

*These minutes were approved at the June 8, 2021 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, May 11, 2021 at 7:00 p.m.  
Town Council Chambers, Town Hall  
8 Newmarket Road, Durham, NH  
MINUTES**

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

**OTHERS PRESENT:** Audrey Cline, Code Administrator (attending remotely)

**I. Call to Order**

Chair Sterndale called the meeting to order at 7:00 pm.

**II. Roll Call**

The roll call was taken. There are no alternates to seat.

**IV. Election of Officers**

Chair Sterndale stated that this will be done later in the meeting.

**V. Approval of Agenda**

Chair Sterndale mentioned that there is an additional Request for Rehearing that will be done under Other Business tonight.

**V. Public Hearings:**

- A. **PUBLIC HEARING** on a petition submitted by Edward Baker, Portsmouth, New Hampshire on behalf of Peter J. Silverman Trust, Evanston, Illinois, for an **APPLICATION FOR SPECIAL EXCEPTION** as specified in Article IX, Section 175-29(B) of the Durham Zoning Ordinance to permit construction of a single family home and driveway on a non-conforming lot in the Shoreland Overlay District. The property involved is shown on Tax Map 6, Lot 7-4, is located at 52 Oyster River Road, and is in the Residence A Zoning District.

Attorney Kevin Baum gave a brief history of the lot which is a pre-existing lot. Alex Ross is the engineer on record. He has to leave at 7:30 p.m. so does the board have any questions for him before Attorney Baum continues? Audrey Cline had a question about the drawing of the setback on the plan, and Alex Ross explained the plan. He has been working with Stephanie from DES and April from Durham Public Works on the drainage.

Chair Sterndale would like a maximum size of the house on record. Attorney Baum said that the exact location of the home is not known at this point, but he had mentioned a proposed home of 30'x52'. Chair Sterndale said he was ok with letting that request go.

Attorney Baum went through the Special Exception criteria found in Article IX, Section 175-29(A) and (B) to show that this proposal does meet each of the criteria where it is applicable.

The Public Hearing was opened.

**Eric Lund** spoke about how he agrees it is a difficult lot to build on. Non-conforming lots are common in the neighborhood. He doesn't see any reason that they shouldn't be able to build on this lot.

***Micah Warnock MOVED to close the Public Hearing. Mark Morong SECONDED the motion and it PASSED unanimously.***

Mark Morong doesn't see any issue with this. Chair Sterndale thinks that the building size, scale and footprint are reasonable for that lot.

***Micah Warnock MOVED that the Zoning Board of Adjustment approve a petition submitted by Edward Baker, Portsmouth, New Hampshire on behalf of Peter J. Silverman Trust, Evanston, Illinois, for an APPLICATION FOR SPECIAL EXCEPTION as specified in Article IX, Section 175-29(B) of the Durham Zoning Ordinance to permit construction of a single family home and driveway on a non-conforming lot in the Shoreland Overlay District with reference to exhibit 1B and the proposed house outlined in reddish burgundy. Alex Talcott SECONDED the motion and it PASSED unanimously.***

- B. PUBLIC HEARING** on a petition submitted by Chase Family Security Trust, Cohasset, Massachusetts for an **APPLICATION FOR VARIANCE** from Article XIII, Section 175-59(A)(2) of the Durham Zoning Ordinance to permit construction of an addition within the wetland setback. The property involved is shown on Tax Map 20, Lot 16-1, is located at 271 Durham Point Road, and is in the Residence C Zoning District.

David Chase introduced and reviewed the scope of the project and submitted a house plan to the Board. He introduced Jase Gregoire of Civilworks New England. Jase explained the site plan to the Board. Chair Sterndale asked about the run-off and roof-line. Audrey Cline mentioned that that any overhang over 18" encroaches into the buffer.

Mark Morong asked if there was any consideration of putting the addition on the other side of the house. David Chase said there was no room there. He felt that impacting only the lawn area was the best.

David Chase spoke to the five variance criteria and how the proposal met the criteria.

The Public Hearing was opened. There was no one from the public who wanted to speak.

*Joan Lawson MOVED to close the public hearing. Mark Morong SECONDED the motion and it PASSED unanimously.*

Chair Sterndale felt it was not an unreasonable request. It is a hardship for an older couple not to have a first floor bedroom. There is no negative impact on surrounding properties.

