

These minutes were approved at the April 14, 2020 meeting.

**ZONING BOARD OF ADJUSTMENT
Tuesday, February 11, 2020 at 7:00 p.m.
Town Council Chambers, Town Hall
8 Newmarket Road, Durham, NH
MINUTES**

MEMBERS PRESENT: Chris Sterndale, Chair
Tom Toye, Vice Chair
Micah Warnock, Secretary
Joan Lawson
Dinny Waters, alternate

OTHERS PRESENT: Audrey Cline, Code Administrator

I. Call to Order

Chair Sterndale called the meeting to order at 7:03 pm.

II. Roll Call

Chair Sterndale noted that Peter Wolfe had stepped down from the ZBA, and said more members were needed. He said he had recommended Mark Morong's application to the Town Council. He said there was a need for some alternate members.

III. Seating of Alternates

Chair Sterndale seated Mr. Waters as a regular member, also noting the applications for which Mr. Waters would need to recuse himself.

IV. Approval of Agenda

Chair Sterndale noted that a number of the applications this evening had to do with accessory apartments, and he asked Ms. Cline to review the Zoning Ordinance provisions concerning accessory apartments.

ACCESSORY DWELLING UNIT – A dwelling unit located in, or attached to, a single-family residence as an accessory use. A single-family residence with an accessory dwelling unit is considered a single-family residence (not a duplex residence). See Article XX
ACCESSORY APARTMENT – A dwelling unit located in an accessory structure in conjunction with a single-family residence as an accessory use. A single-family residence with an accessory apartment is considered a single-family residence (not a duplex residence). See Article XX

G. Accessory Dwelling Units and Accessory Apartments. Accessory dwelling units and accessory apartments shall conform to the following standards:

1. Only one accessory dwelling unit or one accessory apartment shall be located on a lot with a single-family residence. The location of an accessory dwelling unit and an accessory apartment in conjunction with one single-family residence shall not be permitted.
2. An accessory dwelling unit shall contain a minimum of 300 and a maximum of 850 square feet of floor space.
3. An accessory apartment shall contain a minimum of 300 and a maximum of 850 square feet of floor space.
4. In zoning districts where no more than three unrelated persons may occupy a dwelling unit (as specified in subsection 175-56 General Dimensional Standards), there shall be no more than three unrelated occupants in total for the single-family dwelling and the accessory dwelling unit combined or for the single-family dwelling and the accessory apartment combined.
5. The location and design of the accessory dwelling unit or accessory apartment shall maintain the single-family character and appearance of the premises.
6. An interior door shall be provided between the single-family dwelling and the accessory dwelling unit, but the door may be locked or not at the option of the property owner.
7. One parking space shall be provided for the accessory dwelling unit or accessory apartment, in addition to parking required for the single-family dwelling. The parking space may be situated within a driveway along with other vehicles provided it is readily accessed.
8. The property owner shall make adequate provisions for water supply and sewage disposal for the accessory dwelling unit or accessory apartment in accordance with RSA 485-A:38. However, systems for the accessory dwelling unit or accessory apartment separate from those serving the single-family dwelling are not required.
9. There are no additional requirements for lot size, frontage, space limitations, or other dimensional controls for an accessory dwelling unit or accessory apartment beyond what would be required for a single-family residence without an accessory dwelling unit or accessory apartment

Chair Sterndale said Items V.A, B, C on the evening's agenda had been withdrawn.

*Micah Warnock MOVED to approve the Agenda as amended. Tom Toye
SECONDED the motion and it PASSED unanimously 5-0.*

V. Public Hearings:

- A. **PUBLIC HEARING** on a petition submitted by Jeff & Vivian Miller, Durham, New Hampshire for an **APPLICATION FOR APPEAL TO BUILDING CODE BOARD OF APPEALS** from Chapter 1, Administration, and Chapter 18, Fire Department Access & Water Supply, of the 2015 NHPA1 to permit the construction of an accessory apartment. The property involved is shown on Tax Map 20, Lot 12-3, is located at 297 Durham Point Road, and is in the Residence C Zoning District.

