

*These minutes were approved at the September 15, 2020 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, July 14, 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, Vice Chair (attending in person)  
Joan Lawson, Secretary (attending remotely)  
Micah Warnock (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 7:00 pm. He noted that the ZBA continued to meet under the COVID-19 Emergency orders, and said some Board members were attending the meeting remotely.

**II. Roll Call**

The roll call was taken.

**III. Seating of Alternates**

**IV. Approval of Agenda**

The Board made no changes to the agenda.

**V. Public Hearings:**

- A. **CONTINUED 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.

It was noted that this application was continued from the June meeting. Attorney Baum suggested continuing this application for another month, and first working through the variance applications. He said if they were approved this evening, the appeal would be withdrawn, after the 30-day appeal period.

Chair Sterndale said V.A. would be continued to the ZBA meeting next month. Other ZBA members said they were good with this.

- B. **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 XII.1, Sections 175-53 and 175-156(A) of the Durham Zoning Ordinance to permit a multi-unit residence with up to 9 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.

Attorney Baum said last month the Board was fairly comfortable with the variance request generally, but in addition to asking for 9 unrelated under 175-156 A, the applicant decide it was appropriate to ask for relief for multifamily use under 175-53 (table of uses). He said the amended application was filed that included a request for a variance from 175-53. He said Town counsel recommended re-noticing the application, and said this was done.

Attorney Baum noted that he went through the full application last month. He said the main concern was making sure that safety inspections occurred. He said the applicant met with Mr. O'Sullivan of the Fire Dept, who had done an inspection there a year ago. He said a report from that inspection was provided. He said the Fire Dept now thought all requirements had been met except for 4 new windows needed as a secondary means of escape because the current windows were too small. He said new windows had been ordered and said per Mr. O'Sullivan's email and the prior report, that was sufficient to address the Dept.'s concerns. He said that should provide the Board some comfort in approving the variance, and said an approval would be contingent on the final inspection. He noted that Ms. Cline's main concern was that the Fire Department was satisfied.

Chair Sterndale asked the Board if they had any questions at this point. He said the consensus now was that it would be classified as a multi-family property. He noted that there was consensus previously on the Board that the 5 criteria had been met. He said the approval would be conditioned on approval from the Fire Dept.

Mr. Morong asked if the Fire Dept. said sprinklering was necessary. Ms. Cline said the Dept. realized the building fell under the rental housing program and Durham's sprinkler ordinance, so when it was determined how to apply that ordinance Town wide, the property would need to comply with it.

Mr. Morong asked if the Fire Dept. didn't need sprinklering or fire separation between the multifamily units. Ms. Cline said they saw it as a 3 family, 3-unit building, which had been used that way for some time. She said it was inspected in 2012 as that type of building, and said they were being consistent with how they had looked at it in the beginning of the rental housing program.

Chair Sterndale said if that interpretation on enforcement changed, this property would be caught in that. Ms. Cline said yes, along with other rental housing buildings that fell under

the sprinkler ordinance. Mr. Morong asked how many occupants they had in the past. Ms. Cline said there was an excess in the past, but said 3 occupants (3 unrelated people) per unit was permitted.

There was discussion about how to word the motion. Chair Sterndale said if the applicant was asking for 3 units with 3 occupants for each unit, he thought the Board should stick with that in the motion. There was discussion that this should say 3 unrelated occupants per unit.

Attorney Baum said they were asking for up to 9 unrelated occupants, with 3 per unit. He said the units were restricted in terms of the space, but said if there were two siblings who wanted to have a total of 4 occupants in the unit, he would like that option to be available. He said that would be consistent with other rentals in Durham and in the area.

Mr. Morong noted that the applicant was asking for a variance, which wasn't consistent with the neighborhood. Attorney Baum said he thought the applicant had been reasonably restrictive in their request. There was further discussion

Chair Sterndale asked if there were any members of the public who wished to speak. There was no response. He closed the public hearing.

***Tom Toye MOVED that the Zoning Board of Adjustment approve 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 XII.1, Sections 175-53 and 175-156(A) of the Durham Zoning Ordinance to permit a multi-unit residence with up to 9 unrelated occupants total and a maximum of 3 unrelated occupants per unit. 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.***

There was discussion about whether a condition of approval concerning approval by the Fire Department was needed, and it was agreed it wasn't

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

- C. **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.

