

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

**ZONING BOARD OF ADJUSTMENT
Tuesday, May 12, 2020 at 7:00 p.m.
Town Council Chambers, Town Hall
8 Newmarket Road, Durham, NH
MINUTES**

MEMBERS PRESENT: Chris Sterndale, Chair (attending in person)
Tom Toye (attending in person)
Micah Warnock, Secretary (attending remotely)
Joan Lawson (attending remotely)
Mark Morong (attending in person)

OTHERS PRESENT: Audrey Cline, Code Administrator (attending in person)

I. Call to Order

Chair Sterndale called the meeting to order at 7:02 pm.

II. Roll Call

The roll call was taken,

III. Seating of Alternates

All regular members were present at the meeting, either in person or remotely. Chair Sterndale noted that there were currently no alternates on the ZBA, and asked that people consider being on the Board.

IV. Election of Officers

It was agreed that this would be moved to later in the agenda, before Other Business.

V. Approval of Agenda

Tom Toye MOVED to approve the Agenda as amended, to move the election of officers to the end of the meeting, before Other Business. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

VI. Public Hearings:

- A. **CONTINUED PUBLIC HEARING** on a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC, Exeter, NH, on behalf of Kathleen Morris, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(G)(1), of the Durham Zoning Ordinance to allow for more than one accessory dwelling unit on a property. The property involved is shown on Tax Map 8, Lot 2-3, is located at 30 Durham Point Road, and is in the Residence C Zoning District.

Chair Sterndale noted that the Board came up with a list of questions and concerns for the Town attorney last month. He noted the email sent to the ZBA today with a list of conditions. He said they also received updated drawings today.

He reopened the public hearing.

Attorney Somers was at the meeting remotely, and said since the last meeting, she'd talked with the Town Attorney Laura Spector Morgan and Ms. Cline, and as part of that provided evidence of the physical disabilities involved, and that reasonable accommodation for these disabilities were needed. She said her understanding was that the Town attorney said both criteria were met. She said issues that had been raised were the need to have some security that when the decommissioning of the ADUs occurred, there would be funds for this. She said it was determined that the most effective and efficient way to do this was to create a cash savings account or something similar, which would secure the Town's interest that money would be available. She said it was her understanding that this was acceptable to Ms. Cline and Attorney Spector Morgan.

She said the other issue was to address ways that the Board's concerns could be incorporated into conditions of approval. She said she'd put together a rough draft for discussion purposes, which Attorney Spector Morgan had reviewed. She said these conditions addressed the requirement that no units would be rental units, the septic capacity, and the serial decommissioning that would occur when the need for the accessory dwelling units disappeared. She said dismantling of the kitchen was part of the decommissioning. She said the plans submitted clearly indicated that these would be one-bedroom units. She said hopefully the Board's concerns had been addressed with what had been provided.

Chair Sterndale opened the public hearing.

Diane Sylvester, Sunnyside Drive said Ms. Morris was extremely reasonable to deal with, noting that there had been issues at times concerning dogs, children, etc. She said she was impressed with Ms. Morris's ability to meet the needs of her family, and said it was great that she had the resources to do this. She said she and her husband didn't have any issues, noting that they had seen the proposal.

Chair Sterndale said there had been additional correspondence from neighbors Paul and Paula Igoe and Dale and Carol Tock since the last meeting.

Kevin Culligan, Pinecrest Lane, said he had submitted two letters, including one for this meeting from him and Cheryl Whistler.

Chair Sterndale read the most recent letter dated April 28th. It asked the Board to clarify the need for 4 separate kitchens, and also asked that the plans be explained at the meeting. Ms. Cline said the updated drawings were made available this afternoon. It was noted that the footprint hadn't changed, and just the internal layout had changed. The letter asked that the Board include an assessment of the issue of increased noise due to construction, and afterwards. It also asked if the owners/residents planned to replant trees/shrubs or install solid fencing. The letter also said they would like bona fide assurances from the Town or ZBA that if the property was sold, the decommissioning of the units would include complete removal of the kitchens. It provided specifics on this.

