

**Town of Wolfeboro  
Zoning Board of Adjustment  
February 5, 2024  
DRAFT Minutes**

**Members Present:** Audrey Cline, Chair, Suzanne Ryan, Vice-Chair, Luke Freudenberg, BOS Representative, Sarah Silk, Clerk, Charles Sumner, Member, Catherine McMahon, Alternate.

**Staff Present:** Tavis Austin, Director of Planning & Development.

**I. Roll Call**

Suzanne Ryan called the meeting to order at the Great Hall at 7:05 PM. A quorum was present. Suzanne Ryan appoints Sabet Stroman, Alternate, and Cate McMahon, Alternate, to sit in for Luke Freudenberg, BOS Representative, and Audrey Cline, Chair.

**It was moved by Suzanne Ryan the Zoning Board of Adjustment takes jurisdiction of appeal of Planning Board decision of 12/5/2023, case 2023-6 Appeal of Administrative Decisions. Under RSA 674:33 and RSA 676:5. An administrative officer means any official or board involving the interpretation or the application of an ordinance. Sarah Silk seconded. Roll Call vote: Suzanne Ryan – yes, Sabet Stroman – yes, Sarah Silk – yes, Cate McMahon – yes, Chuck Sumner – yes. Motion passed (5-0-0).**

**II. Public Hearings**

**Roger Kent** – 16 Libby Street – Tax Map #217-13 -Case # 02-AAD-24 - Public Hearing for a Appeal of Administrative Decision under

- Chapter 175, Article XXII § 175-128 C (2) Off-Street Parking and Loading Requirements per Chapter 175, Article XIV §175.92.1 B.
- Chapter 175, Article VII § 57.1 E (4) “the minimum of one dedicated off-street parking space shall be provided for the ADU”.
- Chapter 175, Article XXII § 175.129. Issuance of Permits
- Chapter 175, Article XXII § 175-134 A. Availability of spaces

**SITE VISIT 3:00 PM**

Sarah Silk, Clerk, reads the newspaper public notice, and site visit into the record. See attached.

Suzanne Ryan calls Audrey Cline, Representative for Roger Kent, to speak. Requests Miss Cline to read page 3, number 2 A & 2 B, and page 5 to review each criteria and address in her own words.

Audrey Cline, Representative for Mr. Kent, stated a point of order request. The Town Planner represents the Planning Board, so requesting he not give the Zoning Board of Adjustment feedback or advice on this matter.

Suzanne Ryan replied that Mr. Austin will not be participating unless asked a question directly.

Discussion on whether or not Mr. Austin should be seated at the table, or in the audience.

**It was moved by Sabet Stroman the Town Planner sit in the audience because of the perception that exists when you sit at the table.**

Suzanne Ryan noted no second was made. Stated Mr. Austin has removed himself.

Audrey Cline reads from application (application in its entirety is in file), appealing Planning Board decisions, Planning Board case 2023-6, Administrative Appeal. Basis for appeal is Article VII 175-57.1 E (4). Section lists 5 zoning criteria that must be met in order for and ADU to continue on a conditional use application the Planning Board hears. Approval from Planning Board stated it was determined the application satisfied the criteria of 175-57.1 E. Miss Cline argues that it does not meet E-4 as it states must be off-street parking spot identified, and there's additional requirements for parking in zoning, under parking regulations which were not met. 175-92.1 other requirements, because it is in the C1 district, B – off-street parking and loading requirements.

Miss Cline notes that it is stated in the Planning Board minutes, Steve Webster was noted as stating “nothing's being changed, its just a change of use.” A change of use is what is stated in Article XXII 175-129.

Miss Cline stated regarding impervious materials – the statement was made during the site visit that the lower driveway would be grass covered, therefore would be impervious. This is not exactly right, impervious material can be packed gravel, if its prepared correctly to drive on, it can have grass on it, but it does not absorb anything and will still have runoff.

Miss Cline argues that there is no plan for snow storage or removal, and the plan that was submitted for the ADU does not show required items or what already existing. Questioned how the Planning Board can approve a continual use with no site plan, or a site plan that does not match what is there.

Sabet Stroman asked for clarification on the issue with grass being on the parking space.

Audrey Cline replied the driveway being driven on, in site visit it was noted it would be driven on, but there would be grass on it.

Chuck Sumner responded that it was stated in the winter when the ground is firm, they would park there, but in the summer, it would not be for parking, it would be grass covered.