Withdrawn

- B. **PUBLIC HEARING** on a petition submitted by Jeff & Vivian Miller, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(F)(2, 3 & 6) of the Durham Zoning Ordinance to permit the construction of an accessory building over 200 square feet in size, over 14 feet in height, and located forward of the front façade of the house. The property involved is shown on Tax Map 20, Lot 12-3, is located at 297 Durham Point Road, and is in the Residence C Zoning District.

Withdrawn

- C. **PUBLIC HEARING** on a petition submitted by Jeff & Vivian Miller, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XX, Section 175-109(F)(4), of the Durham Zoning Ordinance to permit an accessory building to contain heat. The property involved is shown on Tax Map 20, Lot 12-3, is located at 297 Durham Point Road, and is in the Residence C Zoning District.

Withdrawn

- D. **PUBLIC HEARING** on a petition submitted by Jeff & Vivian Miller, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to permit the construction of a detached garage with an accessory apartment above within the frontyard and sideyard setbacks. The property involved is shown on Tax Map 20, Lot 12-3, is located at 297 Durham Point Road, and is in the Residence C Zoning District.

Ms. Lawson said she knew Vivian Miller, but was comfortable hearing the case as long as the applicants were comfortable with this.

Ms. Miller said she was ok with this. She and her husband showed what was proposed, with slides. She said they had been Durham residents for over 27 years, and purchased the property in question in 2011 and built a new home there in 2014. She said the remaining 1950's cinder block garage sat at the top of the driveway. She said the purpose of the project was to remove a dilapidated 396 sf garage and build a new 672 sf one bedroom apartment with a one car garage below it. She said the project would provide an energy efficient building and improve the overall appearance of the property.

She said the parcel didn't have frontage on Durham Point Road, and shared an access driveway with one currently unoccupied home. She said the property had a long, narrow deeded access of approximately ½ mile. She said the total parcel was approximately 1.5 acres and said there was approximately 125 ft of shoreline frontage on Great Bay. She said the parcel was abutted by Little Bay, conservation land, a utility right of way and one house 125 ft away that was currently unoccupied.

Ms. Miller said the proposal sought to balance reasonable use, while minimizing additional disturbances to the property. She said it would improve the property because it would involve removal of a garage that was in disrepair; the building of a highly energy

efficient structure; a more usable and architecturally aesthetic structure; and placement of an accessory dwelling in an area that worked with the configuration of the property.

Mr. Miller showed with slides that they were surrounded by conservation land. He provided details on the driveway, and also noted where the leachfield was located, between the two structures on the property. He said a survey was done, and also said test pits were done, resulting in an approved plan for increasing the size of the existing leachfield. He also said they had an approved well location and had discussion with the Fire Department about including a sprinkler system. He noted drawings for the garage apartment. He showed how they had tried to move the location of the new structure back as far as they could, and so had increased the setback from the front lot line, but said they were restricted from increasing the side setback for the new building because of the leachfield position.

Mr. Miller reviewed how the variance criteria were met with the application. He said granting the variance would not be contrary to the public interest. He said the condition of the current garage was poor and said it would be replaced with a new accessory dwelling. He said the proximity to the lot lines was not contrary to the public interest since there was no additional encroachment. He noted that they had moved the structure further away from the front setback.

He said the spirit of the ordinance would be observed in granting the variance. He said the purpose of setbacks was to maintain and protect surrounding properties, and said the proposed building would be further away from the front line, which would further protect and improve the buffer. He noted that this area was buffered by trees, which would positively impact the neighbors.

Mr. Miller said substantial justice would be done in granting the variance. He said there would be no harm to neighbors' homes, and no harm to conservation land or easements from the proposed structure. He said the improvements would benefit the land value and aesthetics of the overall property.