Mr. Culligan said he just wanted to be sure everyone had seen his letter, and said some of the concerns had been addressed already. He said he didn't see how the application could be approved if the plans weren't available to abutters. He said he wanted the Board to address the plans.

There was discussion. It was noted that the site plan hadn't changed. Mr. Morong asked if the architectural plans could be shown. The architect said the interior partitions had changes slightly, and suggested that she could provide the plans electronically. Attorney Somers said the revisions were in large part a response to questions that had come up, and said they indicated clearly that the ADUs would be one-bedroom units, and weren't units that were convertible to two-bedroom units.

Chair Sterndale asked about the need for 4 separate kitchens.

Attorney Somers said the first one belonged to the main house, and the second one went with the existing approved ADU, which had served the daycare facility. She said the remaining two kitchens would go with the two ADUs if they were approved tonight. She spoke further. She said the need for 4 kitchens related to the caregivers and the full-time care needed for all three children. She also noted that the adult child would have his own ADU.

Mr. Morong noted the letter from the Town attorney that said multiple caregivers were required.

Chair Sterndale asked about the possibility of any screening, noting that this question was asked by an abutter.

Attorney Somers said there were no plans for this, but said if the neighbors wanted to plant anything on their side, or approached the applicant about getting an easement to plant vegetation on her property, she was open to discussion on this. But she said the applicant wasn't planning to do anything on her own concerning this.

Mr. Morong noted the issue of increased noise during construction and said there was a noise ordinance to address this. He said this issue was beyond the ZBA's purview. He also said there were draft conditions to address decommissioning, including money to be put aside for it, and he provided details on this.

Attorney Somers explained that there wouldn't technically be a deed restriction, and said the idea was that a notice would be recorded at the Registry of Deeds indicating that a variance had been granted for the property, and that it included conditions of approval which could be provided by the Town. She said this would put a potential buyer on notice that there were restrictions on the operation of the property.

There was discussion that the variance, with its conditions, was specific to this family.

Attorney Somers asked the applicant if she wanted to make any further comments. Ms. Morris said with the COVID-19 situation, it had been challenging to meet all of the neighbors. She spoke about conversations she'd had, but said she was happy to work with them, including on possible buffers.

Mr. Morong noted the letters received from the Igoes and the Tocks, and suggested that the Board should review their objections. He noted concerns raised by the Igoes, and commented in some detail on them.

Ms. Lawson said she wasn't comfortable with Mr. Morong proceeding in this manner, because commentary was being added. She said this was the kind of discussion the Board should have after the public hearing was closed. There was discussion about whether it was the Board's responsibility to respond point by point to concerns raised by the public. Mr. Warnock questioned responding to some letters and not others. Ms. Cline suggested that perhaps reading and responding to the points made by members of the public could be done as part of deliberations. Mr. Morong said perhaps they could ask the applicant's attorney to respond to the concerns.

Attorney Somers explained again the need for the 4 accessory dwelling units, and said what was being proposed was two ADU's in addition to an existing ADU that was permitted, and an existing single-family residence, which was permitted. She said the septic issues had been addressed. She said a number of issues raised concerning the daycare were now moot. She said the sound of children playing wasn't within the jurisdiction of the ZBA, and also said children were children and said this was part of a residential use of a property. She said there would not be closets, which potentially could be turned into future living space, and said this was included in the plans that had been submitted.

She said the decommissioning was in the draft conditions of approval. She said some of the noise was connected to the former daycare center, which wouldn't exist anymore. She said the issue before the Board was not the size of the addition and was whether the ADU's met the criteria of the Board. She said some of the comments were for things which were not under the ZBA's jurisdiction, including the idea of looking for another

location to put the ADU's. She spoke further on this. She spoke about the hardship criterion in regard to this application.

Attorney Somers said while she appreciated the concerns raised, the work done with the Code Officer and Town Attorney to come up with conditions of approval to address the core issues at play here would deal with those concerns. She noted that several abutters had come forward to support the application.

