

ZONING BOARD OF ADJUSTMENT
Tuesday, June 10, 2025 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
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 **MOVED** to **APPROVE** the agenda as presented. **SECONDED** by Vice Chair Niman, and **PASSED unanimously 5-0-0**.

IV. Seating of Alternates

Joe Warzin was seated and served as secretary in Member Lemieux's absence.

V. Election of Officers

Chair Warnock **MOVED** to **NOMINATE** Neil Niman as chair. **SECONDED** by Member Morong, and **PASSED unanimously 5-0-0**.

Chair Niman **MOVED** to **NOMINATE** Micah Warnock as vice chair. **SECONDED** by Member Morong, and **PASSED unanimously 5-0-0**.

Vice Chair Warnock **MOVED** to **NOMINATE** Kevin Lemieux as secretary. **SECONDED** by Member Morong, and **PASSED unanimously 5-0-0**.

VI. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Anne and Sean Murphy, New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article XII.1 Use and Dimensional Standards Section 175-54 Table of Dimensions; Minimum setback from front property line 30' and Minimum setback from each side property line 50'. The property involved is shown on Tax Map 120, Lot 24, located at 37 Cedar Point Road and is in Residence C (RC) Zoning District.

Member Warzin read the above public hearing into the record at 7:03pm.

Ms. Murphey explained they would like to build a carport and deck on their home. Most homes in the neighborhood have decks overlooking the water, and they would like to be able to enjoy the view from their home on a deck as well. They also would like coverage for their vehicles, and given the lot and home, a garage is not a suitable option. They are proposing a wrap-around deck to exit through the living room that will run 6' out and 20' forward. It will wrap around to the front of the home and extend 15' out in front of their house. The proposal does not impact wetlands or septic, nor will it lead to an increase in traffic. It would increase the value of the home, therefore increasing tax revenue. Though it encroaches into the setbacks, the size and placement are in keeping with the character of the neighborhood. The survey reflects an increase in the impervious surface due to two garden beds that will be under the deck and the necessary removal of a small crab apple tree. There were two decks approved in the neighborhood within the past few years. Coverage of vehicles in inclement weather would help given they have a small child.

Craig Harris, 34 Cedar Point Road, spoke in favor of the project.

No other members of the public rose to speak on the application.

*Chair Niman **MOVED to CLOSE THE PUBLIC HEARING. SECONDED** by Member Morong, and **PASSED unanimously 5-0-0.** The public hearing was closed at 7:09pm.*

The board reviewed the five criteria. Chair Niman said that due to the unique character of the property and the limitations imposed therein, the request for a variance is reasonable. He said it is not contrary to the public interest, will not reduce property values, and substantial justice will be done because other variances have been approved in the neighborhood and it is not appropriate to deprive the applicants of being able to use their property in a reasonable fashion. They are not able to do anything else to protect their vehicles from inclement weather.

*Chair Niman **MOVED to APPROVE the APPLICATION FOR VARIANCE** in accordance with Article XII.1 Use and Dimensional Standards Section 175-54 Table of Dimensions; Minimum setback from front property line 30' and Minimum setback from each side property line 50'. The property involved is shown on Tax Map 120, Lot 24, located at 37 Cedar Point Road and is in Residence C (RC) Zoning District. **SECONDED** by Vice Chair Warnock, and **PASSED unanimously 5-0-0.***

Chair Warnock explained there is a thirty day appeal period.

78 **B. PUBLIC HEARING** on a petition submitted by 9 Madbury Road, LLC, New Hampshire,
79 for an **APPLICATION FOR VARIANCE** in accordance with Article XII Base Zoning
80 Districts, Section 175-42 Central Business District (CB) Sub-section B; Development
81 standards in the Central Business District: In addition to the dimensional standards,
82 development in the Central Business District shall conform to the following additional
83 requirements: 10. Number of bedrooms – there shall be a maximum of 2 bedrooms in any
84 dwelling unit within a mixed use with residential building or development. The property
85 involved is shown on Tax Map 106, Lot 39 located at 9 Madbury Road and is in the
86 Central Business (CB) Zoning District.

87
88 Member Warzin read the above public hearing into the record at 7:13 pm.

89
90 Chris Mulligan, attorney with Hoefle Phoenix, spoke to the proposal. He said in 2012 the
91 building was completed as a mixed office and residential building. The office space on the
92 4th floor is currently vacant, and the applicants are experiencing low demand for that
93 space. The zoning ordinance was recently updated to allow residential spaces on fourth
94 floors. They would like to take advantage of that updated ordinance and are seeking a
95 variance because there is a limit on the number of bedrooms per unit, though no limit on
96 the number of occupants or units. They are proposing to alter the floor plan to allow for
97 four 4-bedroom units and one 2-bedroom unit. If the variance is not approved, they would
98 either have to create units with very long, narrow bedrooms creating a bowling alley
99 effect with a lot of dead space and lack of windows, or they would have very large
100 bedrooms that would be excessively large and thus inefficient. They did receive a
101 conditional use permit from the planning board. Mr. Mulligan argued that granting the
102 variance will not threaten the safety or wellbeing of the neighborhood, nor would it be out
103 of line from the character of the neighborhood. The residential use is consistent with the
104 building's current use. They are asking to have the same number of total bedrooms but to
105 have those in fewer units than would be required under the current zoning ordinance. The
106 existing residential apartments on the other floors already exceed the two-bedroom limit,
107 and there has been no negative effect on property values in the neighborhood; therefore,
108 Mr. Mulligan said there is no reason to believe that any negative impact would occur with
109 this interior change. If the applicant is required to make the units large bedrooms, they
110 would be marketed as luxury units, which would defeat the purpose of creating affordable
111 housing.