He said granting the variance would not diminish the value of surrounding properties. He said just one home was visible from their house and was currently uninhabited. He said replacing a building in poor condition with a new accessory dwelling unit that was consistent with their new home would not diminish the value of surrounding properties.

He said literal enforcement of the ordinance would result in an unnecessary hardship. He said it would prohibit any replacement of the existing structure. He said due to the configuration of the property and the location of the leachfield and driveway, the new dwelling unit could only be placed in the proposed location.

Chair Sterndale asked what kept the Millers from moving the new structure closer to the driveway. Mr. Miller said there was no place to put it that was their land. Ms. Miller said if they put it closer to the driveway, there were drainage ditches on both sides of the driveway to deal with. Mr. Miller said they had to find a position for the leachfield, and

noted that the well location and the required distance of it from the leachfield came into play. Chair Sterndale asked if they would connect the garage to the driveway. Mr. Miller said yes, and said there would be a paved entrance to the garage coming from the south.

Chair Sterndale opened the Public Hearing, and asked if there were any members of the public who wished to speak about the application. No members of the public came forward to speak.

Tom Toye MOVED to close the Public Hearing. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0.

Ms. Lawson said the property had limitations as to where the new structure could be placed. She said the justifications for why the variance should be granted were good, including replacing a garage that was in poor condition, and moving its location in a way that improved the setback. She said the property was well off of Durham Point Road, and said there was no one there other than the abutting property. Mr. Toye said the applicants had addressed the 5 criteria. Mr. Waters said what they proposed was an improvement over the current situation.

Tom Toye MOVED to approve a petition submitted by Jeff & Vivian Miller, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to permit the construction of a detached garage with an accessory apartment above; with the frontyard and sideyard setbacks to be bound as presented in their packet of February 11, 2020. Micah Warnock SECONDED the motion.

Chair Sterndale said the ZBA was not granting more relief than was necessary. He said there was no identifiable alternative location that would meet the ordinance without a drastic change to the structure. He said the proposed structure was reasonably sized and also said the footprint was reasonable for an accessory apartment.

The motion PASSED unanimously 5-0.

- E. **PUBLIC HEARING** on a petition submitted by Bob Caldicott, Edgewood Place LLC, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(F)(6), of the Durham Zoning Ordinance to permit the construction of shed located forward of the front façade of the house. The property involved is shown on Tax Map 2, Lot 3-7, is located at 20 Edgewood Road, and is in the Residence A Zoning District.

Chair Sterndale noted the revised narrative received for the application.

Mr. Caldicott said the shed was in place because he had overlooked the requirements concerning it. He said he'd thought that because it was 80 sf he could put it there without needing approvals. He said if he had known, he would have asked for the required approvals.

He explained that his son had built the shed as part of a High School project, and said he'd asked that it look professional. He said it was brought to the property in sections. He noted that he had reviewed the location with several people he knew, and they the current location was the right place for it.

Mr. Caldicott reviewed the variance criteria and how they were met with the application. He said granting the variance would not be contrary to the Public interest because it would not threaten the public welfare or character of the neighborhood but rather would improve the value of the property and surround properties. He said the structure would be a small 8x10, neat and handsome shed, with window boxes, a stained a neutral color, and lattice on the bottom. He said he'd do whatever people wanted. He said the property was a ranch, which he had fixed it up as best he could, and said the shed was nicer looking than the house and would improve the appeal compared to the current structures on the property.

He said the shed would provide easier maintenance and neatness of the property, and also wouldn't threaten the public health or safety and would improve the public health/safety. He said the shed would be out of the way of any passage or walkways, and would provide improved maintenance of the property, driveway and parking in the winter and all year round.

Mr. Caldicott said the spirit of the ordinance would be observed in granting the variance because the shed would serve the public interest by adding value to the neighborhood and public by way of improved aesthetic appeal and safety.

