

ZONING BOARD OF ADJUSTMENT
Tuesday, Oct 14, 2025 at 7:00
p.m. Town Council Chambers,
Town Hall 8 Newmarket Road,
Durham, NH MINUTES

MEMBERS PRESENT: Neil Niman, Chair, Mark Morong, Joe Warzin, James Bubar

OTHERS PRESENT: Audrey Cline, Zoning Administrator

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. Joe Warzin was seated in the absence of two board members.

III. Approval of Agenda

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

IV. Seating of Alternates

Joe Warzin was seated prior to the approval of the agenda.

V. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Michael J. Cleary 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 (street) is 30', from side and rear lot lines – 50'. The property involved is shown on Tax Map 120, Lot 32, located at 26 Cedar Point Road and is in Residence C (RC) Zoning District.

Chair Niman asked the applicant if he preferred to proceed today with only four members of the board present, to which the applicant agreed. Member Bubar disclosed he is in a similar situation as the applicant; he stated he feels he can be impartial, but offered to step down if the board or applicant preferred. Mr. Cleary stated he doesn't see a conflict of interest.

Member Morong read the above public hearing into the record at 7:04pm.

Mr. Cleary explained the lots are small in the Cedar Point area. He pointed out where on the map the electrical panel is and explained there is a thick row of arborvitae that

provides natural screening. He said he talked with his neighbors about the variance request he is putting forward.

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

*Member Morong **MOVED** to **CLOSE THE PUBLIC HEARING. SECONDED** by Member Bubar, and **PASSED unanimously 4-0-0**. The public hearing was closed at 7:07pm.*

The board agreed the proposed variance is reasonable given the unique nature of the property and that it is consistent with what others in the neighborhood have done. The board discussed issues around the time when system testing should occur and the longevity of the current vegetative buffer. The board decided for a condition of approval that testing be done at a time consistent with the Durham noise ordinance and a natural or artificial buffer be maintained.

*Member Bubar **MOVED** to **APPROVE** the application submitted by Michael J. Cleary 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 (street) is 30', from side and rear lot lines – 50'. The property involved is shown on Tax Map 120, Lot 32, located at 26 Cedar Point Road and is in Residence C (RC) Zoning District subject to ongoing compliance with the noise ordinance as well as perpetual screening. **SECONDED** by Member Morong and **PASSED 4-0-0**.*

Chair Niman explained there is a thirty day appeal period.

- B. ***PUBLIC HEARING** on a petition submitted by Ping P. Yu on behalf of Thompsonln, LLC for an **APPLICATION FOR VARIANCE** in accordance with Article XX Standards for Specific Uses Section 175-105, C2. Accessory Dwelling Units and Accessory Apartments: An accessory dwelling unit – attached, shall contain a minimum of 300 and a maximum of 850 square feet of floor space. The property involved is shown on Tax Map 109, Lot 18, located at 2 Thompsonln Lane and is in Residence A (RA) Zoning District.*

Chair Niman asked the applicant if she preferred to proceed today with only four members of the board present, to which the applicant agreed. Member Bubar asked about the impact of Bill 577, which the governor signed into law, and whether the board has the authority to override the state's requirement of 950 square feet. Ms. Cline read the law and Member Bubar was convinced the board had the authority to hear a variance requesting a larger square footage.

Member Morong read the above public hearing into the record at 7:21pm.

1 Ms. Yu is requesting a variance for an ADU within the existing single-family house.
2 She said it will not require any external changes to the existing structure, alter the
3 current character of the neighborhood, or increase density. The applicant is looking
4 for an additional 125 square feet above the state maximum. The proposed ADU will
5 be 37% of the entire home and subordinate to the main house. Ms. Yu asserts that
6 denial of the variance would impose a financial burden on the property owner. The
7 proposed plan is to build a single wall to separate the living spaces and make a new
8 kitchen next to the current kitchen. She argued the surrounding property values will
9 not be diminished and that the goal is for the owner to retire in Durham and have a
10 living space for his family while also ensuring privacy for both parties.

