

*These minutes were approved at the May 11, 2021 meeting.*

## **ZONING BOARD OF ADJUSTMENT**

Tuesday, April 13, 2021 at 7:00 p.m.  
Town Council Chambers, Town Hall  
8 Newmarket Road, Durham, NH

### **Draft Minutes**

#### **Members present:**

**Attending in person:** Chris Sterndale, Chair; Thomas Toye, Vice Chair; and Mark Morong

**Attending remotely:** Joan Lawson, Secretary and Micah Warnock

**Others present:** Audrey Cline, Code Administrator (attending remotely)

Attorney Laura Spector-Morgan, Planning Board (attending remotely)

#### **I. Call to Order**

Chair Sterndale called the meeting to order at 7:00 p.m. and introduced the members in the room and those attending remotely under the Governor's Executive Order related to the COVID 19 pandemic.

#### **II. Roll Call**

The roll call was taken.

#### **III. Seating of Alternates**

No alternatives were seated.

#### **IV. Approval of Agenda**

#### **V. Public Hearings:**

**A. CONTINUED PUBLIC HEARING** on a petition submitted by Aaron & Jill Grueter, Durham, New Hampshire for an **APPLICATION FOR VARIANCES** from Article XX.1, Section 175-54, Article XIV, Sections 175-72(A)(4), 175-73 and 175-74 of the Durham Zoning Ordinance to permit construction of a two-car garage and additional decks within the shoreland, frontyard and sideyard setbacks. The property involved is shown on Tax Map 12, Lot 1-19, is located at 22 Cedar Point Road, and is in the Residence C Zoning District.

Aaron Grueter introduced Mike Sievert, Horizon Engineering. A copy of the updated plan was sent to the board prior to the meeting. Mr. Sievert presented a diagram and a detailed plan to address issues related to storm water, drainage and runoff. He explained that the revised storm water treatment and collection system will both

enhance the Grueter's property and will not negatively impact the property to the west and east, particularly to the west where most of the work is being done.

Revised plan will ensure no additional runoff at the edge of the wetland. Driveway to excess new proposed garage will be sloped and have small yard drains. Finished floor will be raised. New foundation piece will have drip strips for runoff. Water that could potentially go into the bay will first go through perforated pipes. Peak of new garage (north to south direction) will go into gutter downspout and pipe to rain garden. Outlet is into the bay not to wetland. Silk socks and erosion control are included in the plan. When the plan is submitted to the Wetlands Bureau, it will include further details.

Chair Sterndale opened it to board questions addressed to Mike Sievert.

Mark Morong asked what if gutter clogs or is not maintained?

Gutters will require a permit. If a homeowner is not maintaining the gutter, it could be enforced. Wetlands Bureau and DES height have a heightened interest in maintaining the bay.

Is rain garden too close to tidal basin? Three quarters of the lot is within the 100 foot buffer. Rain garden will be treated/cooled down before going into the bay.

Audrey Cline noted that the packets received by members today do not show the original drawings from the last ZBA meeting. The north/southeast corner extend on the deck are not shown on tonight's hard copy. Does not impact drainage. Goes into tidal buffer. If variance granted, amend the drawing to the original one.

Meeting open to public comment.

Michael Lehrman, 20 Cedar Point Road, spoke in opposition at the prior meeting. He has discussed the revised plan with Mike Sievert and Aaron Grueter. His concerns have been addressed particularly diverting water from wetland area.

**Tom Toye moved to close the public hearing. Joan Lawson seconded. The motion carried unanimously 5-0 by a roll call vote.**

Tom Toye and Joan Lawson commented that Horizon did a great job addressing the drainage issues.

***Mark Morong moved that the Zoning Board of Assessment approve a petition submitted by Aaron & Jill Grueter, Durham, New Hampshire for an APPLICATION FOR VARIANCES from Article XX.1, Section 175-54, Article XIV, Sections 175-72(A)(4), 175-73 and 175-74 of the Durham Zoning Ordinance to permit construction of a two-car garage and additional decks within the shoreland, frontyard and sideyard setbacks as per the plan submitted #20-22 from Architect, Lucy Gorham, and the stormwater plan submitted***

*from Horizon Engineering..* Micah Warnock seconded the motion, and the motion carried unanimously 5-0 by a roll call vote.