- D. **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 front yard 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.
- E. **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.

Attorney Scott Hogan represented the applicant. He noted a PowerPoint presentation the applicant had provided, and asked if Board members had gotten this. Chair Sterndale said it was provided by email. Board members all said they had seen it.

Attorney Hogan said he was well aware of the long history and context of regulation of driveways, parking spaces, and 3 unrelated issues in Durham. He said Mr. Winslow and his family just moved to Durham last year. He said the order that logically should be used concerning the application was to first address the addition to the front porch, which would provide some cover when they went in and out of the house. He said it would be an enclosure over the existing front door. He said a front yard setback variance was required for that and said it seemed to be the easiest one to address. He said the other two applications should be discussed after that.

Chair Sterndale said the Board would hear V.D. first.

Mr. Winslow said they wanted to put an awning over the front porch. He said there was no place to set down a car seat, etc. on the steps, and said it made sense to widen the landing slightly, along with the roof. He said they would only move forward 12 inches. He noted that the entire house was in the 30 ft frontyard setback, and said the landing would be 4 ft wide.

Chair Sterndale asked if there was a sketch of what was proposed. Mr. Winslow said it was attached to the original application. There was discussion. Ms. Cline said she'd get hard copies of this. It was noted that it wasn't online.

Attorney Hogan said the structure would be about a foot closer to the road. He went through the criteria for the variance. He said concerning the spirit and intent and public interest criteria, there was nothing about what was proposed that would change the character of the neighborhood, and said it would be a nice architectural improvement.

He said Mr. Winslow had spoken with neighbors and they had no objections, so substantial justice would be done in granting the variance. He said what was proposed would be an improvement to the applicant's property. He said regarding the hardship criterion, all of the properties there had hardship issues. He said this was an improvement aesthetically, etc. and said the criteria were clearly met.

Board members had no questions or concerns about what was proposed.

Chair Sterndale suggested that the two other applications should be looked at now as well.

Attorney Hogan said the applicant's father lived with them in an approved accessory dwelling unit, and said they were therefore looking to expand the driveway and get an additional parking spot for him there. He said the immediate abutter had no objections. He said seeing photos of the property would be helpful. He explained that the father had a handicap parking permit and said the only way he could get in and out of the accessory dwelling unit was from the driveway. He said the additional parking space was needed to make things work.

He noted that when the Board met in June, they reviewed and approved an application at Mill Pond Road for the addition of parking spaces, and said Mr. Winslow had listed this property in his presentation along with several other properties. He said in regard to whether what was on other properties on the list reflected violations, the result of variance applications, grandfathering, etc., they were existing conditions. He said the character of the neighborhood was driveways and parking that were consistent with what the applicant requested.

Attorney Hogan said in regard to the Special Exception request, it wasn't practical to restrict parking to the areas the setbacks specified. He said with two young boys and wanting to accommodate the father concerning parking, the applicants couldn't do that practically within the existing driveway. He said this was a corner lot, and said it sloped down on the side. He said there might be a place to park a car there, but said that wasn't practical for the father so it wasn't an option. He said also there were some stormwater management considerations involved.

There was discussion that there were 4 asphalt parking spaces now in front of the garage, and 3 vehicles. Chair Sterndale confirmed that there was also a two-car garage.

Attorney Hogan said the proposed parking spaces would serve onsite dwelling units only. He said all of this was for family use of the property.

Mr. Winslow said he and his wife had family from out of state who visited. He said the Special Exception was needed so cars didn't have to be moved back and forth in order for someone to be able to get in or out. He explained the difficulty involved, and said it was practical if there were visitors to have the additional space.

There was discussion that there was a boat and a trailer in the side yard. Chair Sterndale said they weren't vehicles but said that area was effectively already being used as a parking area. Mr. Winslow said currently they were there now but said he would be moving them.

Attorney Hogan next addressed V.C, the variance request for the expanded driveway. He said no neighbors or abutters objected to what was proposed, and said what was proposed was in character with the neighborhood, and would be an improvement to this and other properties. He said if there were stormwater issues raised, they could be addressed.

Chair Sterndale asked if there was approval from the DPW to widen the curb cut.