The Board reviewed the draft Conditions of approval:

1. There currently is one accessory dwelling unit on the property, and two additional ones are proposed to be constructed. None of the three accessory dwelling units will be used as rental apartments.
2. The daycare facility previously located on site will not be reinstated.
3. Prior to the issuance of a certificate of occupancy for the two proposed accessory dwelling units, the applicant will provide evidence satisfactory to the Town Building Inspector that a septic system exists on site sufficiently sized to serve all bedrooms located in the existing house and accessory dwelling unit together with the two accessory dwelling units to be constructed.
4. This variance is approved without evidence of hardship based on representations of the applicant that four of the existing family members, three minor children and one adult child, have recognized physical disabilities requiring reasonable accommodation and relief from the terms of the zoning ordinance. To protect the interests of the Town, the applicant agrees that when all four of the referenced family members cease their status as permanent residents of the property, that two of the accessory dwelling units will be decommissioned.
5. Should the three minor children, either currently, or when they reach adulthood, need to temporarily reside off the property for medical, educational or seasonal or long term residential program, then the decommissioning requirements shall not be triggered provided that their intent is to return to the property and to be permanent residents, and provided that during any temporary off site residence of the three children, no accessory dwelling units are to be used as rental apartments.
6. Should the adult child who will be residing in one of the accessory dwelling units move off the property for any reason other than medical needs for a period of more than eighteen months, then the decommissioning requirements will be triggered and one of the three accessory dwelling units must be decommissioned for use as such. During any absence of the adult child, the accessory dwelling unit shall not be rented.
7. To ensure that there are adequate funds to pay for the decommissioning of one or both of the accessory dwelling units, the applicant will post either a passbook savings account or some other instrument satisfactory to the Town in the amount of \$10,000.
8. The term "decommissioning" means that, for the accessory dwelling unit being decommissioned, that the refrigerator, stove/oven and dishwasher shall be removed along with such cabinets and countertops that would be customary for a kitchen in an independent living unit. Further, the physical space which is decommissioned shall have such flooring or sheetrock installed as is necessary to create the sense that the decommissioned accessory dwelling unit is

now simply part of the living area of the main home. No other structural or cosmetic changes are required to complete the decommissioning and subsequent to the decommissioning, the applicant may use the area as living space in the same manner and with the same rights as would otherwise be enjoyed for any other portion of the main home.

9. Notice of these conditions of approval shall be recorded at the Strafford County Registry of Deeds.

Chair Sterndale said these conditions were proposed by the applicant, and said both Ms. Cline and Attorney Spector Morgan had signed off on them as being workable. Mr. Morong said they looked good. Chair Sterndale said they were thorough in addressing the Board's concerns and in anticipating likely and unlikely outcomes.

Mr. Toye noted that condition #6 referenced a period of 18 months, and asked for the logic behind this.

Attorney Somers said there might come a time when the unit was decommissioned if the adult child left. She said the 18 months number reflected that this could happen, and also that if it didn't work out, the child could still come back. She spoke further on this. She said there was no particular magic in the 18 months number, and said the applicant felt this was a reasonable time period.

She noted minor revisions made today to the draft COA based on further discussion. Ms. Cline said she believed the Board was looking at the most recent version. She said the changes were concerning wording identifying elements to be removed as part of the decommissioning of the units.

Cheryl Whistler, Pinecrest Lane, said she and Mr. Culligan had questions in their current letter that hadn't been addressed yet. She said one was regarding the need for 4 separate units. She said there appeared to be an unpermitted bedroom in the current accessory unit, and asked if that would be addressed.

Ms. Morris said there was an office and a bedroom, and said the other room couldn't be used as a bedroom. She said one person lived in the basement. She said the closet being discussed wasn't functioning as a closet because it was too shallow.

Attorney Somers said the basement plan from the original submittal, A.1.00, included a small storage area of 57 sf. She said the existing ADU in the basement only was permitted to have one bedroom. She said in the original packet, sheet A.1.01 for the first floor showed a bedroom of 143 sf. She noted today's version of the plan - ZBA-0 and ZBA-1. She said the bottom line was that neither set of plans showed a second bedroom in the existing ADU.

