

*These minutes were approved at the October 8, 2024 meeting.*

**ZONING BOARD OF ADJUSTMENT  
Tuesday, August 13, 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  
Mark Morong  
Joe Warzin, alternate

**OTHERS PRESENT:** Audrey Cline, Zoning Administrator

**I. Call to Order**

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

**II. Roll Call**

Chair Warnock introduced all members of the Board in attendance.

**III. Approval of Agenda**

As there were no objections to the agenda, the board approved it as written.

**IV. Seating of Alternates**

Chair Warnock seated alternate Joe Warzin.

**V. Public Hearings:**

*A. **PUBLIC HEARING** on a petition submitted by Frank Lavalliere, Barrington, New Hampshire, for an **APPLICATION FOR VARIANCE** in accordance with Article XX Standards for Specific Uses Section 175-109 C(2); an accessory dwelling unit shall contain a minimum of 300 and a maximum of 850 square feet. The applicant is requesting a variance to allow an accessory dwelling unit of 1,052 square feet. The property involved is shown on Tax Map 104, Lot 42, located at 53 Bagdad Road and is in the Residence A Zoning District.*

Chair Warnock reviewed the procedures for a public hearing, and Member Morong read the above public hearing into the record.

Mr. Lavalliere stated the property in question is one of the oldest in Durham, built in 1715. It was on the market for a year and not selling because it needs a lot of repairs. His

plan is to turn it into an ADU and make the repairs to keep the original structure as is, using the first floor as an ADU and the second floor as part of the main house. The variance request is so as not to interfere with the historic value of the house. It is not contrary to the public interest, as it is an existing building with historic value to the town. Substantial justice is met by keeping the structure intact to maintain the historic value. Chair Warnock confirmed with the applicant that the hardship justification is that without the variance, the applicant would have to move walls around, which would diminish the historic value of the house. Mr. Lavalliere said the breezeway will be removed and replaced with a two-story space as part of the two-bedroom main home connected to the original home on the second floor, and the one-bedroom ADU will be on the first floor of the original structure. He confirmed that he will not rent the property while it is on the market. Chair Warnock clarified which portions of the house will be used as the main house and which for the ADU. The applicant confirmed the ADU will be on the first floor only. He explained a bank currently will not finance the purchase of the house because there is no conventional heating system, and the fireplaces are not usable and need to be blocked off.

Eric Lund rose to speak in favor of the application as a representative of the Heritage Commission, which supports the application for variance. The structure is one of the oldest surviving homes in Durham, and preserving this structure is in the public interest. The proposal is consistent with the spirit of the existing ordinance. Approving the variance will prevent the structure from becoming derelict, which would diminish surrounding property values. Even if the ADU was in the original footprint of the building, it would still be over the allowed square footage and would require a variance.

Mr. Alan Drake, 55 Bagdad Road, rose to speak when those in opposition were called. He was not sure if he was opposed to the application, but he had questions about the application. He stated he is not sure why the 850 square feet was impossible. Chair Warnock explained it would require the applicant to move around walls, which would diminish the historic value. Mr. Lavalliere said the building would be destroyed if he had to meet the square footage maximum. Mr. Drake asked about traffic. Mr. Lavalliere said the traffic will come in the same way as it currently is. He anticipates an extra car parking on the lot.

Member Morong asked if there was any guarantee that he wouldn't be putting vinyl siding on the property. Mr. Lavalliere said he will use wood siding and may need to put asphalt shingles on the roof. The foundation is a rock foundation and mucky, so he will seal it off to stop the water and put in a sump pump to make the area dry. He said he could put

something in writing if the board would like. Ms. Cline said the board could put conditions on the variance.

Nikoll Lauze, 51 Emerson Road, asked if increasing the square footage will increase the number of people at the rental property. Ms. Cline said the code is written to allow three unrelated people in one structure.

***Member Bubar MOVED to CLOSE THE PUBLIC HEARING at 7:23 pm. SECONDED by Member Warzin, and PASSED unanimously 5-0-0.***

Chair Warnock said in his view, the applicant met the criteria, and if the applicant is willing to preserve the building, it would be good for the board to work with him. Member Bubar sees allowing the variance to be in the best interest of the town. Vice Chair Niman said the board should do what it can to preserve historic buildings in town. Since the two bedrooms of the main house are connected to the proposed ADU, it is in the owner's interest not to rent to noisy tenants, which makes Vice Chair Niman comfortable allowing the variance. Member Morong asked if there is room for two additional cars on the property. Ms. Cline said the requirement is only for one parking space. She was at the lot, and if the applicant creates parking on the other side, there should be room. The board generally felt they didn't want to get into putting conditions on the variance that require a particular kind of siding.