Mr. Winslow said he spoke to Ms. Cline and April about this, and said Ms. Talon provided details on how to widen it.

Attorney Hogan noted the memo from Ms. Cline to the Board last week, which said the DPW was adamant that unless there was a compelling stormwater issue, no driveway would be built wider than 12 ft., and any approval by the ZBA pertained to only the parcel outside of the Town right of way. He said he didn't understand this, because a property owner had the right to ask for a variance from any provision, and if it was a reasonable proposal, the Board had the right to approve it.

Ms. Cline said the variances applied to what was in the Zoning Ordinance. She said the DPW had rules and regs that weren't in the Ordinance, and said that was where their standards were.

Attorney Hogan said there was authority to appeal all of those things.

Chair Sterndale agreed but said the driveway regulations were in a body of law the ZBA had no authority over. There was further discussion on this.

Mr. Winslow said there was no curb cut required, and said Ms. Talon had explained the process to widen the driveway.

Ms. Cline said the ZBA could only provide variances from the Zoning Ordinance, and could also hear appeals from the Planning Board. She said she didn't believe they could hear other appeals.

Attorney Hogan said if the ZBA looked at the three applications and decided the requirements were met, he didn't think there was any DPW regulation or code that would prevent the Winslow's from doing what they hoped to do.

Chair Sterndale said he was willing to let the driveway permit issue go, and said if the applicant was willing to take the risk concerning it, that was fine.

Attorney Hogan agreed that this would be a separate issue for the applicants to deal with.

Chair Sterndale asked to hear the variance criteria for application V.C.

Attorney Hogan said that regarding the spirit and intent of the ordinance and public interest, the issue was whether what was proposed violated Basic zoning objectives or altered the essential character of the locality. He noted the examples submitted of other properties in the area, and said what was proposed was absolutely consistent with them. He said granting the variance would not alter the essential character or threaten health, safety, or welfare and among other things he noted that there were no stormwater issues.

He said regarding the substantial justice criterion, there was no gain to the public and would be a loss to the individual if the variance was denied.

He said the value of surrounding properties would not be diminished with what was proposed. He said for these kinds of applications, abutters were the first to show up if there were concerns about property values. He said the applicants were trying to improve their property with what was proposed, and said this would increase the value of surrounding properties.

Attorney Hogan said that regarding the hardship criterion, what was proposed was reasonable. He said the applicants couldn't use the property in strict conformance with the ordinance, and said concerning the side setback that the immediate abutter there would be the one to object but had not. He also noted that there was a hedge row. He said what was proposed would improve the drainage, and said all 5 criteria were met.

Chair Sterndale opened the public hearing and asked if there were any members of the public who wished to speak for or against any/all of the 3 applications.

**Noel Khleif, 11 Garden Lane**, said she and her husband were abutters. She said she was so happy to have the applicants as neighbors and said she didn't see anything wrong with widening the driveway instead of having the mud there. She said when winter came, it would be a problem for the father. She said young families should be encouraged to move into neighborhoods, and she noted there had been students living near her in the past and it wasn't pleasant. She said having young families in the neighborhood was so exciting. She said the applicants needed the porch and driveway, and asked the Board to given them what they needed for their young family so they would have a more comfortable place to live.

***Tom Toye MOVED to close the hearing on V.C, V.D, and V. 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**

There was discussion on V.D, concerning the proposed porch. Ms. Lawson said she didn't have a problem with the application. Chair Sterndale said it wouldn't be noticeable in that location. Mr. Morong said it would encroach one foot into the setback. Ms. Cline said the drawing showed it 4 ft forward and 8 ft wide, and said technically a bit of the 8 ft encroached. She said that could be included in the motion. There was discussion.

Mr. Winslow said he was good with the dimensions being requested.

**E. Tom Toye MOVED that the Zoning Board of Adjustment approve 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 with stairs not to exceed 8 feet wide by 4 feet deep from the front door of the house. 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. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0 by a roll call vote:**

**Chris Sterndale**      **Yes**  
**Tom Toye**              **Yes**  
**Joan Lawson**         **Yes**  
**Micah Warnock**      **Yes**  
**Mark Morong**        **Yes**

There was next discussion on V.C and V.E

Ms. Lawson said it wasn't clear why the Special Exception was necessary, noting the wording in 175-111: "Number of vehicles – There shall be no more than 3 vehicles parked on a regular basis on a residential lot in the Residence A and Residence B Districts. However, more than 3 vehicles may be parked on the lot if the property owner demonstrates that they are for use by lawful occupants of the dwelling unit, as demonstrated by records acceptable to the Zoning Administrator.