Heather Rivera of Alden Architects said that was correct. She said the plan showed the daycare center that had been dismantled. She said there was one bedroom in there with a closet, and another room used as a playroom with no closet, and said it couldn't be classified as a bedroom. She said the ADU in the basement was approved years ago, had

been reviewed and monitored by the Fire Dept., and was up to code. She said no bedrooms were being added to it.

There was discussion that sheets ZBA-0 and ZBA-1 were the most recent plans. Ms. Cline said they were sufficient for enforcement purposes.

Ms. Whistler noted page 9, the approved floor plan of the 1988 approval of the basement ADU. She said it had one enclosed bedroom. She said the current floor plan showed two enclosed bedrooms, each with a closet.

There was discussion. Ms. Cline said the constraints for ADUs weren't the same then as they are now concerning square footage and enclosed rooms. She also said the sketch from 1988 didn't have dimensions. Mr. Morong noted that the use of the rooms had changed but said there was still one bedroom. There was discussion. He said code officials didn't go by closets.

Attorney Somers said one of the conditions of approval was that none of the 3 accessory dwelling units would be used as rental units. She said that was the core concern of the neighbors as she understood it.

Ms. Whistler said she hoped the ZBA used caution when spaces were changed into bedrooms without permits. She said the septic system was rated by bedroom, and said the capacity could be exceeded if they were used as bedrooms, even if they weren't rented. She also noted that their largest concern was that this would turn into a rental property.

Tom Toye MOVED to close the Public Hearing. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Chair Sterndale noted that the Board went through the criteria last month.

Mr. Toye said one of the things that came up often was whether the Board was granting the appropriate amount of relief. He said it was clearly a 4-unit building, and said he wondered if 4 defined kitchen spaces were necessary for the scenario proposed. He asked if the proposal was more than what was necessary to give the applicants appropriate relief. He said there were 6 bedrooms, 3 offices, 3 playrooms and 3 separate laundry facilities.

Ms. Lawson said she had the same thought, looking at the addition being put on with the second and third ADUs, and if they needed to be as large and well equipped. She said this

lent itself in the future to a great environment for rentals, and said she understood the neighbors' concerns.

Mr. Warnock noted that the legal document said the units would only be available for family members and then would be vacated.

Mr. Toye noted that his comments were tied to the spirit and intent of the ordinance criterion.

Mr. Morong said they weren't considering these as 4 rental units, because of conditions that they wouldn't be rental units. He also said this could be a 5000- 6000 sf house, with 10 kitchens, etc. unless the space was divided up and rented. He said with the conditions, he felt comfortable that the applicant could do what she wanted with the space as long as the units didn't turn into rental units.

Mr. Toye said he didn't think the property would devalue the neighborhood, as long as it wasn't turned into rental housing.

Mr. Morong said he suspected that the neighbors would be vigilant about this, and that the Zoning official would take action if needed.

Mr. Warnock said the legal document said the applicant would decommission the units.

Ms. Cline said with that document on the record, any sales paperwork would come through her office, and said it could be flagged if the property was sold without decommissioning.

Mr. Morong said he could see the value of distancing for these residents, given the pandemic and possible future pandemics.

Chair Sterndale said it was a big house with a big addition, but said this was allowed by right. He said the major concerns, about septic capacity, possible future rental of the units, decommissioning, etc. had resulted in conditions that were tailored to this unique situation. He also noted the stretching of the definition of hardship criterion in this instance, and said this was reasonable, noting that they saw no detriment to neighborhood value and some reasonable assurance that they weren't creating a monster.

Mr. Morong said these conditions were a big tool in the toolbox. There was further discussion. Chair Sterndale said the concerns were valid, but said if this was granted it would be a reasonable amount of relief with a reasonable amount of protection.

Ms. Cline said the ADUs seem to be very comfortable, and said the caregivers got tired and needed a life. She said they needed this kind of space.

Mr. Toye asked if there was anything here that would trigger site plan review. Ms. Cline said no, but noted that there were building and fire code issues, and that the septic issue

was addressed by the state. She said as part of the building permit, all of these things would be addressed. There was further discussion.

Mr. Toye said granting the variance wouldn't be contrary to the public interest given the conditions that had been developed, which addressed the concerns of the public. He noted that they might not address some of the operational concerns of abutters.

