

*These minutes were approved at the August 11, 2020 meeting.*

**ZONING BOARD OF ADJUSTMENT**  
**Tuesday, June 9, 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 remotely)

**I. Call to Order**

Chair Sterndale called the meeting to order at 7:05 pm.

**II. Roll Call**

The roll call was taken. Chair Sterndale noted that the ZBA continued to meet under the Emergency orders from Governor Sununu, and said some Board members were attending the meeting electronically.

**III. Seating of Alternates**

No alternates were seated.

**IV. Approval of Agenda**

Chair Sterndale noted that there had been a request by the applicants for Items E, F and G to take their applications off the agenda for this meeting.

Ms. Lawson said the way she read C and D it sounded like they wanted to have the variance application heard first. Chair Sterndale said the Board would discuss this with the applicants after Item B.

**V. Public Hearings:**

- A. **PUBLIC HEARING** on a petition submitted by Thomas & Lucia Timpone, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTION** from Article XXI, Section 175- 111(B)(2), of the Durham Zoning Ordinance to allow for the construction of additional parking spaces. The property involved is shown on Tax Map 6, Lot 7-46, is located at 35 Mill Pond Road, and is in the Residence A Zoning District.

Mr. Timpone said he wasn't looking to do construction, and just wanted to park one more vehicle in a parking space. He said they had an accessory dwelling unit, and wanted the space for that unit. He said there were two options, and said one was to be able to park the car in the parking lot. He said it was big enough to fit 6 cars.

Chair Sterndale asked how this came to light. Mr. Timpone said it became difficult when his children visited, when there were 4 cars when 3 cars were allowed. He said he found out from Ms. Cline that a Special Exception was needed in order to have a 4<sup>th</sup> vehicle. He said it was a 2-bedroom accessory dwelling unit, and said having the Special Exception would help the person who would live there.

Mr. Morong asked if this was an accessory dwelling unit that would be built. Mr. Timpone said it was already there and said all permits had been received.

Ms. Lawson asked Ms. Cline why this required a Special Exception, and said it wasn't clear what in the Zoning Ordinance required this.

Ms. Cline said in the front 30 ft setback there was a restriction to allow only 3 cars, and said this was a higher standard because more cars could create congestion. She said when someone asked for more than 3 cars, a Special Exception was needed to be sure that what was proposed the best, and/or only way to allow the car to be parked on the property. She said the driveway was in the front 30 ft, and said they could technically fit 4 cars on the existing pavement there, but said a Special Exception was needed for anything more than 3 cars. She said previously a variance would have been required, and said this regulation was actually less stringent now.

There was discussion that the length of the driveway was 59 ft from the street to the garage. Chair Sterndale said this was being interpreted as the front yard setback even though it was the side of the house. Ms. Cline said that was correct. Mr. Morong said about 17 ft of the driveway wasn't in the setback.

There was discussion about the two options proposed, one with 4 cars in the driveway, and one to park 3 cars in an angle partly on the grass, with one car straight in on the left. Mr. Timpone said the first option was the simplest, and wouldn't involve any cost. He said it was a pain in terms of parking, but said it was a plus to be able to park off the street. He said plan #2 would allow everyone to move in and out without any problems.

Ms. Cline said creating additional parking width in order to get the angled parking involved other considerations, including being set back from the property line in creating a parking area, and impervious coverage.

Mr. Timpone said they would go with plan #1.

Ms. Lawson said plan #1 meant there would only be two cars in the setback. Ms. Cline said she didn't measure that but had been enforcing this. She said if the front two cars weren't encroaching on the 30 ft setback, she was sorry about that. She also said she'd want to see where the Town right of way started.

There was discussion about postponing deciding on the application, or granting something that might not be necessary.

Mr. Morong noted that a Special Exception didn't run with the property.

Mr. Toye said he didn't think any Board members had a problem with 4 cars on an existing paved parking lot.

Chair Sterndale asked if they could address the criteria without the exact measurement.

