

**ZONING BOARD OF ADJUSTMENT**  
**Tuesday, Sep 9, 2025 at 7:00 p.m.**  
**Town Council Chambers, Town Hall**  
**8 Newmarket Road, Durham, NH**  
**MINUTES**

**MEMBERS PRESENT:** Neil Niman, Chair  
Micah Warnock, Vice Chair  
Kevin Lemieux, Secretary  
James Bubar

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

**I. Call to Order**

Chair Niman called the meeting to order at 7:00 pm.

**II. Roll Call**

Chair Niman introduced all members of the Board in attendance.

**III. Approval of Agenda**

*Member Bubar **MOVED** to **APPROVE** the agenda as presented. **SECONDED** by Vice Chair Warnock, and **PASSED unanimously 4-0-0.***

**IV. Seating of Alternates**

No alternates were seated as the full board was present.

**V. Public Hearings:**

*A. **PUBLIC HEARING** on a petition submitted by Paula Joyce and Robin Balducci for an **APPLICATION FOR VARIANCE** in accordance with Article XII.1 Use and Dimensional Standards Section 175-54 Table of Dimensions. Minimum setback from side and rear property lines is 50'. The property involved is shown on Tax Map 217, Lot 1, located at 40 Colony Cove Road and is in Residence C (RC) Zoning District.*

Member Lemieux read the above public hearing into the record at 7:00pm.

Paula Joyce of 40 Colony Cove Road introduced Patrick McLaughlin from GPI and fellow property-owner Robin Balducci. Ms. Joyce explained they want to add the addition for a few reasons: 1) as they age, it would improve their safety to have a master bedroom on the first floor so they won't need to use the winding stairs to the second floor; 2) adding a common bathroom on the first floor will allow their older guests and themselves access to a first floor bathroom without the need to use the winding stairs to the second

38 floor; and 3) the addition of a bulkhead will allow for town officials, fire fighters, and  
39 workers ease of access to their basement, which is currently only accessible via a floor  
40 hatch. Ms. Joyce explained the existing home is already set within the setbacks, so they  
41 worked to keep any additional encroachment within the existing amount of setback  
42 encroachment. The current foundation is only 11'; they hope to conjoin the foundation of  
43 the addition with the existing foundation to allow for a bulkhead entrance providing ease  
44 of access to the basement where the boiler and heating system are located. Mr.  
45 McLaughlin explained that the main box of the proposed addition meets the setback on  
46 the right side, with the bulkhead extension slightly over the required 50' setback along the  
47 northerly property line. Along the westerly property line (the rear of the house), the  
48 proposed addition includes a 38.1' setback, well within the existing setback encroachment  
49 of the property, with the home at 37' and the deck at 24'. This ensures the proposed  
50 addition is no more non-conforming than what exists on the property today.

51  
52 Ms. Joyce reviewed the five criteria. She stated the existing encroachments have not  
53 negatively impacted the neighborhood. There is a safety need for access to the basement  
54 by town and fire department officials. She asserts the surrounding properties will not  
55 suffer diminished values due to these improvements on her property and denial of the  
56 variance would provide unnecessary hardship for her given the safety concerns previously  
57 expressed.

58  
59 Ms. Cline said the current code requires an emergency egress from the basement and an  
60 emergency escape. Currently, the applicants do not have both of these. Additionally,  
61 equipment is now required to be removed whole, requiring a larger access to the  
62 basement. The bulkhead would bring the property into compliance with current codes.

63  
64 No members of the public rose to speak on the application.

65  
66 *Vice Chair Warnock **MOVED to CLOSE THE PUBLIC HEARING. SECONDED by***  
67 *Member Bubar, and **PASSED unanimously 4-0-0.** The public hearing was closed at*  
68 *7:18pm.*

69  
70 The board discussed the application. The board agreed that the proposed project will  
71 increase safety of the property. Chair Niman noted the applicants worked to keep the  
72 project within the amount already encroached on the setbacks and that the unique nature  
73 of the property with the small basement and winding stairs would benefit from the  
74 changes.

75  
76 *Member Lemieux **MOVED to APPROVE the application submitted by Paula Joyce and***  
77 *Robin Balducci for an **APPLICATION FOR VARIANCE** in accordance with Article*

*XII.1 Use and Dimensional Standards Section 175-54 Table of Dimensions. Minimum setback from side and rear property lines is 50' to include both the bulkhead and proposed addition shown on the plan submitted to the Zoning Board on September 9, 2025. The property involved is shown on Tax Map 217, Lot 1, located at 40 Colony Cove Road and is in Residence C (RC) Zoning District. **SECONDED** by Vice Chair Warnock and **PASSED 4-0-0.***

Chair Niman explained there is a thirty day appeal period.

## **VI. Discussion of findings of fact and notice of decision**

Chair Niman explained that the State is now looking for finding of facts and a notice of decision whenever the board approves or denies a variance. He shared with the board the slide deck from the NHMA ZBA training he attended in January for their review. It includes details regarding what they should include for findings of fact and notice of decision.

Ms. Cline explained the court wants the items discussed in the minutes to be included as bullet points in the notice of decision. She said the board also needs to include the reasoning for each of the five criteria. She discussed the difference between facts and reasoning, explaining the court wants to see the relevant information and does not want to read through the lengthy reasoning summaries. She said one thing to consider when determining findings of fact is whether the full force of the regulation creates an unnecessary hardship for the applicant.

Chair Niman shared a document he put together for the board's consideration with information that the board can then use to make decisions about the variance. He separated the document into four areas: facts related to the parcel, the ordinance, the request, and comments. In a discussion around the character of the neighborhood criterion, Ms. Cline said the board does need to answer why the character of the neighborhood would or would not be impacted, stating the courts want a "because" after each of the five criteria. If something goes to court, the courts want to ensure the board has enough information on which to base their decision. Ms. Cline recommended the board look through some of the NH Supreme Court decisions to get an understanding of what the court is looking for in terms of the character of the neighborhood criterion.

The board agreed that using the guidelines would be worth implementing. They discussed whether AI could be used for minute taking and putting together the findings of fact and notice of decision. Vice Chair Warnock said the ordinance and parcel items are things that could be prepared at home prior to the public hearing. He proposed each member of the board spend some time writing up a sample findings of fact and notice of decision using Chair Niman's document as an exercise to determine where everyone is in their understanding. The board agreed this would be a good exercise to complete in preparation for a conversation at the next meeting.

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119 **VII. NHMA Board Training**

120 This item was rolled into the discussion of agenda item **VI. Discussion of findings of fact**  
121 **and notice of decision.**

122 **VIII. Other Business**

123 No other business was discussed.

124 **IX. Approval of Minutes:** June 10, 2025

125 *Vice Chair Warnock **MOVED** to **APPROVE** the minutes of June 10, 2025 as written.*  
126 ***SECONDED** by Member Bubar, and **PASSED 3-0-1**, with Member Lemieux abstaining.*

127 **X. Adjournment**

128 *Member Bubar **MOVED** to **ADJOURN** the meeting. **SECONDED** by Member Lemieux,*  
129 *and **PASSED unanimously 4-0-0.***

130 Adjournment at 8:23 pm  
131 Daphne Chevalier, Minutes taker