She said it sounded like everyone living there were lawful occupants of the building.

Ms. Cline said it was the difference between the number of cars on the lot and the number within the front 30 ft setback in the ordinance. She said she could allow more than 3 cars on a lot if they served the lot and weren't within the 30 ft setback, for example if there was a parking area to the rear of the lot. But she said if more than 3 cars were within the 30 ft setback, the Board needed to approve this by Special Exception. She said they were asking for 5 parking spaces in the 30 ft setback.

Chair Sterndale noted the Special Exception criteria in 111 B.2, and said they were specific to this piece of the Ordinance.



- 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.

Chair Sterndale said (c) was pretty easy to meet, and said there wasn't reason to believe it would serve anything else.

There was discussion on (b). Ms. Lawson said the issue of impacts on abutting properties was answered by the abutter/neighbor. She also said the issue of the character of the streetscape was fairly subjective. Chair Sterndale said he hadn't made up his mind yet, but said 5 parking spaces within 30 ft of the road was a sizeable parking lot in front of a single-family residence. Ms. Lawson agreed.

Mr. Morong noted that the neighbor spoke about how nice it was to have a family living there, and also said he didn't think that a Special Exception ran with the property.

Ms. Cline said if it ceased for a period of time, it was not a grandfathered use that could be picked up later. She also said there would be a hardscape in this instance, and said she didn't know how it wouldn't be used.

Ms. Lawson asked what reason was given as to why the proposed parking space was down by the street and not up by the garage. She asked why not have 3 spaces up by the garage and 2 by the street. Mr. Toye said he liked that solution better and suggested that the public hearing be reopened.

The public hearing was reopened.

Mr. Winslow said there wasn't the length in the driveway for 3 vehicles to park back to back in front of the garage. He also said there was a privacy fence that hid trash cans, etc. In addition, he said it was also where the path to the accessory apartment was, which was there when they purchased the property. He said the entrance was at the back-right corner of the garage. He noted that because of the accessory apartment that was created, there wasn't room to park a car in the garage.

There was discussion about the area between the garage and the sideline. Mr. Winslow said it was about 4 ft and was where the vegetation was. Mr. Morong said the garage was pretty close to the sideline. Mr. Winslow said the trees were on his property and said he didn't plan to remove them. He noted the support from the neighbor for the applications, and that they also asked him to leave the vegetation in place and he was happy to do so. There was further discussion.

Mr. Morong said he might like to do a site walk before making a decision.

Attorney Hogan said he encouraged the Board to do a site walk. He noted that it was a corner lot, and said if the Board looked at it, the only other place to put a parking spot was

down the side setback toward the neighbor, which was where there were water issues that had been discussed by neighbors. He also said the father would need to walk up the hill to get to his apartment if he parked there.

Chair Sterndale said that would only be the case if that parking space was used by that resident, and he spoke further on this. Mr. Winslow said that was true, but noted safety issues involved for anyone parking there and walking on the side and back of the property, because of slope, ledge, etc.

Chair Sterndale closed the Public Hearing again.

There was further discussion about the Special Exception criteria for this application. Regarding (a) “a finding that it is not practical to restrict parking to the areas and setbacks specified”, Chair Sterndale said he thought it was practical to restrict a single family home to a two car garage and 4 asphalt parking spaces.

There was discussion that according to Town building records there was parking for 6 vehicles right now, and what was proposed would be the 7<sup>th</sup> space.

Chair Sterndale said he wasn't getting there on Special Exception criterion a). There was further discussion. The Board agreed to do a site walk.

Mr. Toye said he could approve based on the 3 criteria, but also said he'd like to see the approval limited to a certain number of vehicles. He said it was a relatively small lot, servicing an average sized home, and said he didn't think the Board needed to approve 7 vehicles. He spoke further. He said he could approve a maximum of 4 vehicles with the Special Exception, and said if the applicants needed a 5<sup>th</sup> vehicle, they could come back to ask for it.