Mr. Morong said he thought option #2 made more sense, in terms of not having to back into the road. Chair Sterndale agreed, but noted the other considerations Ms. Cline had raised. There was discussion that it could be gravel parking rather than paved parking. Ms. Cline noted that gravel was still considered impervious pavement.

Chair Sterndale said he didn't think they had to create an enforcement burden, by picking a layout method for this particular application. He said the site lent itself to either one and he spoke further on this. Mr. Toye said if they approved the application, they could condition this on 4 vehicles in the existing paved parking. Other Board members were good with this.

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

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

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

Chair Sterndale noted the 3 Special Exception criteria:

- a) a finding that it is not practical to restrict parking to the areas and setbacks specified;
- b) a finding that allowing the parking to be situated as proposed will not have an adverse impact upon abutting properties nor upon the character of the streetscape; and
- c) a finding that the proposed parking spaces will serve on-site dwelling units only.

*Tom Toye MOVED that the Zoning Board of Adjustment approve a petition submitted by Thomas & Lucia Timpone, Durham, New Hampshire for an APPLICATION FOR SPECIAL EXCEPTION from Article XXI, Section 175-111(B)(2), of the Durham Zoning Ordinance to allow for four automobiles to be parked in the existing paved parking lot at Tax Map 6, Lot 7-46, 35 Mill Pond Road. 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>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

- B. **PUBLIC HEARING** on a petition submitted by Gerald Howe & Jodi Frechette, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XIV, Sections 175-73, 175-74 & 175-76 of the Durham Zoning Ordinance to allow for the construction of exterior stairs in the shoreland setback. The property involved is shown on Tax Map 20, Lot 1-0, is located at 595 Bay Road, and is in the Residence C Zoning District.

Chair Sterndale opened the public hearing.

Keegan Carmichael represented the applicants. It was noted that there was no paperwork on this representation. Mr. Carmichael said he represented them back in 2018, and Ms. Cline confirmed this. It was noted that Mr. Carmichael had prepared the application. Chair Sterndale said there could be a condition of approval that there be written consent, if needed.

Mr. Carmichael said the variance was needed because there was only one means of egress from the house. He said with the current layout, if there was a fire the applicants would have to go through the bedroom to the kitchen. He said most likely a fire would start in the kitchen, so this was a safety issue. He said there were two windows and a sliding door out to a deck, which they wanted to build stairs off of. He said the other two windows didn't meet the egress code, so there was legally only one means of egress.

He said they were trying to do something that was as minimal as possible. He said the deck would have a minimal impact on the site, and would involve sonotubes and pressure

treated piers. He said there would be no moving of shrubs, and said the grass there would be impacted but water would drain the same.

He addressed in detail what was proposed in relation to the different sections of the Ordinance: 175-73 prohibited uses in the SPO; 175-74 – dimensional requirements; 175-76 – performance standards.

Mr. Carmichael said the site sloped toward the water. He said they were far above the water line. He said the property contained 1.93 acres, and said the impervious coverage was about 7%. He said the stairs would be about 100 sf, and said this would add 0.25% to the impervious coverage, leaving the site well under 20% coverage. He said there was an existing vegetative buffer that wouldn't be impacted at all.

Chair Sterndale asked what the solid boundary depicted on the plan. Mr. Carmichael said it was the state's representation of where the mean high tide mark was. Chair Sterndale asked what the distance was from that to the corner of the stairs, and was told it was about 26 ft.

Mr. Carmichael said the stairs were allowed under 175-72 as an accessory structure, and said there was no clear definition in the Ordinance of what an exterior stair was. He spoke further on this. Ms. Cline said she would not consider this an accessory structure. Chair Sterndale said that was why the applicants were here.

Mr. Carmichael read the variance criteria and how they were met with the application. He said granting the variance was not contrary to the public interest. He said the variance location pertained to a private single family residence and would not affect the public.

He said the spirit of the ordinance would be observed in granting the variance. He said the construction of the exterior stair was minimal with regard to site impact in terms of the building area and foundations required for the structure.