***Chair Warnock MOVED to APPROVE the petition submitted by Frank Lavalliere, Barrington, New Hampshire, for an APPLICATION FOR VARIANCE in accordance with Article XX Standards for Specific Uses Section 175-109 C(2); an accessory dwelling unit shall contain a minimum of 300 and a maximum of 850 square feet. The applicant is requesting a variance to allow an accessory dwelling unit of 1,052 square feet and limit that accessory dwelling unit to the first floor. SECONDED by Member Warzin, and PASSED unanimously 5-0-0.***

Chair Warnock explained there is a thirty-day appeal period.

- B. Discussion about proposed new language from the Conservation Commission concerning the wetlands conservation overlay district (WSOD) and the shoreland protection overlay district (SPOD) with Town Planner Michael Behrendt.*

Mr. Behrendt explained the conservation commission is in the process of combining the Wetland Overlay District and the Shoreland Overlay District into one district and overhauling the language of the two ordinances. Of concern to the zoning board is the

provision for special exception if there is a vacant lot in the shoreland or wetland districts that can't be built on because the buffer is so wide it doesn't leave enough room on the land. The proposal in the draft ordinance is to reword the ordinance and move it from the non-conforming section into the Wetland Shoreland Overlay District ordinance, as a vacant lot that is difficult to build on is not non-conforming; it just has different constraints. He suggests adding language for the use to be for a single-family house. Member Bubar asked for clarification about the first page; Mr. Behrendt said the page is moving to a different location. Ms. Cline clarified there are three criteria for a special exception, but each area can have its own additional criteria. Mr. Behrendt said page two is the proposed new language, which is more concise and eliminates criteria seven. Member Morong asked if there was room for lots to be used for something other than a single-family home, for example over 55 housing units. Ms. Cline said those situations could apply for a variance. Chair Warnock is concerned about redundancy. He asked who decides what constitutes a reasonable building envelope, and Mr. Behrendt said the zoning board would. Chair Warnock is concerned about the use of the word "reasonable," as it is subjective. The board discussed criteria six and whether it was necessary.

There was a lengthy discussion as to whether a special exception is necessary when there is an option for a variance. Ms. Cline clarified that a special exception is an allowed use with conditions specifically laid out in the ordinance, while a variance is permission to do something that is not otherwise allowed. She said you can't have a situation where a parcel was created before zoning ordinances existed that would make the lot unbuildable. Mr. Behrendt said the special exception provides clear criteria for determining what is allowed. Ms. Cline clarified that a variance is a unique exception, whereas a special exception would apply to a number of lots in a zoning area. Mr. Behrendt explained it is a protection to allot for reasonable use. He asks if there is a different criterion that would be helpful in guiding the zoning board's decision on an application. Ms. Cline pointed out that the use of "undue hardship" is too close to the language of a variance, so it might be good to alter that.

Vice Chair Niman asked about criterion number five and asked if that language was too restrictive. Mr. Behrendt agrees it would be better to soften it. Member Warzin summarized that the board has concerns with the language in criteria two, three, five, and six. Ms. Cline said she could go through the language with Mr. Behrendt again.

Vice Chair Niman asked about the purpose of the last paragraph, as the board already does the things mentioned. He asked if the intent is to obligate the ZBA in some way. He wants to understand the intent and ensure the intent is clearly stated in the language. Vice Chair Niman would like to have one set of rules or one process so everyone is on the same

page and everyone knows how things work. Mr. Behrendt noted the board liked the idea of the applications going before the conservation commission before coming to the ZBA. Mr. Behrendt said he and Ms. Cline will refine that language.

#### **VI. Other Business**

No other business was discussed.

#### **VII. Approval of Minutes: July 9, 2024**

*Vice Chair Niman MOVED to approve the minutes of July 9, 2024 as presented. SECONDED by Member Bubar, and PASSED 5-0-0.*

#### **VIII. Adjournment**

*Vice Chair Niman MOVED to adjourn the meeting. SECONDED by Chair Warnock, and PASSED unanimously 5-0-0.*

Adjournment at 8:28 pm  
Daphne Chevalier, Minutes taker