11
12 Member Warzin asked about parking at the property. Ms. Yu said there is a 2-car
13 garage and then there are 4 additional parking spaces. Member Morong clarified that
14 the new law says parking cannot be a factor in considering this variance. Ms. Yu
15 explained the fire department came to see the property because they had a report that
16 the property was a rental.

17
18 Chair Niman invited members of the public to speak on the application.

19
20 Jeff Berlin, 3 Cowell Drive, spoke in favor of the variance. He believes that the state is
21 moving toward this type of housing for multigenerational families.

22
23 Hannah Baldwin, 1 Burnham Ave, said she's lived in Durham almost her entire life.
24 She has concerns about how creating a duplex will affect single family homes in the
25 neighborhood given her previous experience on Madbury Road living near rental
26 properties.

27
28 Rich Humphrey, 11 Thompson Lane, recently moved to the faculty neighborhood
29 because it is a family neighborhood of single family residences. He is concerned
30 allowing more space in the ADU will lead to it eventually being used as a rental and
31 ultimately will decrease the value of his home. He said rentals are not in keeping with
32 the character of the neighborhood.

33
34 Member Morong explained that the board does not have the authority to deny
35 someone the right to build an ADU. Chair Niman said the Town Council is the
36 legislative body that writes and approves the zoning ordinances. The ZBA has the
37 right to deny the additional square footage being requested, but they do not have the
38 authority to say how the applicant uses the property or whether they can have an
39 ADU. They can only decide if they will allow the applicant to exceed the state
40 ordinance.

41
42 Sean Curran, 29 Faculty Road, expressed concerns about what happens to the
43 property if the current owner decides not to live on the property. He said he has a 1-
44 person rental at his property on Faculty Road, and it is owner occupied.

1 Ted Howard, 12 Burnham Ave, believes going above the maximum square footage is
2 contrary to the spirit of the ordinance, as a maximum was put in place for a reason.

3
4 Member Morong asked Ms. Cline if the town requires that the owner live on the
5 property. Ms. Cline said the issue is at the planning board, but she is not sure if they
6 will take it up. She isn't sure how making that a condition of approval would hold up
7 legally.

8
9 Matt Komonchak, 1 Thompson Lane, stated he doesn't believe abutters received
10 adequate notice for the meeting, noting his letter was postmarked Oct 3rd, with the
11 first attempt of delivery on Oct 6th and the second attempt on the 11th. He asked who
12 the applicant is for the variance and who the owner of the property is. He stated the
13 requested excess square footage is not in the spirit of the ordinance. He hopes the
14 board will consider the difference between a duplex versus an ADU. Given the size
15 being proposed, it is more in line with a duplex rather than an ADU. He doesn't feel
16 there is any obligation to allow the owner the cheapest and easier way to build an
17 ADU; he doesn't feel the hardship argument is accurate. He also has concerns about
18 increased traffic with more people at the property.

19
20 Debra Brook, Valentine Hill Rd, reiterated Mr. Komonchak's statement about the
21 proposal looking more like a duplex rather than an ADU.

22
23 Pam Lowy, 17 Thompson Lane, spoke about the character of the neighborhood as
24 being one where everyone knows each other. She thought it strange that Ms. Yu
25 asked if 8 unrelated people could be living in the property.

26
27 Bambi Miller, 8 Thompson Lane, bought the property so her son who has special
28 needs would be in a family neighborhood. She is concerned the additional space of
29 the ADU would create more of a duplex than an ADU.

30
31 Daniel Bean, 5 Valentine Hill Rd, spoke against the application. He said the application
32 is against the public interest, as the public showed up and is not in favor of it. The spirit
33 of the ordinance in Durham was 850 square feet, not in excess of 950 square feet. He
34 feels the unnecessary financial burden argument is simply not true and values of
35 surrounding properties could be diminished by setting a precedent of approving a
36 variance for a much larger ADU than is allowed in the ordinance. He is not convinced
37 there is a substantial hardship.

38
39 Tom Yoder, 4 Valentine Hill Rd, stated the property in question is the largest house in
40 the neighborhood. He shared examples of some of the public disturbances from the
41 house in question he has experienced in the past from living in the neighborhood.

42
43 Andrew Kun, 22 Faculty Road, stated it would be nice to have a multigenerational
44 family living at the property. He asked how many people would be able to live at the
45 property.