He said substantial justice would be done in granting the variance. He said the goal of adding the stair was to provide a second means of egress from the existing residence. He said right now the current and only path of egress to the exterior required the inhabitants to exit through the kitchen. He said in the unlikely event of a fire, the applicants said it would most likely start in the kitchen. He said the stairs The stair was more of a safety issue than anything else.

He said the values of surrounding properties would not be diminished in granting the variance. He said the goal was for the egress stair not to be visible from the street and thus have little to no impact on the surrounding properties or public view.

He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He 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. He said the exterior stair was allowed according to the zoning ordinance under section 175 section 72 as an accessory structure.

He said the proposed use was reasonable. He said the total area of the stair was 104 sf and would allow drainage under the stair with a very minimal impact to the existing site. He said the materials proposed would blend in with the exterior aesthetic of the existing home and landscape. He said the proposed stair would impact the lot coverage by 0.13%.

Mr. Morong said he had a problem with the stairs being a safety issue. He said the bedroom didn't need any windows, and had two sliders that opened onto decks which were more than ample if there was a fire. He said the decks were substantial. He said if there was a fire the applicant could go out the sliding door in the living room. He said he didn't think the stairs were for safety reasons, and said the insurance company wouldn't have any problem with what was there now.

Chair Sterndale confirmed that they were sliding glass doors from the kitchen, living room and bedroom. There was also discussion that there was a 4<sup>th</sup> sliding door on the side deck where the stairs would be. He asked how high off the ground the deck was and was told it was 6 ft. There was discussion about a privacy screen, which could be changed to allow a 4.5 ft jump off the deck.

Mr. Toye said the applicants wanted a set of stairs, and said it didn't matter why they wanted them.

Chair Sterndale asked what the other benefits were of a set of stairs. He asked if it was an easy access to the water from the living space. Mr. Carmichael said yes, it was another benefit.

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

Chair Sterndale noted that the property had been the subject of 12 variance requests over the past several years. Mr. Carmichael provided some details on this. There was discussion.

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

<b><i>Chris Sterndale</i></b>	<b><i>Yes</i></b>
<b><i>Tom Toye</i></b>	<b><i>Yes</i></b>
<b><i>Joan Lawson</i></b>	<b><i>Yes</i></b>

**Micah Warnock**      **Yes**

**Mark Morong**        **Yes**

Mr. Morong said there had been 12 requests for special exceptions, variances, etc. over the years. He said it had grown from a camp to a house to having an enclosed porch, accessory building, and a garage. He said it seemed to keep growing. He said he was inclined to say there was no good reason for the stairs, and to not be in favor of the variance.

He said denial of the variance would not create a hardship. He said in terms of the substantial justice criterion, he didn't see that there was a safety issue. He said the application didn't meet the spirit of the ordinance for the shoreland district. He said he didn't think property values would be affected and said the application wouldn't affect the public interest.

Chair Sterndale said he agreed that 3 criteria weren't met. Mr. Toye said he agreed in regard to the hardship criterion not being met.

Ms. Cline said almost the entire lot was within the 125 shoreline setback and said this particular piece was within the 50 ft non-buildable buffer area. She said if they needed to make use of the property in a way that was closer to the road, that would be a fairly common application.

Mr. Morong said if they put the stairs off the road side, it would satisfy the safety concerns and minimize the impact on the 50 ft buffer.

Mr. Warnock said if the applicants felt this was a safety issue for them, how was that not part of a hardship.

Ms. Cline said they could put the stairs access on the road side. Chair Sterndale said there were plenty of ways out of the building. Mr. Toye suggested that the applicants could drop the stairs within the footprint of the deck.

