

ZONING BOARD OF ADJUSTMENT
Tuesday, Dec 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
Mark Morong
James Bubar
Joe Warzin, alternate

OTHERS PRESENT: Audrey Cline, Code Enforcement Officer

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

*Vice Chair Warnock **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.

V. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Scott Boudreau, LLS 961, Boudreau Land Surveying on behalf of property owners Felix and Susan Devito, for an **APPLICATION FOR SPECIAL EXCEPTION** in accordance with Section 175-56 G. Septic Systems. Septic systems, including leach fields, may be placed closer to property lines than otherwise permitted under this chapter by special exception, but may not be placed closer to property lines than permitted by New Hampshire Department of Environmental Services. The property involved is shown on Tax Map 214, Lot 28, located at 88 Durham Point Road and is in Residence C (RC) Zoning District.

Member Lemieux read the above public hearing into the record at 7:01pm.

Mr. Boudreau explained the application is for an existing lot created in 1977 as a state approved subdivision. The owners had an approved septic design previously, but it was

not developed. Due to the slope of the site, the proposed location is the only place to put the leach field, as it is the flattest area on the site. Member Bubar asked what type of septic system was being proposed. Mr. Boudreau said it is an Enviroseptic aerobic system, which allows for a smaller leach field footprint and shallower bed water table.

Barry Smith of 84 Durham Point Road spoke in opposition of the application, stating the proposed leach field is going onto his property. Vice Chair Warnock clarified that the survey presented shows the leach field is not on Mr. Smith's property. Mr. Smith disagreed. Vice Chair Warnock explained they have to go by the legal survey submitted and Mr. Smith can get a legal survey to appeal the decision the board makes on the application.

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

The board discussed the application, determining the proposed application meets the criteria for special exception given the character of the property.

*Vice Chair Warnock **MOVED to APPROVE** the petition for **SPECIAL EXCEPTION** in accordance with Section 175-56 G. Septic Systems, which includes leach fields, may be placed closer to property lines than otherwise permitted under this chapter by special exception, but may not be placed closer to property lines than permitted by New Hampshire Department of Environmental Services based upon the provided modern survey dated Oct 25, 2025 based on the criteria being met. The property involved is shown on Tax Map 214, Lot 28, located at 88 Durham Point Road and is in Residence C (RC) Zoning District. **SECONDED** by Member Bubar and **PASSED 5-0-0.***

Chair Niman explained there is a thirty day appeal period.

- B. ***PUBLIC HEARING** on a petition submitted by Tim Collins on behalf of property owner Almerindo Graziano, for an **APPLICATION FOR ADMINISTRATIVE APPEAL** from Notice of Violation decision dated 10/21/2025, that the driveway does not meet the maximum requirement of 12 feet at right of way. The property involved is shown on Tax Map 230, Lot 7-1, located at 361 Durham Point Road and is in Residence C (RC) Zoning District.*

Member Lemieux read the above public hearing into the record at 7:14pm.

Mr. Collins was not present to present his appeal. Ms. Cline explained the process does not require the applicant to be present for the appeal to be considered.

*Member Morong **MOVED** to **OPEN THE PUBLIC HEARING. SECONDED** by Member Bubar, and **PASSED unanimously 5-0-0**. The public hearing opened at 7:16pm.*

No members of the public spoke to the appeal.

*Chair Niman **MOVED** to **CLOSE THE PUBLIC HEARING. SECONDED** by Vice Chair Warnock, and **PASSED unanimously 5-0-0**. The public hearing closed at 7:17pm.*

Member Morong stated he is not clear why the driveway needs to be longer than 12 feet. Vice Chair Warnock said the language in the ordinance clearly states the driveway shall not be bigger than 12 feet, and Chair Niman stated he does not believe the Zoning Code Enforcement Officer made an error in interpreting the ordinance.

