

1 **DRAFT**

2 **ZONING BOARD OF ADJUSTMENT**
3 **Tuesday, October 8, 2024 at 7:00 p.m.**
4 **Town Council Chambers, Town Hall**
5 **8 Newmarket Road, Durham, NH**
6 **MINUTES**
7

8 **MEMBERS PRESENT:** Micah Warnock, Chair
9 Neil Niman, Vice Chair
10 Kevin Lemieux
11 James Bubar
12 Mark Morong
13 Joe Warzin, alternate

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

15 **I. Call to Order**

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

17 **II. Roll Call**

18 Chair Warnock introduced all members of the Board in attendance.

19 **III. Approval of Agenda**

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

21 **IV. Seating of Alternates**

22 No alternates were seated.

23 **V. Public Hearings:**

24
25 *A. **PUBLIC HEARING** on a petition submitted by Cheri & Robert McManus, Durham, New*
26 *Hampshire, for an **APPLICATION FOR SPECIAL EXCEPTION** in accordance with*
27 *Article XII.1 Use and Dimensional Standards, Section 175-53 Table of Land Uses of the*
28 *Durham Zoning Ordinance to have a short-term rental within the residence. The property*
29 *involved is shown on Tax Map 209, Lot 87, located at 26 Old Piscataqua Road, and is in*
30 *the Residence A Zoning District.*

31
32 Chair Warnock reviewed the procedures for a public hearing, and Secretary Lemieux read
33 the above public hearing into the record. Member Bubar recused himself, as he knows the
34 applicant.
35

36 Mr. McManus stated he doesn't believe there will be any detriment to the neighborhood.
37 His approved ADU is a studio that will be used as a short-term rental with a dedicated
38 parking space. The intent is not to have loud guests. The purpose is to have a place
39 available to friends who visit while still being able to earn income on the unit via short-
40 term rentals. The applicants live on site and don't plan on renting the house. They will be
41 on the property whenever someone is renting the unit. No recreational vehicles will be
42 allowed and there is no signage. Ms. Cline said the applicant will need to contact the fire
43 department to have a short-term rental inspection completed.

44
45 No members of the public rose to speak in favor or in opposition to the proposal.

46
47 *Vice Chair Niman **MOVED** to **CLOSE THE PUBLIC HEARING. SECONDED** by*
48 *Member Morong, and **PASSED unanimously 5-0-0.***

49
50 In discussion, the board did not see any reason to deny the special exception given the
51 location or characteristics of the property.

52
53 *Vice Chair Niman **MOVED** to **APPROVE** the **APPLICATION FOR SPECIAL***
54 ***EXCEPTION** in accordance with Article XII.1 Use and Dimensional Standards, Section*
55 *175-53 Table of Land Uses of the Durham Zoning Ordinance to have a short-term rental*
56 *within the residence. The property involved is shown on Tax Map 209, Lot 87, located at*
57 *26 Old Piscataqua Road, and is in the Residence A Zoning District. **SECONDED** by*
58 *Secretary Lemieux, and **PASSED unanimously 5-0-0 by roll call vote (Lemieux - aye,***
59 ***Niman - aye, Morong - aye, Warzin - aye, Warnock - aye).***

60
61 Chair Warnock explained there is a thirty-day appeal period.

62
63 **B. PUBLIC HEARING** on a petition submitted by Qing Lin, Durham, New Hampshire, for
64 an **APPLICATION FOR VARIANCE** in accordance with Article XIII Wetland
65 Conservation Overlay District, Use and Dimensional Standards, Section 175-59.
66 Applicability A.2.d. Setback/Upland buffer strip Residence B zone is 75 feet. The property
67 involved is shown on Tax Map 113, Lot 102, located at 15 Foss Farm Road, and is in the
68 Residence B Zoning District.

69
70 Member Bubar rejoined the board, and Secretary Lemieux read the above public hearing
71 into the record.

72
73 Ms. Lin's daughter explained the drainage will be such that runoff from the roof will drain
74 away from the wetlands. By minimizing encroachment, the applicant believes substantial
75 justice is achieved. They are committed to using only native vegetation. The purpose of
76 the new house plan includes an ADU for the applicant's aging parents.

77

78 Vice Chair Niman asked where the wetlands are located on the property. Ms. Cline had
79 asked for a larger copy of the plan, but it was not included in the packet. Mr. Frank
80 Lavalier, contractor working with the applicant, explained the applicant has moved the
81 dwelling as far back on the lot as she can. He explained that standing water is the
82 problem. They are looking to build a swale for the runoff. Ms. Cline explained the
83 applicant will need to speak with Mr. Michael Behrendt about the application, as there are
84 additional steps the applicants will need to take. Mr. Lavalier said he believes the
85 structure will be 3200 square feet and the ADU will be 650 square feet. Decks and
86 porches were not factored into the square footage.