**Mark Morong MOVED that the Zoning Board of Adjustment deny a petition submitted by Gerald Howe & Jodi Frechette, Durham, New Hampshire for an APPLICATION FOR VARIANCES from Article XIV, Sections 175-73, 175-74 & 175-76 of the Durham Zoning Ordinance to allow for the construction of exterior stairs in the shoreland setback for failure to meet the hardship criteria. The property involved is located at 595 Bay Road, and is in the Residence C Zoning District. Chair Sterndale SECONDED the motion and it PASSED 4-1-0 on a roll call vote:**

**Chris Sterndale**      **Yes**

**Tom Toye**                **Yes**

**Joan Lawson**          **Yes**

*Micah Warnock*      *No*  
*Mark Morong*        *Yes*

C. **PUBLIC HEARING** on a petition submitted by Kevin M. Baum, Hoefle, Phoenix, Gormley & Roberts PLLC, Portsmouth, New Hampshire, on behalf of Schoolhouse Technologies LLC, North Hampton, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from an April 20, 2020 letter of Building Inspector, Audrey Cline, limiting the occupancy of the residence to 6 unrelated occupants. The property involved is shown on Tax Map 5, Lot 4-7, is located at 21 Schoolhouse Lane, and is in the Courthouse Zoning District.

D. **PUBLIC HEARING** on a petition submitted by Kevin M. Baum, Hoefle, Phoenix, Gormley & Roberts PLLC, Portsmouth, New Hampshire, on behalf of Schoolhouse Technologies LLC, North Hampton, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXII.1, Section 175-156(A) of the Durham Zoning Ordinance to allow up to 9 unrelated occupants in a residence. The property involved is shown on Tax Map 5, Lot 4-7, is located at 21 Schoolhouse Lane, and is in the Courthouse Zoning District.

Attorney Baum was present in the room. He asked that V.D be addressed before V.C.

Mr. Toye said he thought there was sufficient evidence to support V.C. so perhaps the variance wasn't needed. There was discussion.

Attorney Baum said given the history, the preference was to make everything clear so there were no questions going forward. Board members agreed to hear V.D first.

Chair Sterndale said there was a lot of information involved, and said he thought this would take a while and perhaps would not be decided on tonight.

Attorney Baum said there was no dispute that the property was permitted as a pre-existing nonconforming rental. He said the issue with both applications was whether 6 unrelated occupants or 9 were permitted He said they were requesting that 9 being permitted, one for each apartment.

He said Schoolhouse Lane was relatively narrow and sloped, and said it was a transition area between the commercial area on Dover Road and the 3 Chimneys Inn and the areas beyond that. He said the original listing on the permit showed a duplex but said it was not. He said since construction, it was three stories, with an apartment on each story. He said there was an 1100 sf basement, with 3 bedrooms. He said the first floor apartment had 4 bedrooms and 1100 sf, and said the second floor (third story) had approximately 820 sf and 3 bedrooms. He said it had been rented since it was constructed, and he provided details on this. He said most recently and for at least a decade and a half, it had



been rented primarily to students only, and with 3 unrelated occupants per apartment unit. He said if relief was granted, it would be limited to just 3 per unit.

He said the area beyond the Town Hall was almost exclusively rentals, which were all multi-units, and said many had many units. He provided details on this and there were questions on some of them, including one that had 11 units. He said what was in the memorandum was approximate, and told the story of what was in the area.

He said the only non-rental in the immediate area was lot 4-6, and said the owner submitted a letter in support of the application. He said the area was technically the Courthouse district, but said the property was an outlier in terms of the uses permitted in that district. He said the number of occupants would not change from the average use over the past 16 years and said this was consistent with other similar uses in the area.

Attorney Baum said the spirit and intent and public interest, were considered together, and said the primary consideration was whether granting the variance would unduly and to a marked degree conflict with the ordinance such that it violated basic zoning objectives. He said they didn't believe it did.

He reviewed in detail the purposes of the Courthouse district and how these were met with the application. He said there would be no change to the building and also said allowing this use helped to maintain a buffer between the truly commercial properties and the Three Chimneys Inn and residential properties beyond it, so it fit nicely with the intent of the ordinance. He also said the property provided students who didn't want to live in Town or campus the opportunity to be close enough so they could get to campus without driving. He said commercial services were unlikely to occur here because the road didn't support it, and said a commercial project would involve having to remove a significant amount of land and installation of a retaining wall. He said access from Schoolhouse Lane didn't seem appropriate or likely.