Mr. Morong said most of neighbors' concerns weren't in the Board's purview, or were covered by other ordinances. He spoke further on this and there was discussion.

Chair Sterndale said the spirit of the ordinance being observed was tied into the public interest. He said this was a unique situation, and also said there were conditions. He said what was proposed didn't alter the neighborhood or threaten public health and safety. He said the application was a bit weak in terms of asking for the minimum amount of variance needed.

Mr. Morong said the house would look like other houses in the neighborhood, and Mr. Toye said it would be an improvement over the current house. Mr. Morong said there was already a lot of traffic on the road, and said there might be less than when the daycare was there. Mr. Toye noted Ms. Cline's explanation about the caregivers, and that this would be their home and they would need time to recharge. He said he could appreciate that there was a need for the separate, personal space the ADUs would provide, and said that satisfied his concern about this criterion.

There was discussion that there would be no decrease in the value of surrounding properties with what was proposed, and that substantial justice would be done in granting the variance, Mr. Morong said it would meet the needs of the applicant without changing the nature of the neighborhood. Chair Sterndale said there was no gain for the public in denying this application. Mr. Toye said the direct abutters probably benefited from the daycare center no longer being in operation. He said it was nice-looking architecture. Mr. Morong noted that a daycare was a permitted use in the zone.

There was discussion that the Board was in agreement that the statement from Attorney Spector Morgan absolved the applicants of the responsibility to prove hardship.

Mark Morong MOVED that the Zoning Board of Adjustment approve a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandella, PLLC, Exeter, NH, on behalf of Kathleen Morris, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XX, Section 175-109(G)(1), of the Durham Zoning Ordinance to allow for more than one accessory dwelling unit on a property as per the conditions of approval dated 5/11/2020 and the architectural submission dated 3/25/2020 and amended 4/14/2020. The property is located at 30 Durham Point Road, Tax Map 8, Lot 2-3, in the Residence C Zoning District. Tom Toye SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

Chris Sterndale

Yes

<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

- B. **PUBLIC HEARING** on a petition submitted by Auger Building Company Inc., Greenland, New Hampshire, on behalf of Ahmad Etebari, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XII.1, Section 175-56(G) of the Durham Zoning Ordinance to allow for the replacement of a septic system closer to the property lines than is allowed. The property involved is shown on Tax Map 11, Lot 31-13, is located at 3 Riverview Court, and is in the Residence C Zoning District.

Chair Sterndale opened the public hearing.

Ben Auger said there was a failed septic system, and explained that it consisted of a tank that had to be pumped out often and had needed replacement and improvement for a long time. He said they had located where the new system could go, and said both Ms. Cline and Mr. Behrendt had reviewed this. He noted that their emails were included in the packet. He said what was proposed met most of the regulations, but said it was too close to the property line.

Mr. Morong said this application looked pretty cut and dried.

Mr. Toye asked if there were any other locations where this system would fit, perhaps on the east side away from Johnsons Creek.

Mr. Auger said not really. He said it was almost a peninsula there, also noting that it was steep and wooded, and was within the wetland buffer.

Mr. Morong said this looked like a typical septic system and asked if a Clean Solutions type of system, which would take up less square footage was considered. Mr. Auger said there was the opportunity to make the footprint of the distribution chambers smaller if a more expensive system was used. Mr. Morong asked why this couldn't be done. Mr. Auger said it was more expensive and would still be within the 50 ft side setback. He provided details on this, looking at the plan. There was discussion about how small the new systems could be.

Ms. Cline asked if this would be a gravity system, and was told it would be. She asked if the existing system was in the same location as was proposed for the new system. Mr. Auger said no. Ms. Cline noted that a Clean Solutions system would require pumping. Mr. Morong asked if vegetation would need to be cleared. Mr. Auger said there were trees where the new leachfield would go. There was discussion that the area proposed was outside of the 125 shoreland setback.

Mr. Auger said the septic system would have chambers set in a grid, which would reduce the size somewhat. There was discussion. He said whatever system was put in, it would

still need a Special Exception. There was further discussion about possible other locations for the septic system.