Mr. Morong said he couldn't get there on the Special Exception without seeing if there were other options.

There was discussion that V.C. if approved would create a 5<sup>th</sup> space. Ms. Cline said if the Special Exception was approved but the number of vehicles was limited to 4, it would need to be done again, and said it should be decided on before the variance application was decided on.

Ms. Lawson said if the Special Exception was just relative to the parking of some number of vehicles, she could get there. But she said she couldn't get there on how the application was worded: “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.” She said she was ok with allowing 4 spaces on the existing pavement. She said the driveway issue should be handled with the variance.

There was further discussion. Chair Sterndale said he was willing to do a site walk, and other Board members agreed. It was agreed that it would be a formal meeting where they

would ask questions. Chair Sterndale said it was recommended that the applicant be there. The site walk was scheduled for August 11<sup>th</sup>, at 6 pm.

Mr. Winslow said he appreciated the desire to put this off in order to get clarification. He also said he'd hoped to get the approvals tonight for financial reasons, and he spoke further on this.

Chair Sterndale said he appreciated it that this process always took longer than property owners wanted. He also said he suspected that the odds of being satisfied with the outcome would be better if Board members could get their heads around these questions.

Ms. Cline said it would be very helpful if the applicant had an approved driveway permit next month.

***Chair Sterndale MOVED to continue V.C and V.E to the August ZBA meeting. 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>
<b><i>Micah Warnock</i></b>	<b><i>Yes</i></b>
<b><i>Mark Morong</i></b>	<b><i>Yes</i></b>

- F. **PUBLIC HEARING** on a petition submitted by Brandon & Danielle Lisowski, 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 garage, mudroom, and lean-to within the sideyard setback. The property involved is shown on Tax Map 14, Lot 25-1, is located at 60 Wiswall Road, and is in the Rural Zoning District.

Ms. Lisowski said the prior application was for a home business in the garage. She said they wanted to make improvements to the house now. She said the garage wasn't built of the best quality, and said it had a dirt floor. She said they also had a mudroom that had no foundation. She said because of the position of the house on the property they were within the sideyard setback, so the variance was needed to make the improvements.

She went through the variance criteria and how there were met with what was proposed. She said granting the variance would not be contrary to the public interest and the spirit of the ordinance would be observed, because the sections of the house already existed and making them slightly larger wouldn't alter the essential character of the neighborhood, threaten public health or welfare or otherwise injure "public rights".

She said the value of shrouding properties would not be diminished, and if anything, they would go up in value due to the improvements they intended to make.

She said because of the way the house was positioned on the property, there was no way to renovate or build without exceeding the 50 ft setback requirement, which necessitated the variance. She said both the garage and mudroom existed prior to the purchase of the house, and said by building the mudroom out 3 ft, they would not be building any closer to the property line and would be building closer to the road, which would still be 81 ft away. She also said by rebuilding the garage, they would not be building any closer to the side property line and would still be well within the backyard setback.

Chair Sterndale said it looked like the garage was being widened and that a lean-to was being added on the north side of the house. He asked how far the northeast corner of the garage was from the property line. Mr. Lisowski said it was about 30 ft. It was noted that the closest point to the sideline setback was the corner of the house, and the distance was 15 ft. It was also noted that the porch room now was 12 ft by 12 ft, and that the rebuild would keep it and the garage the same distance going toward the property line.

There was discussion that the 14.8 ft distance to the existing porch would decrease. Mr. Lisowski said it should be less than a foot of decrease based on the way the line currently ran. Chair Sterndale said the Board would want to put a number on that given the level of detail that had been provided. Ms. Cline said as long as she knew how much larger the porch could be, it didn't matter what the 14.8 ft distance narrowed down to.

Mr. Morong said he knew from being the former assistant building inspector in Durham that the building in the back should go.

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

***Mark Morong MOVED to close the Public Hearing. Micah Warnock 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>
<b><i>Micah Warnock</i></b>	<b><i>Yes</i></b>
<b><i>Mark Morong</i></b>	<b><i>Yes</i></b>

Board members said they had no problem with the variance application. Chair Sterndale said this would replace what was there with a minor additional encroachment. It was noted that there were big lots in that area, and Chair Sterndale said this fit in with what was around it. Mr. Morong said any hardship was that someone put the house so close to the lot line. Chair Sterndale spoke briefly about the hardship criterion being met.