He said what was proposed wouldn't alter the essential character of the area, and said there would be no threat to the public health, safety and welfare, in maintaining the current status quo and setting things up so there would be no questions going forward.

He said substantial justice would be done in granting the variance. He said denial would be a significant loss to the applicant, involving a loss of about 1/3 of the rentals. He said there was no benefit to the general public in denying the variance. He said it would go from the 9 being requested down to 6 being permitted.

He said there was no dispute over whether 6 unrelated were allowed, and said the dispute was whether 9 unrelated were allowed. He noted that this variance application assumed that there was no administrative appeal on the table.

Attorney Baum said granting the variance would not diminish surrounding property values. He said there was sufficient space and parking, and said the approval would continue what the nearby residents were used to. He also said the variance would provide clarity on what was allowed. He said the applicants would plan to clean up the driveway and potentially remove one of them. He said they would be open to this as a condition of approval and said this would be a benefit to surrounding properties.

He said denial of the variance would result in an unnecessary hardship. He said the special conditions were that the building had been divided into three sections since construction. He also noted the location and elevation above Dover Road, which provided special conditions that made it ill-suited to retail, professional service or other commercial uses. He also said there were similar nonconforming uses in the neighborhood with no ill affect, so there was a hardship.

He said the restriction under unrelated occupancy was to promote commercial use but said that wasn't realistic for this property so wasn't applicable. He said the three units were there and the square footage was sufficient to allow for 3 unrelated occupants. He said the property provided a transitional buffer between other properties in the area.

He said the proposed use was reasonable. He said it was already permitted, and said allowing 9 unrelated occupants in light of the size and layout of the building, the existing units and the density in the surrounding area, the request was reasonable.

Chair Sterndale said the case was made for this to be a residential rental property, and said it didn't fit the zone. He said where he didn't see it passing the variance tests was in setting a number. He said the number of residents was in dispute, he said there was nothing about the property that said there needed to be 9 residents. He said while it had been that way for 60 years, the legality of this was in dispute.

Attorney Baum said based on the historic use, that was a consideration. He said in this case, the building itself spoke to the need and the hardship to require fewer than 9 occupants, which was 3 unrelated people per unit. He said if this building came to the Board without this history, with three separate floors, he said it would be reasonable to have 3 people in each of them. He said there was more space than one would expect from looking at the building from the outside and on the sketches.

Mr. Morong asked if they wouldn't be able to make money with 6 tenants. Attorney Baum said it would be a hardship on the applicant. He said the Board's determination wasn't concerning this. There was discussion. Attorney Baum said the hardship was with the building, given that it had three separate apartments, each of which was sufficient to house 3 unrelated occupants. He said this was the case, especially in light of the properties nearby, which had far more units and occupants. He said each floor on its own could support 3 unrelated occupants.

Chair Sterndale said if the applicant came to them with a 3 story shell of a house, this would have to go to site plan review if the use was approved by the ZBA. He said granting this variance would codify a disputed preexisting use that coincidentally was an end run around the site plan review process.

Attorney Baum said he didn't think that was an entirely fair statement. He said this was building permitted in 1962. He said if there was concern that this was compliant with the building code, this would be addressed.

Chair Sterndale said presumably site plan review would evaluate a lot of things to determine what was appropriate in terms of the number of residents.

Attorney Baum said given the circumstances, history and neighborhood, it would seem like an unnecessary expense to do site plan review. But he spoke about the applicant being open to doing this.

Ms. Cline said regarding the size of the building being a hardship or adequate for 9 people, it was made larger in 2000. She said there was a time when it seemed to be too small. She also said the basement renovation was done in the late 1990-s. She said that regarding site plan review, the building on Schoolhouse Lane had 11 people in a duplex, and said it went through site plan review.

Mr. Morong said it seemed that the applicant hadn't had a good history with code officials and whether standards were met, which was troubling. There was discussion about whether this was in the record.

Attorney Baum said the applicant had spoken to the Fire Chief and had talked through concerns and plans to make changes. He said it was determined that this didn't need to happen immediately. He said it wasn't relevant to what was being considered tonight, and said there would be a code review later.