Mr. Auger said almost the whole property was within the 125 setback but said most of the leachfield was kept out of it. But he said in order to do that, they were violating the side setback. The emails from Town staff concerning this were noted. Mr. Toye noted that the neighbors sharing the property line supported the proposal.

Chair Sterndale asked if there were any members of the public who wished to speak for or against the application. There was no response.

Mark Morong MOVED to close the Public Hearing. Tom Toye SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Chair Sterndale noted the criteria for granting the Special Exception.

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious or noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. Zoning Districts (See Table of Contents) of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or comparable adverse causes, impacts, or conditions.

Mr. Toye said this was a much more robust system than currently existed on the property.

Tom Toye MOVED that the Zoning Board of Adjustment approve a petition submitted by Auger Building Company Inc., Greenland, New Hampshire, on behalf of Ahmad Etebari, Durham, New Hampshire for an APPLICATION FOR SPECIAL EXCEPTION from Article XII.1, Section 175-56(G) of the Durham Zoning Ordinance to allow for the replacement of a septic system closer to the property lines than is allowed as per the plan by Civilworks New England dated 6/26/2019. The property is located at 3 Riverview Court, Tax Map 11, Lot 31-13, in the Residence C Zoning District. Joan Lawson SECONDED the motion.

Mr. Morong said he wished the applicant had come forward with the smallest footprint he could for the septic system, but said he didn't see that the variance criteria weren't met.

The motion PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

- C. **PUBLIC HEARING** on a petition submitted by Nathaniel S. Balch, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XX, Section 175-109(F)(2 & 6), of the Durham Zoning Ordinance to allow for the construction of an addition to the existing garage which is over 200 square feet in floor area and located forward of the front façade of the house. The property involved is shown on Tax Map 14, Lot 21-2, is located at 20 Wiswall Road, and is in the Rural Zoning District.

The Board agreed to discuss both C and D together, and then to vote on them separately.

Mr. Balch said they'd lived there for 20 years, and said he had an interested in woodworking. He said he would like to extend his garage and have a well-lit, heated workshop. He said it would be well insulated, and said he'd like it to have heat in it. He said the garage sat in front of the house, closer to the road than the house, and said any way that one would build an addition to the garage would also mean the addition would be located in front of the house. He said the proposed addition would be 384 sq. ft.

Ms. Lawson asked what was on the left, northern side of the garage now, and also asked why that location wasn't considered. Mr. Balch said there was an unheated shed that was attached after the garage was built. Ms. Lawson asked why the addition couldn't be put to the north of that. Mr. Balch said the main reason was that the south side of the garage had good southern exposure, which was good for light and heating. He said the driveway entered into the garage. He said he didn't want to encroach on the lawn side, and instead would like to put the addition in the wild area between the garage and the lot line.

Ms. Lawson asked about the east side, and Mr. Balch said it was unfinished land as well. Ms. Lawson asked if he would consider this as a possible location for the addition. Mr. Balch said yes, and noted that he stored his sailboat in that area. He said that end of the garage had a stairwell, and said the 250-gallon standing propane tank was on the end. He said it would be difficult to put the addition on that end of the garage. There was discussion that there was a second story on the garage.

Mr. Morong asked if there would be a business there and Mr. Balch said no. Ms. Cline said with an application to add space that also wanted services to be provided there, she

looked at this as an accessory building. She noted that the wording in the Zoning Ordinance about these kinds of situations was difficult. There was discussion.

Mr. Balch said he hoped to have a door at the end rather than on the side, to increase the amount of bench space. He also said this would allow him to bring in wood, run it through the table saw and then get it into the main part of the garage so he could frame up a boat. He noted that right now, he had to carry the wood up a flight of stairs. He said the only encroachment of the door was the set of stairs that would be 2-3 ft into the 30 ft setback. There was discussion that a second version of the design showed the stairs and door that Mr. Balch was describing and proposing.

Ms. Cline said she felt this changed the application because there would be encroachment into the 30 ft setback.