***Mark Morong MOVED that the Zoning Board of Adjustment approve a petition submitted by Brandon & Danielle Lisowski, 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 garage, mudroom and lean-to***

*within the sideyard setback. The mudroom can be enlarged 3 feet towards the front of the house. The property involved is shown on Tax Map 14, Lot 25-1, is located at 60 Wiswall Road, and is in the Rural Zoning District. 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>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

- G. **PUBLIC HEARING** on a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Chandelle PLLC, Exeter, New Hampshire, on behalf of Scott & Karen Letourneau, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-53 of the Durham Zoning Ordinance to allow for an accessory apartment within the Residence B Zone. The property involved is shown on Tax Map 6, Lot 9-5, is located at 26 Newmarket Road, and is in the Residence B Zoning District.

Attorney Somers said the applicants were requesting a variance to allow an accessory apartment on a property they had just purchased. She said the architect for the project couldn't be here tonight, but she noted the conceptual design she'd done. She said the applicants proposed to take the existing attached garage and construct a new garage in the same location. She said they wanted to attach on to it an accessory apartment, which would enable them to have their elderly parents live with them when the time came. She said it would be connected to the main house by a walkway.

She said the physical layout of the lot and house didn't lend themselves to having the accessory unit connected directly to the house. She also said putting it on the other side of the property, closer to the Schwartz property would be too crowded. She said attaching the accessory dwelling to the rear of the property, away from the Newmarket Roadside of the house would interfere with the bulkhead and septic tank. She also said they were trying to preserve an opportunity to make the back area into a back yard.

She went through the variance criteria. She said granting the variance would not be contrary to the public interest. She said a one-bedroom accessory apartment was proposed, and said it wouldn't be in violation of the Residence B zone. She said there was nothing inherent in the apartment that would be a threat to the public health, safety, and welfare. She said the spirit and intent criterion was consistent with the public interest criterion so that was taken care of.

Attorney Somers said granting the variance would not decrease the value of surrounding properties. She said there would be a newly constructed garage and an overhaul of the overall property, which would be subject to the Historic District Commission approval. She said the accessory apartment would be considered part of a series of buildings, and said for these reasons, there wouldn't be a decrease and perhaps would be an increase in the value of surrounding properties.

She said regarding the hardship criterion that the property was unique in that the garage was a detached structure, which was consistent with the typical pattern in 1917. She said that was different from other properties in the area. She also said the existing home was approximately 75-80 ft from the office building on the abutting property.

She spoke about the issues with the rear of the property, which she said taken together created unique qualities that satisfied the first element of the hardship criterion. She said in general, the purpose of not having accessory apartment in this zone was to prevent overcrowding. But she said in this case the applicants would try to create a feeling where the apartment would be considered one of several outbuildings connected to the main building. She said the proposed use was reasonable, and said the size conformed with the ordinance and would blend in with the new garage and the walkway. She also explained that it wasn't possible to put the apartment in the house because the foundation was so tall.

Attorney Somers said that regarding the substantial justice criterion, the benefit by granting the variance would be to allow the apartment to serve family needs and would allow a back yard where its size wasn't reduced. She noted letters from abutters, including one from Lot 9-4 in support of the application, and said they weren't aware of any concerns from any other abutters. She said they were confident that the HDC would like the proposal that had been prepared, so there would be no damage to the public.

She said the applicants were available remotely to answer questions.

Ms. Cline said in the RA and RB zone, only attached units were permitted. She said she didn't consider this truly an attached accessory apartment because the walkway wasn't a living area and the doorway from the apartment didn't go into the primary unit. There was discussion. She said the other option was to appeal her decision that this wasn't really attached.

Mr. Morong said the average person driving by wouldn't know it wasn't attached.

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

***Mark Morong MOVED to Close the Public Hearing. Tom Toye 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 Attorney Somers did an excellent job summarizing the application. He said he'd been in the house, and said the base of the foundation was significantly above grade, so there would be 4-5 steps just to enter the house. He said the septic tank was in the way in the back.