Mr. Morong spoke about fire code issues involved with bringing it up to being a multiunit building.

Ms. Cline said the rental housing program had inspected the building, and spoke with the applicants about some changes needed. She said that program didn't start until 2012, and this house came into the program 3 years ago. She said when inspections were done under this program, the assumption was made that the units had undergone code review. She spoke further. She said if it was a true three unit building, the question was whether it was always this before more stringent fire codes were applied to multiunit buildings. There was discussion.

Mr. Morong said he hadn't seen anything other than the applicant's testimony to indicate that this was very legally a 3 unit building. He noted Mr. Edney's letter concerning this, saying it was a duplex with an accessory apartment

Mr. Toye noted Exhibit I, for the Administrative Appeal, which was a letter from Mr. Edney dated in 2000. He asked if that basement apartment was best classified as an accessory apartment. Attorney Baum said it was believed this was an error by Mr. Edney. He said there had been additions and changes over time, but said the general layout hadn't changed. He said it would be difficult tonight to try to parse the safety code, and said this was unfair to the applicant in light of the variance request. He said if it was granted, it would be subject to Ms. Cline's and Fire Dept. review concerning safety standards being met.

Mr. Toye asked if there would be any benefit to bring this to the full Technical Review Committee and not just the Fire Dept. Ms. Cline said she didn't think that would be appropriate. There was discussion. Ms. Cline said if this was deemed to be a multiunit building, there could be site plan review by staff, as part of the minor site plan review process. There was further discussion.

Ms. Lawson asked whether if the Board approved the variance, that had any implications on the designation of the building. She asked what happened down the road if the variance was granted. Ms. Cline said it would be considered a multiunit building and she spoke further on this. Ms. Lawson said if the variance was granted, this would cause Ms. Cline difficulties with the building, adding weight to support that it was a duplex with an accessory apartment. Ms. Cline said if it was 3 units, it was multiunit building under the commercial code, and was not residential. She said that was a change of use.

Attorney Baum spoke further. He noted another recent application and asked that the applicant be treated equally as was the case with that application.

Ms. Cline spoke about that application, and said there were repercussions involved with that application.

Chair Sterndale opened the public hearing and asked if there were any members of the public who wished to speak.

Attorney Baum said the variance request was consistent with the area and asked the Board to consider that as well.

Ms. Cline noted the memo she'd provided to Board members.

Chair Sterndale noted that they had heard from abutters: 14 Schoolhouse Lane, with no objections, and 27 Schoolhouse Lane.

***Tom Toye MOVED to close the Public Hearing. Micah Warnock SECONDED the motion and it PASSED unanimously by a roll call vote:***

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

Mr. Toye said he thought the application passed on all 5 variance criteria. He said his only concern was the life safety code issues with three units, and said there should be a condition of approval to make sure Ms. Cline and the Fire Dept. were satisfied concerning this.

Mr. Morong said he agreed. He said the property was similar to other properties nearby and said the variance criteria were met. He said he didn't see compelling evidence that it was a three unit building, but said he had no problem with it being considered one as long as it was brought up to date in terms of life safety codes. He spoke further on this.

Chair Sterndale said he didn't know the minor site plan review process. He said he was wary of codifying a disputed grandfathered use with a variance, locking in a certain number of people for a property that hadn't been reviewed. He said he wasn't troubled by it being a multiunit building, but said 3 units triggered site review issues, concerning parking, etc. He spoke further.

He said a variance was a very big step he wasn't convinced was necessary to provide relief. He said he didn't know that not getting it caused a hardship He said it left open a number of questions that would have to be addressed in some way. He said he didn't know that they could craft conditions that would make him happy with a variance.

Mr. Toye said for the current owner or a future owner to change the property, either the zoning or the neighborhood would have to change. There was discussion. Mr. Toye said he didn't think 9 people was excessive. He said his experience was that unless the footprint was being changed, there were mostly life safety issues to address. He said the variance could be conditioned upon a site plan approval process. Chair Sterndale asked what happened if that process determined 9 people was too many for that site. There was discussion.