He said substantial justice would be done in granting the various because it was a win for all. He said this was the ideal place for a small, handsome storage shed near the house and driveway, with close proximity to recreational and maintenance areas of the property. He said a storage shed on either side of the house would be close to the house and might look out of place with conflicting roof lines. He said a there was already a shed in the upper back yard, and said it had proven to be useful only for that upper back tier of the property, but not for the house and front portions of the property.

He said granting the variance would not diminish the values of the surrounding properties and said it would improve the property and value of surrounding properties. He said it would provide a necessary location to store maintenance tools and recreational items; would allow the front portico, which was currently functioning as a garage because there was no garage, to be clear and cleaned more often; would provide necessary storage for shovels, rakes, leaf blowers, pressure washers, other tools, sand/salt that at times cluttered the portico; and would promote easier maintenance of the property by providing a holding place for maintenance items.

He said it would also provide a localized barrier to sound and visual nuisances from car doors, lights in the parking area proximal of the shed. He said it would improve the appeal of the property, with a neat and handsome shed with window boxes, stained a neutral color and lattice on the bottom.

Mr. Caldicott said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property was burdened by the zoning restriction in a manner that was distinct from other land in the area. He said the property was distinct from many of the surrounding properties because it had no garage for storage of items near the front side of the house and grounds. He said special conditions of this property made a shed in the proposed location ideal. He explained that the backyard was tiered, and said there was no appropriate room in the lower tiers of the back yard for a shed. He said the shed in the upper tier was too far away and had not proven to be helpful concerning maintenance of the house and the front portion of the property.

He said the property was distinct from most properties in the area in that there wasn't a suitable, large area directly behind or to the sides of the house for a shed/garage. He said the layout and lots lines of the side yards would force the shed close to the existing house structure, which would likely conflict with the architecture of the ranch. He said many houses in the area had garages near or in front of the house. He said a shed in the proposed area would not alter the essential character of the neighborhood. He said considering the special conditions of the property, the proposed use was reasonable. He said the shed location would provide improved aesthetic appeal of the property, and improved maintenance of the property, improved tidiness of the property.

Mr. Caldicott also noted that what made this property distinct was that a set of stop signs were added to Edgewood Road within the past couple years, and said they straddled the driveway entrance of the property. He said this had created a new and significant hardship in terms of the loss of privacy. He said a side benefit of the shed was that it provided a minor privacy barrier and thus minor relief from that hardship.

There was discussion about the exterior of the house and the shed, and that the shed was about 12 ft high at the peak. Ms. Lawson asked if there were tenants in the house, and Mr. Caldicott provided details on this. Ms. Lawson said there weren't dimensions shown for the side yard of the property, and there was discussion on this. It was noted that the distance from the left side of the house to the property line was 30 ft. Mr. Caldicott said power lines connected to the house in that area, and said there was a walkway in this area. He also said this area was close to the house and wasn't level, and said putting the shed there would mean a good size tree would need to be taken down.

Ms. Cline noted that an accessory building had to be at least 20 ft from the primary roadway. She also said the shed didn't need to meet the setbacks because it was less than 200 sf, but said if it did need to meet them it would be too close to the front and side setbacks. She said the issue was that the shed was in front of the house. She said the 30 ft distance would need to be verified.

Chair Sterndale asked if a garage could be in front of a house. Audrey said a garage, even detached could be in front of the house. But said it would have to meet the front setback. Chair Sterndale said his concern was that the point of having a restriction against a shed in front of a house was that people didn't want to look at a bunch of sheds. He said given

the height, the shed was rather dominating although gorgeous, and said it was what people would see on the property.

Mr. Toye said there didn't seem to be a logical alternative location for the shed on the property. There was discussion about whether it would be appropriate to look at the left side of the house for a possible location, and whether there was a better alternative than granting the variance.