Mr. Balch said he would be happier if the original applications were addressed. He said he could pass the wood through the window instead. He said he would probably come back to ask for a variance from the 30 ft setback in the future. There was discussion. Chair Sterndale suggested that the proposal would be better received in one piece than piecemeal. Mr. Balch suggested going with what he'd originally proposed.

Chair Sterndale said the concern was whether this was the beset side of the building for the addition.

Mr. Toye said in this part of town, with large lots, it wouldn't bother anyone. He said it was an existing structure. There was discussion that nothing had been received from abutters.

Chair Sterndale asked if there were any members of the public who wished to speak for or against the application. There was no response.

Mr. Balch said to allay concerns, he would make special efforts to match the façade of the addition with the existing façade of the garage, which matched the house. He said he wanted it to blend in seamlessly with the rest of the structure. He provided details on this.

Mr. Morong asked Mr. Balch he considered having this addition as a standalone building on the property. Mr. Balch said no, because the design expanded on the/square footage and volume of the garage. He said the garage was heated, and said his work bench had been there for 20 years so it was appropriate to add onto it. He said it was a nice spot on the land and received natural sunlight. He said the garage was built in 1988, and said the previous owner had a shop in the garage.

Chair Sterndale said the Special Exception was an extension of what was perhaps a not permitted, pre-existing condition. Ms. Cline said this section of the Ordinance probably wasn't around when the garage was built.

There was further discussion about how the ordinance addressed or didn't address what the applicant wanted to do.

Mr. Morong said if this was an accessory building, he couldn't find hardship in having to put it someplace else. He said it could be put to the side, rather than in the front. He also said if it was called a garage, it didn't need a variance and he was fine with it.

Mr. Balch said the proposed location was the best location because it was unimproved land with the best solar exposure. Mr. Morong said if the addition was put on the east side, it would be on unimproved land, there would still be solar gain, and it wouldn't be in front of the garage. Mr. Balch said it would be more difficult to do the addition there, and also said there would be no ability to pass wood into the garage.

Ms. Cline said a garage wasn't defined, but said they could perhaps go with it instead.

Chair Sterndale said he heard Mr. Morong on the hardship issue. But he also said that concerning the substantial justice criterion, there was no public purpose met by not finding a hardship here.

Mr. Morong said he still didn't think the applicant needed to be here. Ms. Cline said a garage was meant to house vehicles, so any other types of uses, or additions to a garage that was used for something else fell under an accessory use. There was discussion.

Mr. Balch said he'd also like to be able to practice music there.

Tom Toye MOVED to close the public hearing, Micah Warnock SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Mr. Toye noted a similar application before the Board recently, where the applicant wanted to attach a music studio to a garage. He said he put a lot of value on individual property rights, and said anything an applicant wanted to do that wasn't permitted was a hardship to the particular owner. He said the question for him was whether there was a hardship to the owner without a loss to the community, and said he didn't see there was a detriment to the community in addressing what the applicant wanted.

Mr. Morong said not wanting to upset the lawn or move the propane tank weren't what he considered to be hardships. He also said he didn't see special conditions that prevented the applicant from moving the addition to another location. He asked Ms. Cline whether she would deny a building permit for an addition to the garage. Ms. Cline said no, if it was a garage, but said if it was usable space accessory to other things than storing vehicles, it was accessory space.

Mr. Morong said 50% of the garages he'd seen didn't store vehicles. Ms. Cline said that didn't mean they were set up to be used for other activities. She asked whether if someone bought a property with a horse barn and then proposed to put a dance studio there, that would that be ok. There was further discussion. Mr. Morong said there could be multiple uses for a garage. Ms. Cline said the activity was accessory to their life, rather than accessory to the garage.

Chair Sterndale asked if the fact that this discussion could continue on for 25 minutes was a hardship to the applicant in that the ordinance didn't anticipate this. He said what the applicant was trying to do was reasonable and had no impact on the community and said denying it provided no benefit to the community or to the sanctity of the ordinance. Mr. Toye said it would create an unnecessary hardship for the owner. Mr. Warnock spoke in detail about how he agreed with Mr. Toye on this.

Ms. Cline said there might not be a fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision for this particular property. She said there would be if it was on Emerson Road. There was further discussion.

