

ZONING BOARD OF ADJUSTMENT
Tuesday, June 11, 2024 at 7:00 p.m.
Town Council Chambers, Town Hall
8 Newmarket Road, Durham, NH
MINUTES

MEMBERS PRESENT: Micah Warnock, Chair
Neil Niman, Vice Chair
James Bubar

OTHERS PRESENT: Audrey Cline, Zoning Administrator (via Zoom)

I. Call to Order

Chair Warnock called the meeting to order at 7:01 pm.

II. Roll Call

Chair Warnock introduced all members of the Board in attendance.

III. Approval of Agenda

Vice Chair Niman MOVED to approve the agenda as presented. SECONDED by Member Bubar, and PASSED unanimously 3-0-0.

IV. Seating of Alternates

No alternates were seated this evening.

V. Public Hearings:

Chair Warnock reminded the public that the hearing tonight is a continuance from the May 14, 2024 ZBA meeting.

- A. PUBLIC HEARING** on a petition submitted by Qiaoyan Yu, Durham, New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article 175-109 B (7) Accessory Building for Single-Family Use, of the Durham Zoning Ordinance. The building shall be set back at least ten (10) feet from any property line. The property involved is shown on Tax Map 107, Lot 67, located at 15 Cowell Drive and is in the Residence A District. **Please note that this application is continued from the May 14, 2024, Zoning Board meeting.**

Chair Warnock read the above public hearing into the record. He summarized that the Board requested a revised plot plan for the location of the shed, which has not been submitted to Ms. Cline as of yesterday. The applicants were not present for the public hearing this evening. Given the applicants have not submitted the necessary materials for the petition, Vice Chair Niman is in favor of denying the petition; if the applicants want to move forward, they can submit a new application for variance. He stated it doesn't meet

38 the spirit of the ordinance, which is to keep sheds in locations that will not be obvious to
39 those in the neighborhood. Member Bubar agreed and stated he is not sure what the
40 hardship is in regards to the shed and does believe it would have an impact on
41 neighboring property values.

42
43 *Vice Chair Niman **MOVED to DENY** the petition submitted by Qiaoyan Yu, Durham,*
44 *New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article*
45 *175-109 B (7) Accessory Building for Single-Family Use, of the Durham Zoning*
46 *Ordinance as it is not in keeping with the spirit of the ordinance, hardship clause, and*
47 *effect on property evaluations. The building shall be set back at least ten (10) feet from*
48 *any property line. The property involved is shown on Tax Map 107, Lot 67, located at 15*
49 *Cowell Drive and is in the Residence A District. **SECONDED** by Member Bubar, and*
50 ***PASSED** by roll call vote 3-0-0 (Bubar - aye, Niman - aye, Warnock - aye).*

51
52 Chair Warnock explained the applicants have thirty days to appeal the decision.

53 VI. Other Business

54 Chair Warnock shared that he went before the Town Council this week to share the ZBA's
55 concerns about short-term rentals and that it seems odd that a special exception is being used
56 to deny short term rentals (STR). A member of the council told him he should come before
57 the council with a full proposal or go before the planning board. Vice Chair Niman thanked
58 Chair Warnock for bringing those concerns to the council, as he doesn't think it is fair or
59 reasonable to charge people \$500 or \$600 to have a short-term rental when the criteria to
60 deny it is not clear. Chair Warnock stated the best point is to require the property owner be
61 present on the property.

62 Ms. Cline asked to confirm if what the board would like is to put the conditions on an
63 approval for a short term rental through the building office so the applicants wouldn't have
64 to come before the board and spend the money. Chair Warnock confirmed that, given that
65 those who speak before the board typically do so with strong emotion but not a strong
66 connection to the criteria, that might be a better option, as it is difficult for the board to do
67 anything about those concerns. Ms. Cline shared that the difference between permitted uses
68 and those permitted by board approval is that those permitted by board approval are
69 announced to the public, allowing the public a chance to talk at the hearing and appeal the
70 decision. If a STR goes only through the building department, there is no chance for the
71 public to express concerns until there is a problem, at which point there is no opportunity to
72 appeal the approval. Chair Warnock stated it seems to do more harm to allow the residents to
73 come in to voice their disapproval when there isn't anything the board can do about it; their
74 concern is something that really needs to be addressed with the Town Council. Ms. Cline
75 said in order to change the process for STR, it would need to go through a revision process
76 with the planning board and then before the public for a vote. When the current rules were
77 established through this process, there was a lot of concern that this use was going to cause
78 problems. She doesn't think it has caused problems, but the public input may be why it went
79 to a special exception use. Chair Warnock said during his tenure on the board, they have had
80 a number of AirBnBs come before the board, and each time a member of the public spoke
81 against it, nothing in their statement spoke to the criteria for approval, which is why he

82 believes this process just allows people's emotions to be stirred up and causes more trouble
83 than it's worth. He is not going to put anything together for the council, as he doesn't see
84 that as in his purview as ZBA Chair. His job is to hear these petitions and if he sees
85 something wrong, to inform the town council and let them approach it.

86 **VII. Approval of Minutes:** April 9, 2024 and May 14, 2024

87 Regarding the May 14, 2024 minutes, Member Bubar stated he submitted comments on how
88 the title of secretary was listed in the minutes. He believes Secretary Lemieux was elected
89 secretary in March.

90 *Member Bubar MOVED to approve the minutes of May 14, 2024 as amended.*
91 *SECONDED by Chair Warnock, and PASSED 3-0-0.*

92 *Chair Warnock MOVED to approve the minutes of April 9, 2024 as presented.*
93 *SECONDED by Vice Chair Bubar, and PASSED 3-0-0.*

94 **VIII. Adjournment**

95 *Vice Chair Niman MOVED to adjourn the meeting. SECONDED by Member Bubar,*
96 *and PASSED unanimously 3-0-0.*

97 Adjournment at 7:17 pm
98 Daphne Chevalier, Minutes taker