Ms. Cline corrected a statement she'd made concerning setbacks for a shed, and said even an 8 ft by 10 ft shed would need to be 10 ft from any property line and 20 ft from any principal residential building on an abutting lot. There was discussion about the fact that the 30 ft distance from the house to the property line hadn't been verified.

Mr. Toye said the pictures presented for neighboring properties showed two duplexes that appeared to have a shed in their front yards, between the house and the road. Chair Sterndale said they were not as visually dominating as this one.

Mr. Waters said he was happy with the shed as proposed.

Mr. Caldicott said he'd be happy to create a barrier there, with a line of trees, etc. Mr. waters said he liked the flower boxes idea.

Chair Sterndale opened the Public Hearing. There were no members of the public who came forward to speak. Chair Sterndale noted an email from Richard Blakemore, Davis Ave. which said he was opposed to the variance application.

Mr. Caldicott said there was no better alternative, from what he could see. He said the shed stood out because it was brand new, and said vegetation would grow in and he'd plant things to hide it and make it look nicer.

Micah Warnock MOVED to close the Public Hearing. Tom Toye SECONDED the motion and it PASSED unanimously 5-0.

Mr. Warnock said the shed was tall, but said if it was a neutral earthy tone it would blend in. He said he thought Mr. Caldicott's reasons for having the shed there was fair.

Mr. Toye said it was a challenging property to create a garage/additional storage space because of the topography, said he would rather see a nice shed there than equipment, etc. outside. Chair Sterndale said the ordinance didn't speak to clutter in front yards. Mr. Toye said the letter in opposition to the application said the applicant had done a nice job of cleaning up the property. Chair Sterndale said that wasn't a factor in law.

Ms. Lawson said in addition to the newness of the shed which made it stand out, it looked big in relation to the ranch house. She said it sounded like it couldn't be moved to the side of the house, and the only other alternative was to build an attached garage on the left or have a shed in the back. There was discussion about the topography behind the house. Mr. Toye said perhaps there should be site walk. There was discussion that the Board could require screening. Mr. Warnock said the shed was so commanding because

of the slope on the property. Mr. Waters said he understood the need for storage, and said the applicant had made an effort to have it blend in.

The Board reviewed the variance criteria. Mr. Toye said that concerning the public interest, the ordinance said the shed must be behind the façade of the house. He said public interest aspect of this was clear, and said absent a site walk but knowing the general area, it didn't appear that there was a better alternative location for a shed. He said they could talk about the size of the shed separately. He said there was no threat to public health and safety.

Mr. Warnock said the spirit of the ordinance criterion went parallel with the public interest criterion. He said for both, he couldn't quite get there in terms of saying the criteria were met, but said if there was more effort to blend the shed with paint, arborvitae, etc., he could get there. Mr. Toye said there should probably be a neutral, earth tone.

Mr. Warnock said substantial justice was done with what was proposed.

Ms. Lawson said they were basing their deliberations on what they believed, without a site walk.

Mr. Toye said he could get there on all of the criteria, and said the only open question was if there was an alternative location. Ms. Lawson agreed, and said her concern was the aesthetic appeal issue. There was discussion about the email received that was against the application. It was noted that he might not be an abutter but lived nearby on Davis Ave.

Mr. Waters said people were struggling with how it looked against the house. He asked the applicant if he could make the Board feel better about how the shed would look when it was painted and had flower boxes.

Chair Sterndale said he didn't have a problem with the shed in relation to the house, and had a problem with its height and prominence.

There was further discussion. Mr. Toye suggested continuing the application and asking the applicant to come back with a more specific way to address the concerns. Chair Sterndale said his concern was the character of the neighborhood, and said the shed was prominent in a cluster of small lots and homes. He said he would be open to a presentation that said how it would be mitigated. He said with what the Board had right now, he couldn't get there concerning the public interest and spirit and intent criteria.