1
2 Danny Brown, Mill Pond Rd, shared the definitions of a duplex versus an ADU. He
3 argued that requiring additional work would move the home from an ADU to a
4 duplex. The size would allow for families in the home.

5
6 Ann Marie Harris, 56 Oyster River Rd and 55 Mill Pond Rd, was concerned that there
7 is no requirement for owner occupancy and about the number of bedrooms (3 on one
8 side and 2 on the other). That could house 10 people, which is a huge occupancy in
9 the neighborhood. She is concerned allowing for a larger square footage would set a
10 precedent.

11
12 Howard Gross, 6 Valentine Hill Rd, believes the size is the issue and that this
13 proposal is an attempt to get around not being able to build a duplex in the
14 neighborhood. He said the property is not unique in the neighborhood other than that
15 it is the largest house in the neighborhood. He stated that given that the owner is an
16 LLC, people in the neighborhood have no idea who is going to move into the home or
17 the ADU. He said that the owners knew that they were limited to an 850 square
18 footage ADU when they purchased the property in May prior to the state's new law.
19 He argued that the owners are not trying to mitigate financial hardship but rather to
20 maximize profit.

21
22 Ms. Yu said there is a shortage of housing for multigenerational families who want to
23 live next to each other and the ADU is subordinate to the main dwelling. She shared
24 her personal story as an immigrant renting in Durham. She suggested a larger ADU
25 will draw in a renter who is a professional looking for a friendly neighborhood.

26
27 Chair Niman explained a challenge the board faces is that the variance lives with the
28 property, which may change hands multiple times. He is concerned how the larger
29 ADU will impact density in the neighborhood. He asked if Ms. Yu would be willing
30 to accept conditions of approval that would require owner occupancy in one of the
31 units or limit the number of people who could live in the ADU. Ms. Yu believes there
32 is an ordinance saying there can't be more than 4 unrelated people in the property.
33 Ms. Cline explained that is not a restriction on a single family home. Member
34 Morong asked if there was a square foot per person requirement; Ms. Cline said not
35 for a single family dwelling. Ms. Cline advised against any condition of approval that
36 includes language about related or unrelated people; instead, she recommended
37 keeping with the language of the new law that allows for towns to require owner
38 occupancy. Chair Niman asked Ms. Yu if she would be open to a condition of
39 approval being owner occupancy. She said she would need to talk with the owner.
40 Ms. Cline said he wouldn't need to live in the home yet, but he wouldn't be able to
41 rent it. Ms. Yu pointed out that a larger ADU was approved in Durham. Chair Niman
42 explained that the variance must be considered based on the particular property in
43 question.

44
45 Matt Komonchak, 1 Thompson Lane, addressed the application and asked if someone
46 could read the owner's signature for the public.

1
2 Ms. Yu said she doesn't have the right to say who the owner is because he decided to
3 register as an LLC.

4
5 Matt Komonchak, 1 Thompson Lane, said he knows the LLC is registered at an address
6 in Derry, NH. He would like to know who the beneficial owner is.

7
8 Jeff Berlin, 3 Cowell Drive, said HB 457 gives the applicant the right to make that
9 property a rooming house, which gives them a larger financial benefit. He suggested
10 the larger ADU proposal may be preferable to that.

11
12 Ann Marie Harris, 56 Oyster River Rd and 55 Mill Pond Rd, asked the board if the
13 ordinance is allowed in the RA district. Ms. Cline said the state legislature disallows
14 the town from restricting the number of occupants in a dwelling unit. Ms. Harris
15 expressed concerns about the history of difficulty with enforcement. Ms. Cline said
16 it's difficult to enforce regardless of the specifics on restrictions. Rental housing is
17 required to be inspected, whether the whole house, an ADU, or apartments.

18
19 Rich Humphrey, 11 Thompson Lane, asked the board to please decide against the
20 variance as there is no compelling reason to approve it.

21
22 Ms. Yu spoke to the financial hardship faced by the owner. The most efficient and
23 cheapest way to create the ADU is through this proposal. She asked how else the
24 owner could create an ADU within the requirements. Member Morong said if the
25 door of the upstairs office were to be bolted shut, the ADU would be within the
26 allowed square footage.