**B. PUBLIC HEARING** on 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.

Chair Sterndale stated that the appeal is centered on the definitions of surface parking vs. structured parking.

Joshua Meyrowitz, 7 Chesley Drive, Durham gave a slide presentation. Structured parking on Church Hill is prohibited per the zoning definition. The parking lot requires major changes to the grade (17,000 cubic yards of fill). Requires two or more stories parking structure and changes the topography of Church Hill.

Peter Anderson said that he and his wife agree with Joshua Meyrowitz and Mr. Puffer regarding the definitions.

Attorney Laura Spector-Morgan, Planning Board  
Sent letter today. Considers this surface parking. It is one level. Grade is with street. The fill does not make it an above grade parking lot. Surface is not within a structure. Parking is next to retaining wall therefore not structured parking.

The meeting open to public comment.

Tim Murphy gave a slide presentation. Interpreting this as surface parking requires disregard of the definitions of the words, "at grade", "within" and "structure", such that at grade means above ground; within means on top of; and the ground is considered a structure that is above grade. It would disqualify any parking as surface parking.

Mark Puffer submitted a letter to the board and presented diagrams and a detailed presentation. Toomerfs' renderings and photos do not show multiple views of this massive structure and how it will change the topography of Church Hill. There is clearly a drop off that requires 17,000 cubic yards of fill. Could not provide parking without multi stories. No requirement that structured parking is within a building or structure. Fails to meet definition of surface parking.

Mike Sievert- The retaining wall is not needed. Can be narrowed. Run grades to property lines. At grade means the original grade. Fill in a road is not grade. If you call this a

structure, it means that any fill someone puts on their property is a structure. Clarified that the wall is concrete blocks not steel.

William Hall, 3 Smith Park Lane, Cited several examples of what has been done over the years to level off property in Church Hill area. Considers it surface parking. Homeowner has a right to do this on their property.

Eric Lund showed photo of parking lot behind Church Hill. It shows the amount of fill required to have it at grade. This is structured parking according to the ordinance.

Kyle Urso, 5 Smith Park Lane. It is important to keep in mind the principle of requirements for zoning in the Church Hill district. The ordinance does not allow for new construction that will significantly alter the look and character of the district.

Noelle Khleif, 11 Garden Lane. The parking lot will destroy the wooded area. Chair Sterndale recommended that the speaker connect with the Planning Board. The question tonight is structured vs. surface parking definitions.

Beth Olshansky. At grade means existing grade not a grade that requires 17,000 cubic feet of fill. Mike Sievert described the structure(wall) at grade on granite. Concurs with others who have previously spoken that this is structured parking.

-Additional permits required for more than 6 foot retaining wall. This is much higher.

Malcolm Sandberg-Look at intent of the ordinance. Limit the amount of parking spaces in a primarily residential zone. Meet the demands of what is there. It is a structure that requires more than a 6' retaining wall. This is rooftop parking on non-existing grade that needs something to support it. It is structured parking.

Robert Russell- Proposed parking lot slopes(inward and downhill). It is a parking lot at multiple levels. It fits the definition of a structured parking lot.

Tim Murphy (2<sup>nd</sup> time)There is a difference between the terms structures(lights, stripes, wall, fencing, etc.) and structured parking. The wall is a structure. It is not surface parking. s

Joshua Meyrowitz (2<sup>nd</sup> time). A massive wall is not the same as structures such as minor installations(lights and stripes). Note that this involves four legally distinct lots that would require massive fill to have it "at grade". Could not have them without massive concrete structure.

Mike Sievert (2<sup>nd</sup> time). Can build long, narrow parking lot without retaining wall. Wall is the structure not the parking lot. Fill is making it "at grade". You will be saying that fill is a structure.

Beth Olshansky (2<sup>nd</sup> time). Zoning ordinance states that terms that are not defined will have ordinarily accepted meaning. Common usage for “at grade” is at ground level. Finished grade is different. Finished grade is after fill is brought in.

Mark Puffer (2<sup>nd</sup> time). The structure provides parking. The massive retaining wall is needed in order to have parking.

Attorney Laura Spector-Morgan heard tonight's comments and will stand by her letter.