Ms. Lawson said she was also a no vote right now. Mr. Toye said perhaps some additional detail would address the concerns, and said it behooved the Board to give the applicant with an opportunity to provide this. Ms. Lawson spoke in favor of having a site walk and giving the applicant the opportunity to provide additional material. Mr. Warnock said a plan would definitely help. There was discussion about possibly doing a site walk.

Chair Sterndale reopened the Public Hearing in order to speak with the applicant. He said he thought the Board would continue the application and set up a site walk, in anticipation of getting detail on what could be done to minimize the visual impact of the shed. He asked Mr. Caldicott if that was worth pursuing.

Mr. Caldicott said yes. He said it was steep in the backyard, and also said the shed in the back of the property wasn't helpful. He said the sideyards were the only potential options, which could be looked at. He said he'd gotten a text from a neighbor who was in favor of the application. He said the shed stood out because it was brand new and wasn't painted.

Chair Sterndale spoke further, and then closed the Public Hearing.

There was discussion about the idea of requiring specific paint colors. Mr. Caldicott Applicant said he would propose the colors. Chair Sterndale said information on vegetation would also be helpful.

Tom Toye MOVED to continue the Application and schedule a site walk. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0.

- F. **PUBLIC HEARING** on a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC, Exeter, NH on behalf of Charles & Trisha Mr. Waters, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XX, Section 175-109(F)(4), of the Durham Zoning Ordinance to permit an accessory building to be supplied with sewer. The property involved is shown on Tax Map 7, Lot 2-0 is located at 83 Mill Road, and is in the Residence B Zoning District.

Mr. Waters recused himself for applications F and G.

Attorney Somers said because there wasn't a full Board, with one member just having recused himself, the applicants were hopeful that there would be an appointment of an additional ZBA member by the Town Council. She said they would therefore like to continue the applications for F and G, and be heard at the April ZBA meeting.

Chair Sterndale said they would see the applicants in April.

- G. **PUBLIC HEARING on** a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC, Exeter, NH on behalf of Charles & Trisha Mr. Waters, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XII.1, Section 175-53 of the Durham Zoning Ordinance to permit an accessory apartment in the RB Zoning District and from Article XIII, Section 175-65(F) of the Durham Zoning Ordinance to permit the placement of a septic tank and aeration tank within 125 feet of a wetland. The property involved is shown on Tax Map 7, Lot 2-0 is located at 83 Mill Road, and is in the Residence B Zoning District.

Continued to April ZBA meeting.

H. PUBLIC HEARING on a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC, Exeter, NH on behalf of Thomas W. & Anne E. Duncan, Sudbury, Massachusetts, for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(G)(3) of the Durham Zoning Ordinance to permit the construction of an accessory apartment of 1,735 square feet. The property involved is shown on Tax Map 19, Lot 19-7 is located at 560 Bay Road, and is in the Residence R/RC Zoning District.

Mr. Waters returned to the table at 8:11 pm.

Attorney Somers said the property was acquired in 2017, with intention to build a long term residence. She said the property was flanked on one side by lot 6, which was owned by NH Fish and Game and had a conservation easement on it. She said the property on the other side had a shared driveway with the applicants' property.

She noted that Exhibit #1 showed the proposed accessory apartment structure, and said it would be located approximately 270 ft from Bay Road. He said the applicants also proposed to build a 3-bedroom house with approximately 4900 finished sq. ft. He said the accessory apartment would be 1735 sf, of which 1465 sf would be living space and the rest of the space would be for pool related items. She said this was shown on Exhibit #2.

Attorney Somers reviewed the variance criteria and how they were met with the application. She said there would be no decrease in the value of surrounding properties with what was proposed. She said the apartment wouldn't be visible to others, and said its size was proportional to the house, which was a pretty good size. She said the dwellings on other lots in the area were comparable, so the property wouldn't be terribly different from what was out there now.