Ms. Lawson said the variance approval could be contingent on a review the applicants successfully passed. There was discussion.

There was discussion on whether this was a 3-unit building.

Chair Sterndale reopened the public hearing.

Attorney Baum said if this was approved tonight, it could be subject to building inspector review of life safety issues. He said a question was what the review would be, for a duplex or a three-unit building. Ms. Lawson said that related to the question she had asked Ms. Cline.

Ms. Cline said if this was deemed to be a duplex with an accessory apartment. historically and the applicant was asking for additional people, it would not be a change of use. He said if the variance was granted to allow additional people, and it was found to be a 3-unit building, it would be a change of use, which would require code review for a multiunit building, which involved the commercial code. She said she didn't know how the Board could decide this without looking at the history of the case.

Ms. Lawson said that was the point she'd been trying to make, that approval of the variance implied that this was a duplex with an accessory apartment. She said if it was three unit building, she didn't think it wouldn't need the variance.

There was further discussion. Chair Sterndale said a change in the number of unrelated people allowed in granting the variance was just an end run around the 3 unrelated rule in this specific location, without capturing any of the benefits that would be obtained from a change of use and the review process that would come from that. He spoke in further detail on this.

Mr. Toye said he'd amend what he said earlier, and said he was not in favor of expanding the three unrelated rule. He said a duplex with an additional accessory apartment was a black sheep. He said they should call it a three unit and make it go through the change of use review process.

Attorney Baum asked if the Board would continue the application to allow them to amend this to request 3 units. He said this would allow a discussion with Ms. Cline about what was involved. He said the goal was to have 9 tenants who were safe.

There was discussion. Mr., Morong said when they came back it would be good to come back with a plan the Board could see as to how their concerns were addresses, or see if minor site plan review was appropriate.

The Board agreed to continue the V.D., the variance application.

***Mark Morong MOVED to continue Application V.D. to the meeting in July. Tom Toye SECONDED the motion.***

There was discussion that V.D was being continued but the applicants might come forward instead with a different variance request.

*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>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

It was agreed that V.C should be continued as well.

*Tom Toye MOVED to continue Application V.C. to the meeting in July. 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>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

- E. **PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XXI, Section 175-111(C)(2)(c) of the Durham Zoning Ordinance to allow for the widening of the driveway, encroaching on the side setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District.

**(The applicant has requested that this application be postponed until the meeting of July 14, 2020.)**

- F. **PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to allow for the construction of a covered porch plus stairs within the frontyard setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District.

**(The applicant has requested that this application be postponed until the meeting of July 14, 2020.)**

- G. **PUBLIC HEARING** on a petition submitted by Scott J. Winslow, Durham, New Hampshire for an **APPLICATION FOR SPECIAL EXCEPTIONS** from Article XXI, Sections 175-111(B)(2) & 175- 111(C)(2)(b) of the Durham Zoning Ordinance to allow

for the widening of the driveway and the parking of more than three vehicles in the front setback with one parking space encroaching on the side setback. The property involved is shown on Tax Map 6, Lot 5-55, is located at 15 Garden Lane, and is in the Residence A Zoning District.

**(The applicant has requested that this application be postponed until the meeting of July 14, 2020.)**

**VI. Other Business**

**VII. Approval of Minutes**

March 17, 2020

Page 9, 2<sup>nd</sup> paragraph, should read “...and/or the land area or size of the building,... and in regard to the land and the building...”

***Micah Warnock MOVED to approve the March 17, 2020 Minutes as amended. Joan Lawson SECONDED the motion and it PASSED 4-0-1 with Tom Toye abstaining.***

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

April 14, 2020

Line 358, should say “in”, not “an”.  
Line 359, should say as to whether any unit was...

***Tom Toye MOVED to approve the April 14, 2020 Minutes as amended. Mark Morong SECONDED the motion and it PASSED unanimously 5-0.***

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

**VIII. Adjournment**

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



**Adjournment at 9:21 pm.**

**Victoria Parmele, Minutes taker**