Tom Toye moved to close the public hearing. Mark Morong seconded. The motion carried unanimously 5-0 by a roll call vote.

Joan Lawson summarized points from speakers. At grade would be at the bottom of the wall. Finished grade becomes the level of surface parking. This falls under the definition of structured parking because it is a structure (arrangement of parts) that makes parking available.

Board members discussed speakers' comments and reviewed definitions of surface and structured parking. It was noted that there is overlap in the definitions. Whether or not to factor in the intent of the ordinance was also discussed. Quantity of fill and height of fill are not part of the ordinance. The question is not about bringing in fill. It is the wall. The wall is a structure and provides part of the parking according to the definition for structured parking.

***Joan Lawson moved that the Zoning Board of Adjustment approve 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. Micah Warnock seconded the motion and it passed 3-2 by a roll call vote:

Tom Toye, No; Mark Morong, Yes; Joan Lawson, Yes; Micah Warnock, yes; and Chair Sterndale, No

**C. PUBLIC HEARING** on a petition submitted by Jeff Berlin, BPNE Property 2 LLC, Durham, New Hampshire, for an **APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION** from a February 25, 2021 letter of the Zoning Administrator Audrey Cline regarding the parking of a fifth car on the property without providing records acceptable to the Code Enforcement Office. The property involved is shown on Tax Map 10, Lot 12-27, is located at 39 Emerson Road, and is in the Residence A Zoning District

The agenda item was moved to the end of the agenda to see if applicant would be present. The applicant is not present. Chair Sterndale is prepared to act on the application. Board discussed whether to move forward with application. Applicant has 30 days from original notice of application to appeal. Time limit has been exceeded. Joan Lawson asked how would it be enforced if documentation is not submitted. Audrey Cline would issue a Land Use Summons and fine until documentation is supplied.

Audrey Cline emailed the documents prior to the meeting. The applicant is permitted to park four tenants at this location. Beyond this, he is required to document to show compliance with the ordinance. He believes that he can park a fifth car there without documentation. Zoning ordinance allows code officer to request documentation if it appears to be over the legal amount of cars. The applicant received a letter from the Code Administrator in April 2020 explaining the ordinance. Normally three cars are allowed. Four cars are permitted at this residence. Five are parked here regularly.

Meeting open to public comment.

Katherine Zaiatz spoke. More people are living in the duplex than the town allows. Six or seven cars were parked on the property this weekend.

**Mark Morong moved to close the public hearing. Micah Warnock seconded. The motion carried unanimously 5-0 by a roll call vote.**

***Mark Morong moved to deny a petition submitted by Jeff Berlin, BPNE Property 2 LLC, Durham, New Hampshire, for an APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION from a February 25, 2021 letter of the Zoning Administrator Audrey Cline regarding the parking of a fifth car on the property without providing records acceptable to the Code Enforcement Office.*** Joan Lawson seconded the motion. The motion carried unanimously 5-0 by a roll call vote.

## **Other Business**

Tom Toye is not seeking reappointment at the end of his term. He has served for more than nine years. He will be missed and greatly appreciated by board members. Chair Sterndale thanked him for his service and presented a certificate of appreciation.

No other business.

## **VII. Approval of Minutes: March 16, 2021**

Minor additions, deletions and corrections were noted.

Page 2, line 18, delete 3E and the word total.

Page 4, line 32, 34, 35, misspelling of the word property  
page 31, 32, words run together

Page 6, line 33, remove sf, misspelling of the word property

Page 16, line 24-if(not of) there was a floor plan

**Chair Sterndale moved to approve the March 16, 2021 minutes as amended. Micah Warnock seconded the motion and it passed unanimously 4-0 by a roll call vote. Chair Sterndale, yes; Joan Lawson, yes; Micah Warnock, yes; and Mark Morong, yes.**

**VIII. Adjournment**

**Chair Sterndale motioned to adjourn the meeting. Mark Morong seconded the motion passed unanimously 5-0 by a roll call vote.**

**Adjournment at 9:38 p.m.**

Respectfully submitted,  
Judy King, Minute Taker

***Please note: These written minutes are intended as a general summary of the meeting. For more complete information, please refer to the DCAT22 On Demand videotape for the entire proceedings on the Town of Durham website.***

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Mark Morong, Secretary