27
28 Tom Young, 13 Thompson Lane, asked how the ADU is defined in a house. The
29 board explained that there is a door that gives you access to the other side. He asked if
30 there has to be a kitchen. Ms. Cline said in order to be a separate dwelling, yes.

31
32 Jason Beisieger, 5 McGrath Road, questioned the financial hardship argument if when
33 he bought the property he was depending on approval of the variance to create an
34 ADU. He believes there should be a higher standard of proof and not just a nameless,
35 faceless owner.

36
37 Sean Curran, 29 Faculty Road, said he is not against renters but for the neighborhood. The
38 issue is that with a nameless entity, it's hard to say this proposal will be good for the
39 neighborhood.

40
41 Chair Niman asked if Ms. Yu had any final statements to make before the public
42 hearing was closed. She did not have any additional comments.

43
44 *Member Morong **MOVED to CLOSE THE PUBLIC HEARING. SECONDED by***

Member Warzin, and **PASSED unanimously 4-0-0**. The public hearing was closed at 8:56pm.

The board discussed the application. Member Bubar said he understands the frustration about not knowing the name of the applicant, but that the variance stays with the property rather than the owner. Member Morong is not swayed by the number of the people in the house, by the cost of plumbing or moving a wall, or by potential changes to the property that would need to happen if the variance is not approved. Chair Niman wondered if a condition of approval could be that it has to conform to the plan that has been submitted to the board limiting it to one bedroom. Ms. Cline said the new state law does not allow municipalities to restrict the applicant from having fewer than two-bedrooms. Member Warzin stated that most of the concerns held by the neighborhood are really more for the Town Council, noting that the previous owner sold the property to an LLC knowing that it was likely to be used as a rental property. Chair Niman shared a letter he received from Christen Kadkhodai expressing concern about the change in use of the property, noting they sold the home with the understanding it would continue to be a single family home and expressing concerns about a potential conflict of interest given Ms. Yu's continued representation of Thompsonln, LLC after representing them as their seller's agent. Chair Niman said the board also received emails of opposition from Brianna and Geoffery Taylor, Elle Ferris, Katherine Morgan.

Member Morong said he doesn't see a hardship, as the owners can still have an ADU with a smaller square footage. Chair Niman said the property can be reconfigured, so it doesn't meet the hardship criteria.

Member Morong **MOVED** to **DENY** the application submitted by Ping P. Yu on behalf of Thompsonln, LLC for an **APPLICATION FOR VARIANCE** in accordance with Article XX Standards for Specific Uses Section 175-105, C2. Accessory Dwelling Units and Accessory Apartments: An accessory dwelling unit – attached, shall contain a minimum of 300 and a maximum of 850 square feet of floor space. The property involved is shown on Tax Map 109, Lot 18, located at 2 Thompsonln Lane and is in Residence A (RA) Zoning District. **SECONDED** by Member Warzin and **PASSED 4-0-0**. The **Application for Variance** is **DENIED**.

Chair Niman explained there is a thirty day appeal period. Ms. Cline provided some guidance to the applicant about possible alternatives, including reapplying with the owner occupied requirement or building a smaller ADU on the property. She encouraged Ms. Yu to speak with her later this week.

VI. Continued discussion of findings of fact and notice of decision

Chair Niman summarized the discussion the board had at the last meeting on this item. Ms. Cline shared a document she put together with the help of A.I. and shared the process she went through to create it. She said it is likely that A.I. could run a staff

review for the board and offered to run a thorough staff review with A.I. to see how it would work. The board asked her to do that and see what she finds.

VII. Other Business

No other business was discussed.

VIII. Approval of Minutes: September 9, 2025

Member Morong stated he wasn't present for the meeting but noted that there was no indication in the minutes if the applicants were asked if they wanted to postpone until a meeting when more than 4 members of the board were present. Chair Niman said he believed he asked them before the meeting began. Ms. Cline said that should be included in the minutes.

The board postponed voting on the minutes, as they do not have a quorum with only two of the present members in attendance at the September meeting.

IX. Adjournment

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

Adjournment at 9:34 pm

Daphne Chevalier, Minutes taker