Chair Sterndale said the septic tank and bulkhead were reasonable things to avoid. Chair Sterndale said what was proposed would be a net benefit to abutting properties. There was discussion. He said it was reasonable to put an accessory apartment on a property like this and said there was no benefit to precluding it here.

Mr. Toye noted the abutters that had written in support of the application. He said he could see the house from his property, but said he wasn't a direct abutter. He said he wasn't affected by the application in any way.

***Micah Warnock MOVED that the Zoning Board of Adjustment approve a petition submitted by Sharon Cuddy Somers, Donahue, Tucker & Ciandela PLLC, Exeter, New Hampshire, on behalf of Scott & Karen Letourneau, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-53 of the Durham Zoning Ordinance to allow for an accessory apartment within the Residence B Zone. The property involved is shown on Tax Map 6, Lot 9-5, is located at 26 Newmarket Road, and is in the Residence B Zoning District. Tom Toye 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>
<b><i>Micah Warnock</i></b>	<b><i>Yes</i></b>
<b><i>Mark Morong</i></b>	<b><i>Yes</i></b>

- H. **PUBLIC HEARING** on a petition submitted by Matthew Lake, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A) of the Durham Zoning Ordinance to allow for the construction of an attached garage within the wetland setback. The property involved is shown on Tax Map 18, Lot 4-2, is located at 266 Newmarket Road, and is in the Rural Zoning District.

Mr. Lake said he and his wife bought the house in December of last year. He said it was a beautiful location, and said they'd realized the garage would be a challenge when they bought it, but hadn't realized there were wetlands on the property. He said they were granted a shoreland permit from the state, and learned that Durham's wetland setback was 100 ft. He said where they wanted to put the garage was 78 ft from the wetland.

He said the attached garage would have a room above it and would be more appealing than a detached garage. He said it was hoped this would be an improvement to the property, which would benefit the neighbors. He said it shouldn't impact the wetland, noting that they wouldn't be doing any more to the impermeable surface than what was in place now. He explained in some detail why there was no better place on the property to put it.

There was discussion that there was currently asphalt where the garage was proposed. There was discussion about how runoff moved on the site. Ms. Lawson said with the addition of the garage, there would be more runoff from the roof off the right side. Mr. Lake noted again that the impervious surface wouldn't change much. Chair Sterndale said they wanted the runoff to go to the right place. There was discussion about the erosion control barriers that would be in place. Mr. Lake said the roof runoff would follow the same route as current runoff. There was discussion about the application possibly being an opportunity to make stormwater management near the wetland better.

Ms. Cline spoke about a conditional use application being needed for possible impacts to wetlands. There was discussion with the applicant about this.

Mr. Toye said the garage would be 78 ft from the wetland, and said he didn't think the Board needed to complicate things regarding directing runoff.

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

Ms. Cline noted that Mr. Behrendt had indicated that the variance should come before the conditional use application.

***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>
<b><i>Micah Warnock</i></b>	<b><i>Yes</i></b>
<b><i>Mark Morong</i></b>	<b><i>Yes</i></b>

Ms. Lawson said her concern had been answered. Mr. Morong said he had no concerns, especially with the Conservation Commission looking at the situation after the ZBA. Chair Sterndale said one hard surface was being replaced with another so that made the Board's job easier. He briefly reviewed how the variance criteria were met with the application. He said regarding the hardship criterion that what was proposed was reasonable, and said it was the most logical place for the garage.

***Tom Toye MOVED that the Zoning Board of Adjustment approve a petition submitted by Matthew Lake, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XIII, Section 175-59(A) of the Durham Zoning Ordinance to allow for the construction of an attached garage within the wetland setback as presented on plans dated May 19, 2020 by Bordeau Land Survey. The property involved is shown on Tax Map 18, Lot 4-2, is located at 266 Newmarket Road, and is in the Rural Zoning District. 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>

- I. **PUBLIC HEARING** on a petition submitted by FHP at Hickory Pond LLC, Durham, New Hampshire for an **APPLICATION FOR VARIANCE** from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to allow for the reconstruction of a barn to exceed the 20% maximum impervious surface. The property involved is shown on Tax Map 18, Lot 12-1, is located at 1 Stagecoach Road, and is in the Rural Zoning District.