*Member Morong **MOVED** to **DENY the APPLICATION FOR ADMINISTRATIVE APPEAL** from Notice of Violation decision dated 10/21/2025, that the driveway does not meet the maximum requirement of 12 feet at right of way, because the board does not believe the town zoning officer is in error. The property involved is shown on Tax Map 230, Lot 7-1, located at 361 Durham Point Road and is in Residence C (RC) Zoning District. **SECONDED** by Member Bubar and **PASSED 5-0-0**.*

*C. **PUBLIC HEARING** on a petition submitted by Jeff Berlin, 10 Cowell Drive LLC, for an **APPLICATION FOR VARIANCE** in accordance with Article XII.1 **Table of Uses:** Section 175-53(3)a. to allow for a multi-unit building, Section 175-54 Table of Dimensions - Lot size; Lot area per unit; Front Side and Rear Setbacks; Building Height; Impervious Surface Ratio and Article XXI Off-Street Parking: Section 175-111, A.2 Number of vehicles, B. 1 Setback of parking spaces;(a) (b) (c) and B. 2 Special Exception to adjust parking requirements; ;(a) (b). The property involved is shown on Tax Map 108, Lot 27, located at 10 Cowell Drive and is in Residence A (RA) Zoning District.*

Member Lemieux read the above public hearing into the record at 7:22pm.

Mr. Berlin explained that Ms. Cline made him aware that the LLC is not currently active. He asked the board how they would like to proceed and stated he was there in good faith and was prepared to either continue the hearing or withdraw all or part of the application.

Ms. Cline clarified that anything related to the LLC could be listed as a condition on the board's decision. Vice Chair Warnock expressed concerns that there is no one

administratively to speak to the application because the LLC is not in good standing. Ms. Cline confirmed that the LLC has been administratively dissolved. The board had a lengthy discussion on how to proceed given the complicated nature of the application and the status of the LLC. Member Bubar expressed concerns that the planning board could allow the applicant exceptions to the setbacks during the site plan review; Paul Rasmussen, the Planning Board Chair, was present and clarified that the site plan regulation requirements can be waived by the planning board, but zoning ordinances have to be heard at the zoning board as a variance. Member Bubar asked Mr. Berlin if he had considered asking the planning board to rezone the area to the Church Hill District, which is zoned for multi-family. He said he was advised to start with the zoning board.

Vice Chair Warnock has concerns about hearing the case with the LLC not in good standing and no official owner representing the property. The board agreed that it would be best to wait until the LLC is in order. Mr. Berlin stated he might prefer to withdraw the application and submit a new application once the LLC is in order. The board decided to open the public hearing to consider the application.

*Member Morong **MOVED** to **OPEN THE PUBLIC HEARING. SECONDED** by Member Lemieux and **PASSED unanimously 5-0-0**. The public hearing opened at 8:11pm.*

Chair Niman asked if there was a legal representative present who wishes to speak to the application. Seeing none, the board decided to continue the meeting.

*Member Morong **MOVED** to **CONTINUE THE PUBLIC HEARING** to January 13, 2026. **SECONDED** by Member Lemieux, and **PASSED unanimously 5-0-0**.*

VI. Other Business

No other business was discussed.

VII. Approval of Minutes: September 9, 2025 and October 14, 2025

*Vice Chair Warnock **MOVED** to **APPROVE** the minutes of September 9, 2025 as amended. **SECONDED** by Member Lemieux, and **PASSED 4-0-1**, with Member Morong abstaining.*

*Member Morong **MOVED** to **ADOPT** the minutes of October 14, 2025 as written. **SECONDED** by Member Bubar, and **PASSED 4-0-2**, with Vice Chair Warnock and Member Lemieux abstaining and Alternate Warzin voting to approve having served at the October 14, 2025 meeting.*

IX. Adjournment

154 *Member Bubar **MOVED** to **ADJOURN** the meeting. **SECONDED** by Vice Chair*
155 *Warnock, and **PASSED** unanimously 5-0-0.*

156 Adjournment at 8:15 pm

157 Daphne Chevalier, Minutes taker