 15 Foss Farm Road, and is in the Residence B Zoning District.

Member Bubar rejoined the board, and Secretary Lemieux read the above public hearing into the record.

Ms. Lin's daughter explained the drainage will be such that runoff from the roof will drain away from the wetlands. By minimizing encroachment, the applicant believes substantial

justice is achieved. They are committed to using only native vegetation. The purpose of the new house plan includes an ADU for the applicant's aging parents.

Vice Chair Niman asked where the wetlands are located on the property. Ms. Cline had asked for a larger copy of the plan, but it was not included in the packet. Mr. Frank Lavalier, contractor working with the applicant, explained the applicant has moved the dwelling as far back on the lot as she can. He explained that standing water is the problem. They are looking to build a swale for the runoff. Ms. Cline explained the applicant will need to speak with Mr. Michael Behrendt about the application, as there are additional steps the applicants will need to take. Mr. Lavalier said he believes the structure will be 3200 square feet and the ADU will be 650 square feet. Decks and porches were not factored into the square footage.

Vice Chair Niman asked if there is something the applicant could do that the board could make a condition for the variance that would improve the site or quality of the wetland or reduce erosion. Ms. Cline said that it would require a conditional use or a special use permit, for which the zoning board doesn't have jurisdiction; the zoning board only has the ability to grant a variance. Chair Warnock is concerned about the potential for neighboring properties to decrease in value due to flooding impacts. He stated he needs a more detailed, engineered plan to make a decision. The board felt review by and recommendations from the conservation commission would help them make a decision. Chair Warnock noted the proposed house would be 1200 square feet bigger than the average home in the neighborhood.

Chair Warnock opened the hearing to public comment at 7:43pm.

Tom Christie, 13 Foss Farm Road, spoke in opposition, stating the applicant needs to have a 30' setback in the rear of the lot, not a 20' setback. He noted that the previous owners came before the board in 2016 for a variance, which was rejected. The property in question is a non-conforming lot; unless a survey is done, the numbers provided by the applicant on the plan cannot be assumed to be accurate. He argued the building could be reduced in size in order to meet town zoning ordinances. He doesn't believe the proposed structure is in the spirit and intent of the ordinance. The proposed dwelling would change the character of the neighborhood, as the proposed structure is over 2.5x larger in square footage than other homes in the neighborhood. He questioned the height of the proposed home as well. He believes a structure could be built to limit the impact on the wetlands. He respectfully requests that the board deny the application for a variance. He submitted a handout to the board to be entered as part of the record.

Paul Schlie, 16 Foss Farm Road, said he welcomes a single-family home on that lot; however, after careful consideration, he opposes the variance, as the lot could house a smaller home.

Ms. Lin said the survey was already completed when she bought the property. Member Bubar pointed out the survey is not signed. Ms. Cline said the current contractor used the previous survey.

Vice Chair Niman said he doesn't believe the height of the house or whether the side setback is within the limits is relevant for the variance, and he said the board should be focused on the specific setback requirements.

Lynne Christie, 201 Dame Road, stated the size of the building needs to be considered, as it speaks to the criteria related to the character of the neighborhood. The applicant is asking for a home that is not sustainable on the lot and would change the character of the neighborhood.

*Chair Warnock **MOVED to CLOSE THE PUBLIC HEARING. SECONDED** by Vice Chair Niman, and **PASSED unanimously 5-0-0.***

Ms. Cline said that under the current regulations, an 18" overhang is not considered to be within the setback. If the board approves a variance, she will need to know if that variance includes the 18" overhang within the approval or if they are allowing the same leeway as the ordinance.

Chair Warnock said without an appropriate drainage and runoff plan, the board can't make a decision. Member Lemieux added they should have definitive square footage of the house. He said the bigger the house, the bigger the roof plain, thus more runoff which needs to be directed somewhere. Vice Chair Niman said his concern is about the impact on the wetlands by the portion of the home that will be in the wetland buffer. He would feel more comfortable making a decision if he had an accurate plan to show how much of the home is in the buffer.

The board agreed they need more information, including a survey with topography and actual setback lines, a building footprint including all decks and porches, and a drainage plan. Member Morong would like to ask the conservation commission for their assessment of the impact of the proposal. Vice Chair Niman would like the applicants to provide more of an explanation as to how the proposed driveway would reduce erosion and to clarify what is going to happen to the water that is being directed toward the road.

*Chair Warnock **MOVED** to **CONTINUE THE PUBLIC HEARING** until the **November 12, 2024** Zoning Board meeting to give the applicant the opportunity to provide the board with an appropriate survey including topography, wetlands, wetlands buffer, and structural footprints, the septic system, a drainage plan, additional information speaking to the runoff impacting the buffer, and the square footage impacting the wetlands buffer, as well as consultation with the Conservation Commission. **SECONDED** by Vice Chair Niman, and **PASSED unanimously 5-0-0** by roll call vote (Bubar - aye, Lemieux - aye, Niman - aye, Morong - aye, Warnock - aye).*

VI. Other Business

No other business was discussed.

VII. Approval of Minutes: August 13, 2024

*Vice Chair Niman **MOVED** to approve the minutes of August 13, 2024 as presented. **SECONDED** by Member Bubar, and **PASSED 4-0-1**. (Member Lemieux abstained as he was absent at the August meeting.)*

VIII. Adjournment

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

Adjournment at 8:21 pm
Daphne Chevalier, Minutes taker