*Joan Lawson MOVED to approve an APPLICATION FOR VARIANCE from Article XIII, Section 175-59(A)(2) of the Durham Zoning Ordinance to permit construction of an addition within the wetland setback based on site plan from Civilworks New England dated 3-5-21. Alex Talcott SECONDED the motion and it PASSED unanimously.*

## **VI. Other Business:**

- A. **REQUEST FOR REHEARING** on a March 16, 2021 denial of a petition submitted by Thomas J. & Erin L. Daly, Nashua, New Hampshire, for an **APPLICATION FOR VARIANCES** from Article XIII, Section 175-59(A)(2)(d) and 175-62 of the Durham Zoning Ordinance to permit the construction of a new four bedroom house with attached garage and detached pool house within the Wetland Conservation Overlay District. The property involved is shown on Tax Map 12, Lot 7-0, is located at 190 Piscataqua Road, and is in the Residence C Zoning District.

Chair Sterndale reviewed the criteria for whether the Board should grant a rehearing. The Dalys had raised the issue of procedure whereby the reasons for denial were not specified in the motion. The two variance requests were not voted on separately either. Chair Sterndale felt that due to the procedural issues, they could grant a rehearing.

*Mark Morong made a MOTION to grant a rehearing, Micah Warnock SECONDED the motion. The motion PASSED unanimously.* The rehearing will be held on June 8.

- B. **REQUEST FOR REHEARING** on an April 13, 2021 approval of a petition submitted by Joshua Meyrowitz & Andersen Williams Group LLC, Durham, New Hampshire for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a March 10, 2021 Planning Board decision that the Site Plan/Conditional Use Application for the properties located at 19-21 Main Street proposes surface parking. The properties involved are shown on Tax Map 5, Lots 1-9, 1-10, 1-15, and 1-16, are located at 19-21 Main Street, and are in the Churchill Zoning District.

Joan Lawson doesn't see an immediate need to rehear the application. Micah Warnock would like a bit more information on the definitions of parking. Mark Morong mentioned that the parking definitions are not very well defined in the ordinance. He thinks the Board did their best, and he is comfortable with his decision. Joan Lawson said that unless they had better definitions of those words available, they were not going to be able to make a different decision. Micah Warnock asked if a rehearing could be granted based on the fact that the applicant did not define the difference in the parking definitions well enough. Chair Sterndale stated that he felt that, no, that was not grounds for rehearing.

Audrey Cline mentioned that she had recently read that there were a couple of reasons a court might remand a case back to the ZBA. One of these reasons would be if proper procedure wasn't followed. Another reason would be if there wasn't enough information given for the members to make a reasonable decision. She mentioned that there is a lot more information out there that the Board didn't hear, either because the lawyer didn't make the case well or maybe because the lawyer just didn't make the case. So the Board would be potentially justified to rehear the application for that reason. Alex Talcott disagreed and said that he would predict that a judge would not remand the application back to the Board.

***Mark Morong MOVED to deny the request for rehearing. Joan Lawson SECONDED the motion. The motion FAILED with Mark Morong and Joan Lawson voting in favor of the denial, Chair Sterndale and Micah Warnock voting against the denial and Alex Talcott abstaining. The motion, therefore, FAILS due to the fact that there is no majority vote to deny.***

**IV. Election of Officers**

Micah Warnock nominated Chris Sterndale as Chair. Mark Morong seconded the motion. The motion passed unanimously.

Joan Lawson nominated Micah Warnock as Vice Chair. Mark Morong seconded the motion. The motion passed unanimously.

Chris Sterndale nominated Mark Morong as secretary. Micah Warnock seconded the motion. The motion passed unanimously.

**VII. Approval of Minutes:**

**February 9, 2021**

No one had any corrections to these minutes.

**April 13, 2021**

Joan "Larson" should be changed to "Lawson" throughout the document.

Page 2, Line 56 – Tom Toye should be changed to Mark Morong

***Chair Sterndale MOVED to approve the February 9 and April 13, 2021 minutes as amended. Chair Sterndale SECONDED the motion and it PASSED 4-0 with one abstention.***

**VIII. Adjournment**

***Mark Morong MOVED to adjourn the meeting. Joan Lawson SECONDED the motion and it PASSED unanimously.***

Adjournment at 8:17 pm

Karen Edwards, Minutes taker

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Mark Morong, Secretary