Ms. Lawson said she was good with what Mr. Warnock had said.

Concerning the spirit of the ordinance being met, Mr. Toye said the Rural zone anticipated large lots and activities that were complimentary to residential uses.

Mr. Morong said he didn't have a problem with any of the other variance criteria. But he said he couldn't get past the "owing to special conditions" provision of the hardship criterion.

Mr. Toye said there were no issues concerning property values diminishing if the variance was granted. criterion. The Board agreed that there were no concerns about the public interest criterion being met. Mr. Toye said substantial justice was done in granting the variance, and said this supported his hardship argument.

Mr. Morong disagreed, but said he agreed there was substantial justice in granting the variance.

Mr. Toye said he wasn't sure what the spirit and intent ordinance was regarding this property in the zone.

Micha Warnock MOVED that the Zoning Board of Adjustment approve a petition submitted by Nathaniel S. Balch, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XX, Section 175-109(F)(2 & 6), of the Durham Zoning Ordinance to allow for the construction of an addition to the existing garage which is over 200 square feet in floor area and located forward of the front façade of the house as per the submitted site plan C1. The property involved is located at 20 Wiswall Road, Tax

Map 14, Lot 21-2, in the Rural Zoning District. Joan Lawson SECONDED the motion and it PASSED 4-1, with Mark Morong voting against it.

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>No</i>

Mr. Morong said he couldn't vote to approve the variance application because of the hardship criterion.

- D. **PUBLIC HEARING** on a petition submitted by Nathaniel S. Balch, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XX, Section 175-109(F)(4), of the Durham Zoning Ordinance to allow for the construction of an addition to the existing garage which will be heated. The property involved is shown on Tax Map 14, Lot 21-2, is located at 20 Wiswall Road, and is in the Rural Zoning District.

Chair Sterndale noted the criteria for granting the Special Exception.

1. That the use will not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the kind and nature of other uses in the vicinity or by reason of obvious and adverse violation of the character or appearance of the neighborhood.
2. That the use will not be injurious or noxious and thus detrimental to the neighborhood by reason of any of the causes stated in Part B. Zoning Districts (See Table of Contents) of this chapter.
3. That the use will not be contrary to the public health, safety or welfare by reason of undue traffic congestion or hazards, undue risk to life or property, unsanitary or unhealthful emissions or waste disposal, excessive noise, or comparable adverse causes, impacts, or conditions.

Board members had no concerns about these criteria being met.

Joan Lawson MOVED that the Zoning Board of Adjustment approve a petition submitted by Nathaniel S. Balch, Durham, New Hampshire for an APPLICATION FOR SPECIAL EXCEPTION from Article XX, Section 175-109(F)(4), of the Durham Zoning Ordinance to allow for the heating of an addition to the existing garage. The property involved is located at 20 Wiswall Road, Tax Map 14, Lot 21-2, is, in the Rural Zoning District. Mark Morong SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>No</i>

VII. Other Business

Election of officers

Tom Toye MOVED to appoint Chris Sterndale as Chair of the ZBA. Mark Morong SECONDED the motion and it PASSED 4-0-1 by a roll call vote:

<i>Chris Sterndale</i>	<i>abstained</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Micah Warnock MOVED to appoint Tom Toye as Vice Chair of the ZBA. Joan Lawson SECONDED the motion and it PASSED 4-0-1 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>abstained</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Micah Warnock MOVED to appoint Joan Lawson as Secretary of the ZBA. Tom Toye SECONDED the motion and it PASSED 4-0-1 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>abstained</i>
<i>Mark Morong</i>	<i>Yes</i>

VIII. Approval of Minutes

March 17, 2020

The Board agreed to hold off on approving the Minutes in order get clarification on the wording of the first paragraph on page 9. Ms. Lawson said she'd check the video on this.

IX. Adjournment

Micah Warnock MOVED to adjourn the meeting. Joan Lawson SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:

<i>Chris Sterndale</i>	<i>Yes</i>
<i>Tom Toye</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Joan Lawson</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

Adjournment at 9:58 pm.

Victoria Parmele, Minutes taker

Joan Lawson, Secretary