87
88 Vice Chair Niman asked if there is something the applicant could do that the board could
89 make a condition for the variance that would improve the site or quality of the wetland or
90 reduce erosion. Ms. Cline said that it would require a conditional use or a special use
91 permit, for which the zoning board doesn't have jurisdiction; the zoning board only has
92 the ability to grant a variance. Chair Warnock is concerned about the potential for
93 neighboring properties to decrease in value due to flooding impacts. He stated he needs a
94 more detailed, engineered plan to make a decision. The board felt review by and
95 recommendations from the conservation commission would help them make a decision.
96 Chair Warnock noted the proposed house would be 1200 square feet bigger than the
97 average home in the neighborhood.

98
99 Chair Warnock opened the hearing to public comment at 7:43pm.

100
101 Tom Christie, 13 Foss Farm Road, spoke in opposition, stating the applicant needs to have
102 a 30' setback in the rear of the lot, not a 20' setback. He noted that the previous owners
103 came before the board in 2016 for a variance, which was rejected. The property in
104 question is a non-conforming lot; unless a survey is done, the numbers provided by the
105 applicant on the plan cannot be assumed to be accurate. He argued the building could be
106 reduced in size in order to meet town zoning ordinances. He doesn't believe the proposed
107 structure is in the spirit and intent of the ordinance. The proposed dwelling would change
108 the character of the neighborhood, as the proposed structure is over 2.5x larger in square
109 footage than other homes in the neighborhood. He questioned the height of the proposed
110 home as well. He believes a structure could be built to limit the impact on the wetlands.
111 He respectfully requests that the board deny the application for a variance. He submitted a
112 handout to the board to be entered as part of the record.

113
114 Paul Schlie, 16 Foss Farm Road, said he welcomes a single-family home on that lot;
115 however, after careful consideration, he opposes the variance, as the lot could house a
116 smaller home.

117

118 Ms. Lin said the survey was already completed when she bought the property. Member
119 Bubar pointed out the survey is not signed. Ms. Cline said the current contractor used the
120 previous survey.

121
122 Vice Chair Niman said he doesn't believe the height of the house or whether the side
123 setback is within the limits is relevant for the variance, and he said the board should be
124 focused on the specific setback requirements.

125
126 Lynne Christie, 201 Dame Road, stated the size of the building needs to be considered, as
127 it speaks to the criteria related to the character of the neighborhood. The applicant is
128 asking for a home that is not sustainable on the lot and would change the character of the
129 neighborhood.

130
131 *Chair Warnock **MOVED** to **CLOSE THE PUBLIC HEARING. SECONDED** by Vice*
132 *Chair Niman, and **PASSED unanimously 5-0-0.***

133
134 Ms. Cline said that under the current regulations, an 18" overhang is not considered to be
135 within the setback. If the board approves a variance, she will need to know if that variance
136 includes the 18" overhang within the approval or if they are allowing the same leeway as
137 the ordinance.

138
139 Chair Warnock said without an appropriate drainage and runoff plan, the board can't
140 make a decision. Member Lemieux added they should have definitive square footage of
141 the house. He said the bigger the house, the bigger the roof plain, thus more runoff which
142 needs to be directed somewhere. Vice Chair Niman said his concern is about the impact
143 on the wetlands by the portion of the home that will be in the wetland buffer. He would
144 feel more comfortable making a decision if he had an accurate plan to show how much of
145 the home is in the buffer.

146
147 The board agreed they need more information, including a survey with topography and
148 actual setback lines, a building footprint including all decks and porches, and a drainage
149 plan. Member Morong would like to ask the conservation commission for their
150 assessment of the impact of the proposal. Vice Chair Niman would like the applicants to
151 provide more of an explanation as to how the proposed driveway would reduce erosion
152 and to clarify what is going to happen to the water that is being directed toward the road.

153
154 *Chair Warnock **MOVED** to **CONTINUE THE PUBLIC HEARING** until the **November***
155 ***12, 2024** Zoning Board meeting to give the applicant the opportunity to provide the board*
156 *with an appropriate survey including topography, wetlands, wetlands buffer, and*
157 *structural footprints, the septic system, a drainage plan, additional information speaking*
158 *to the runoff impacting the buffer, and the square footage impacting the wetlands buffer,*
159 *as well as consultation with the Conservation Commission. **SECONDED** by Vice Chair*

160 *Niman, and PASSED unanimously 5-0-0 by roll call vote (Bubar - aye, Lemieux - aye,*
161 *Niman - aye, Morong - aye, Warnock - aye).*

162 **VI. Other Business**

163 No other business was discussed.

164 **VII. Approval of Minutes: August 13, 2024**

165 *Vice Chair Niman MOVED to approve the minutes of August 13, 2024 as presented.*
166 *SECONDED by Member Bubar, and PASSED 4-0-1. (Member Lemieux abstained as he*
167 *was absent at the August meeting.)*

168 **VIII. Adjournment**

169 *Vice Chair Niman MOVED to adjourn the meeting. SECONDED by Member Lemieux,*
170 *and PASSED unanimously 5-0-0.*

171 Adjournment at 8:21 pm
172 Daphne Chevalier, Minutes taker