She said granting the variance would not be contrary to the public interest. She said the zoning objective here was likely to make sure that an accessory apartment didn't become so large that it was in fact no longer an accessory use and instead was a primary use. She said the logical conclusion was that the size of accessory apartments was regulated to make sure they didn't dwarf the primary dwelling. She provided the numbers on this.

Attorney Somers said the accessory apartment would be incorporated into the overall design for the project, and she noted that there would be a pool off of the apartment. She said there would be no alteration of the essential character of the neighborhood, which had fairly good size homes that were well buffered from the road and each other.

She said that concerning the hardship criterion, the special condition of the property was that there was a shared driveway, and said it was realistic that construction would be as close to it as possible. She noted that Exhibit #3 showed this, and said the shared driveway, which they had to work from, resulted in certain constraints in terms of where to put the house and apartment. She also said the applicants wanted to preserve as much as possible of the extensive tree coverage on the lot. She noted that Exhibit \$1 showed the existing tree line, which would drive where to locate the structures. She also said there was some slope out there.

She said there was no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. She said given the proportional nature of the two buildings, there was no fair and substantial relationship. She said the two buildings would remain in harmony, although perhaps on a larger scale.

She said the use was reasonable use because the apartment wouldn't be seen by anyone, and would be in proportion to the residence. She said it would meet the needs of the Duncans, in that it would allow for family members to visit, and said they wanted to have a good size structure for this.

Attorney Somers said substantial justice would be done in granting the variance because the applicants would be able to construct an accessory apartment that complemented their development proposal and met their needs, and there would be no corollary harm to members of the public.

She said the spirit and intent of the ordinance criterion was met, referring to the public interest criterion.

Ms. Lawson said she was good with all of the variance criteria being met except hardship. She said she found it hard to justify that there were special conditions of the property that meant denying the application would cause unnecessary hardship. She said the alternative was to construct a larger house, and said she said she didn't understand what prohibited the architect from designing that.

Attorney Somers said there was a desire to have adequate space for guests' needs, and also a desire for older members of the family to have some degree of privacy and peace and quiet away from the accessory apartment activity. She spoke again about how the shared driveway was driving the design, and said the garage would logically be located behind the main house. She said a larger building wouldn't be conducive to this, and said it made sense to put the apartment a bit further away and closer to where the pool would be. She said concerning other alternative locations that there were slopes off toward Bay Road, as well as sideyard setback issues. She said the applicants were also trying to preserve the tree line, and to work with the property as it was.

Kelly Kinhan of Cobb Hill Construction (the project manager) said there was a unique shape to the lot, noting that it was stretched out on the front side at the road, had a steep grade and a lot of ledge. He said it would be hard to fit a larger structure into the wedge shape. He spoke about the design for the main house, accessory apartment and pool area, and the desire to maintain a natural setting for all of this. He said the applicants were trying to keep things tight, and said the construction would be on a level area on top of a knoll, with blasting involved. He said they weren't going tall with the house and were trying to keep its visual impact to a minimum. He said a bigger house wouldn't fit, and would be a bigger image to take in from the road. He said the accessory living space would be tucked in behind the house, and said people wouldn't even know it was there.

Chair Sterndale said of all the problems that had just been identified would be easier to solve with a smaller accessory apartment, and said a smaller footprint would make it easier to comply with the ordinance.

Attorney Somers said she didn't think the Duncans would want to have an 800 sf compliant accessory apartment, because it would be too small and wouldn't be what they would need.

Chair Sterndale said more than the allowed size might be reasonable, but said the hardships that had been spelled out didn't cry out for relief with a variance.

Ms. Lawson said she got it that the accessory apartment was proportional and would be hidden.

Mr. Toye noted the issue of "unnecessary hardship", and that there had been discussion about it at a recent ZBA meeting. He said the question was whether, if a property owner wanted to do something with his property and the Zoning Ordinance prohibited this, there was a greater benefit to the community by denying it than there was by granting the benefit to the homeowners. He said as presented, he didn't see that the ZBA would be doing a greater good for the community by denying this application. Ms. Lawson said she was with Mr. Toye, but said she struggled with the variance criteria wording.