112
113 Chair Niman stated the purpose of the ordinance is to encourage developers to create units
114 that adults would want to live in, particularly as enrollment at the university decreases and
115 with it, demand for student housing. He asked the applicant to respond with reasons for
116 why working professionals would not find this kind of housing desirable. Mr. Mulligan
117 said the building was built specifically for student housing and will likely be occupied by
118 students. Matt Crape stated that there is no parking at the property, which would not be
119 desirable for a family or working adults who would need parking.

General Manager Liz Shepard of University Downtown stated that she has been working quite a bit to try to find parking for current residents. She doesn't believe most adults will want to have to walk to public transportation or to their vehicles parked off property as part of their daily commute, making the apartments undesirable for that population.

Vice Chair Warnock expressed concerns that increasing the number of units would only increase the parking issue. Ms. Shepard explained her process for identifying which tenants would like parking and stated that generally not all the students request parking. Mr. Mulligan stated that students are less likely to need parking as opposed to families. Vice Chair Warnock asked if there is a need for additional student parking. Mr. Crape said the office spaces have allotted parking spaces, so whether the units are office or residential, there will be an impact on parking. He said there is still demand for housing in Durham and given his experiences with his properties in Keene, any decline in the need for student housing usually results in the housing in the center of town staying student housing while the properties on the outskirts shift to non-student housing. Ms. Shepard said they have 100% occupancy each year.

Member Bubar asked what the planning board approved. The applicant said it was a conditional use permit to allow residential use on the fourth floor of the property. The planning board left open the opportunity to come before the zoning board for a variance; if the variance is granted, they will not need to return to the planning board. Member Bubar asked if there was a discussion about parking at that hearing. Mr. Crape said the planning board's focus was on the conditional use of the floor plan, understood his situation, and wouldn't require him to return before the planning board if the variance is approved.

Chair Niman asked if it was correct to say the number of residents at the property won't change regardless of the number of bedrooms per unit; it's just a matter of how comfortable the apartments are. Mr. Mulligan said it is a practical impossibility to build units that meet the current regulations, but if the applicants can adjust the floor plan, they would be able to do that. They are asking for relief so that they can have the same number of bedrooms but configured more practically for residents. Chair Niman stated the parking issue will be the same regardless of this variance, as the number of bedrooms would be the same.

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

*Chair Niman **MOVED to CLOSE THE PUBLIC HEARING. SECONDED** by Member Morong, and **PASSED unanimously 5-0-0.** The public hearing was closed at 7:40 pm.*

In discussion, Vice Chair Warnock expressed concerns about the proposal as regards the spirit of the ordinance. Chair Niman said the ordinance makes sense for new construction, but this building already exists and is currently used for students. He applauded the applicants for trying to use the space for businesses, but it is currently sitting empty, which seems like a waste. Chair Niman said he doesn't know what the public interest gains by saying they have to adhere to two bedrooms. Member Bubar said more people downtown will result in more people patronizing the businesses downtown. Chair Niman said the proposal will improve the economics of the building, and the applicants can pay taxes, which is good for the town.

*Chair Niman **MOVED** to **APPROVE** the **APPLICATION FOR VARIANCE** in accordance with Article XII Base Zoning Districts, Section 175-42 Central Business District (CB) Sub-section B; Development standards in the Central Business District: In addition to the dimensional standards, development in the Central Business District shall conform to the following additional requirements: 10. Number of bedrooms – there shall be a maximum of 2 bedrooms in any dwelling unit within a mixed use with residential building or development. The property involved is shown on Tax Map 106, Lot 39 located at 9 Madbury Road and is in the Central Business (CB) Zoning District. **SECONDED** by Member Bubar, and **PASSED 4-0-1** by roll call vote (Warzin - aye, Niman - aye, Morong - aye, Bubar- aye, Warnock - abstained).*

Chair Warnock explained there is a thirty day appeal period.

VII. Other Business

*Vice Chair Warnock **MOVED** to **POSTPONE** the November 11, 2025 meeting to November 18, 2025. **SECONDED** by Chair Niman, and **PASSED unanimously 5-0-0**.*

VIII. Approval of Minutes: February 11, 2025

*Vice Chair Warnock **MOVED** to **APPROVE** the minutes of February 11, 2025 as written. **SECONDED** by Member Warzin, and **PASSED unanimously 5-0-0**.*

IX. Adjournment

*Chair Niman **MOVED** to **ADJOURN** the meeting. **SECONDED** by Member Morong, and **PASSED unanimously 5-0-0**.*

Adjournment at 7:45 pm
Daphne Chevalier, Minutes taker