The applicant, John Randolph spoke briefly about the fire that had destroyed a portion of the barn. He explained that they were at 27% impervious cover on the site with the previous barn, and said the reconstruction would still mean the amount of imperviousness would be close to 27%.

He reviewed the variance criteria and how they were met with the application. He said there would be no decrease in the value of surrounding properties with what was proposed. He said the proposed barn structure was a replacement for a portion of the existing barn that was lost in the fire in 2017. He said the value of surrounding properties included the existence of the barn previously, so replacing it would have no detrimental effect on property values.

He said granting the variance would not be contrary to the public interest because the project sought to restore the essential character of the neighborhood.

He said denial of the variance would result in unnecessary hardship owing to the special conditions of the property that distinguished it from other properties. He said there was no fair and substantial relationship between the general public purpose of the ordinance provision and specific application to the property. He said the amount of impervious surface wasn't substantially changing with what was proposed. He said the ratio was currently 27%, and said the total impervious surface would increase by .025%, for a total of 27.025%.

He explained that insurance investigations after the fire took a year to complete, and said the rebuild of the barn was forced to be outside of the allowed one year rebuild period, which was spelled out in section 175-30 of the Ordinance. He said all proceeds from the insurance claim would be heavily taxed if the barn wasn't rebuilt. He said the insurance company also included hold backs that were only released if the barn was rebuilt in a similar size and function.

He said the ordinance provision didn't serve its purpose in a fair and substantial way in this instance because the property already exceeded the maximum impervious surface ratio, and

there would not be a significant increase in the impervious surface ratio with what was proposed. He said the proposed use was reasonable because the proposed barn would replace what existed previously, though with a differently proportioned footprint and a minimal increase to the impervious surface ratio.

He said substantial justice would be done in granting the variance because no harm would be done in rebuilding the barn. He said the residents of Harmony Homes at Hickory Pond Assisted Living would enjoy having a complete campus and neighbors would benefit by having the existing site restored. He said no harm would be done in the small increase in water runoff.

He said granting the variance would not be contrary to the spirit and intent of the Ordinance. He said the proposed rebuild of the barn didn't conflict with the explicit or implicit purpose of the ordinance, and did not alter the essential character of the neighborhood.

Chair Sterndale asked how the barn would be used. Mr. Randolph said he kept snow equipment and other maintenance equipment and tools in the barn. He noted that he had lost a lot of tools in the fire.

There was discussion about how the hardship criterion was addressed by the applicant. Ms. Randolph reiterated what Mr. Randolph had said about this.

Chair Sterndale opened the public hearing and asked if there were any members of the public who wished to speak. There was no response.

***Mark Morong MOVED to close the Public Hearing. Tom Toye 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 the application was pretty straightforward and said there would end up being a nicer property than what they started with. He said it was a unique property so there were probably a number of ways to slice the hardship argument. Chair Sterndale said it was a tiny increase proposed in the amount of impervious surface.

***Micah Warnock MOVED that the Zoning Board of Adjustment approve a petition submitted by FHP at Hickory Pond LLC, Durham, New Hampshire for an APPLICATION FOR VARIANCE from Article XII.1, Section 175-54 of the Durham Zoning Ordinance to allow for the reconstruction of a barn to exceed the 20% maximum impervious surface as described on a survey plan by MJS Engineering dated June of 2020. The property involved is shown on Tax Map 18, Lot 12-1, is located***

*at 1 Stagecoach Road, and is in the Rural Zoning District. 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>Joan Lawson</i>	<i>Yes</i>
<i>Micah Warnock</i>	<i>Yes</i>
<i>Mark Morong</i>	<i>Yes</i>

**VI. Other Business**

**VII. Approval of Minutes:**

May 12, 2020

Page 7, line 41 should read “He said there were six bedrooms”

*Chair Sterndale MOVED to approve the May 12, 2020 Minutes as amended. Micah Warnock SECONDED the motion and it PASSED unanimously 5-0.*

**VIII. Adjournment**

*Mark Morong MOVED to adjourn the meeting. Tom Toye SECONDED the motion and it PASSED unanimously 5-0.*

Adjournment at 10:14 pm

Victoria Parmele, Minutes taker

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Joan Lawson, Secretary