Chair Sterndale spoke about the public purpose of a size restriction. He said the applicants had said their accessory apartment needed to be proportional with the primary structure, and said that was a reasonable assumption. He also said keeping the accessory apartment from becoming the primary residence was another purpose of a size restriction.

Mr. Kinhan said he thought that location was a key issue. Chair Sterndale said if the ordinance cared about the location, it would require different size accessory apartments in different zones.

Mr. Warnock asked about the restrictions on accessory apartments in the Zoning Ordinance. Ms. Cline provided details on this. Mr. Warnock said if at some point there were two accessory apartments in the proposed building instead of one, there could be impacts from this. Chair Sterndale said the Ordinance said there couldn't be multiple accessory dwelling units on a property.

Mr. Toye said the 800 sf number was arbitrary and was based on the average of a normal house size. There was discussion. It was noted that 1465 sf was 30% of the square footage of the primary residence that was proposed. Ms. Cline noted that the Ordinance had formerly scaled the size to different neighborhoods and types of houses, but said now the 800 sf number was in the Ordinance.

Chair Sterndale said he couldn't identify any other potential purposes for the size restriction than the ones the applicant had identified. He asked what purpose would be served by requiring that the apartment must be attached to the primary building. There was discussion. Mr. Toye said this was what the property owner wanted.

Attorney Somers said there was also the issue of whether the proposed use was reasonable. She said the applicants didn't want all of the square footage to be in one house, and said given that the accessory apartment would be shielded she didn't think the proposal was unreasonable.

Ms. Lawson said the Board's struggle was that they had to answer to yes to all these questions in the variance criteria in order to approve the application.

Attorney Somers said the proposed use was reasonable, and said denial would result in unnecessary hardship. She said there were some unique attributes to the property, and also said an 800 sf property would be a hardship. She said the special conditions should be read in conjunction with the other prongs of the hardship criterion, and said the applicant met these other prongs.

Chair Sterndale opened the Public Hearing. There were no members who came forward to speak.

Tom Toye MOVED to Close the Public Hearing. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0.

Mr. Toye said he felt that any hardship to the applicants was not outweighed by a greater benefit to the community. He said he thought this was a nice proposal, and said the size was what the owners wanted. Ms. Lawson said they were adding a qualifier to the hardship criterion. There was discussion. Mr. Toye said he was looking at this application, on this site, in this part of Town. Chair Sterndale said through the lens of what alternatives there were, the applicants could do with less, but said to what public benefit. Ms. Lawson said there were alternatives. Chair Sterndale said he hadn't been able to find what public benefit there was to requiring less. Ms. Lawson said as long as the Board felt that this was answering in the affirmative, she agreed that what was proposed wasn't unreasonable. Ms. Lawson said she could get there.

Tom Toye MOVED to approve a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC, Exeter, NH on behalf of Thomas W. & Anne E. Duncan, Sudbury, Massachusetts, for an APPLICATION FOR VARIANCE from Article XX, Section 175-109(G)(3) of the Durham Zoning Ordinance to permit the construction of an accessory apartment of 1,735 square feet.

There was discussion that the motion should just include the 1735 sf and not the living space to provide some leeway in terms of the design.

The motion PASSED unanimously 5-0.

VI. Other Business

- A. Discussion of whether to hold the meetings of March and November on different dates due to elections being held the same day.

There was discussion, and Board members agreed to change the date for the November ZBA meeting, and also the date for the March ZBA if it was still possible to do that.

VI. **Approval of Minutes:** No Minutes

VII. **Adjournment**

Micah Warnock MOVED to adjourn the meeting. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0.

Adjournment at 8:51 pm

Victoria Parmele, Minutes taker

Micah Warnock, Secretary