Audrey Cline stated an approved site plan for conditional use needs to take into consideration what was done prior to the permits. Site plan does not match at all. Stated for this purpose of parking, any place a vehicle is to travel, needs to be prepared, soil packed, packed gravel or a surface that would absorb water.

Sabet Stroman questioned if it is known what went under the gravel, if there is any documentation for it.

Audrey Cline replied that no plans were submitted for those aspects of the site.

Sabet Stroman stated that what the Planning Board had to work with, what the Zoning Board of Adjustments saw, it did seem like the criteria was met, because it showed parking for 3 cars. Miss Cline is saying there are other things, like the way the space was created, that need to be considered.

Jim Steiner, Attorney, Concord NH, appearing on behalf of Mr. Beckwith. Would like to discuss memorandum drafted by town counsel, motion to dismiss filed with the Zoning Board of Adjustments, and address arguments made by Miss Cline.

Suzanne Ryan asked the Town Planner if the Planning Board voted to release the legal opinion.

Tavis Austin stated that the Planning Board chair, Kathy Barnard, requested Miss Spector-Morgan to prepare the memorandum on Friday 2/2/24. The memo was received late in the afternoon by the Town planner office on 2/5/2024.

Suzanne Ryan noted that typically when the Zoning Board of Adjustments gets legal advice, it is the Zoning Board's until they vote to release it.

Sabet Stroman stated she believes it is inappropriate for Mr. Beckwith's attorney to address the Planning Board memo when the Zoning Board hasn't had a chance to go over it, or have their attorney look it over.

Tavis Austin noted that the Zoning Board took jurisdiction of this case, Miss Spector-Morgan's opinion was it could be received as public comments since it is not legal counsel to the Planning Board.

Mr. Steiner stated he filed 3 things on behalf of Mr. Beckwith; Appearance, Motion to dismiss, and a memorandum that rebuts arguments presented to the Zoning Board. Would like to make a brief record regarding the letter from counsel, the letter states no jurisdiction in the Zoning Board. No appeal of Planning Board decision to the Zoning Board, therefore if a board doesn't have legal jurisdiction to address issue, only remedy is to dismiss appeal. Mr. Steiner speaks to the motion to dismiss. Reads letter from James Pineo, Town Manager. "Town can now affirm, 'Town of Wolfeboro has confirmed that Miss Cline does in fact have authority to speak on behalf of Mr. Kent in this case'" Mr. Steiner noted this conclusion legally is not enough, stating if the letter of authorization was not signed by Mr. Kent on 8/26/2023 then no authority was given. Anything that follows, including the appeal is void. The document does not have to be a POA but needs to be a writing signed by Mr. Kent.

Sabet Stroman replied that the Zoning Board did receive a letter of authorization giving Miss Cline authority, that Mr. Kent signed.

Mr. Steiner argued Mr. Kent's signature looks dramatically different on the letter than it does from past signatures on mortgages and deeds. Also noted that Mr. Beckwith spoke with Mr. Kent and asked if he did in fact sign the authorization letter, and Mr. Kent replied that he did not.

Suzanne Ryan stated this will go to Zoning Board's attorney as well. Questioned if this is a civil matter as opposed to a matter for the Zoning Board. Would like Miss Cline to rebut before

continuing the case, addressing the letter that Miss Cline gave the Zoning Board signed on 8/26/2023. Reads letter that gives Miss Cline authority to represent Mr. Kent and his interests for any planning or zoning board processes, sign applications. (Letter is with application in its entirety in file)

Luke Freudenberg, Resident, 68 Center St, Wolfboro noted that the Zoning Board operates under rules and procedures that allow the chair to have anyone approaching the podium under oath.

Audrey Cline stated she does have authority to speak for Mr. Kent. Stated if this is in question then to move for a continuance. Next meeting she would try to bring Mr. Kent in or could do a video of him speaking to her authority or take him to have a letter written up and notarized. This is not a Zoning Board issue.

Suzanne Ryan asked if Miss Cline could get a letter from Mr. Kent.

Audrey Cline replied absolutely. Stated she had spoken to Mr. Kent the day after she found out about Mr. Beckwith's application, and that is when the letter was written. It was not long after that the first appeal was filed. Stated Mr. Beckwith's statement is contradictory to the statement of 2 Town employees that went to see Mr. Kent regarding the letter. Stated the Town Planner and Code Enforcement Officer went to Mr. Kent's home, and asked him if he did sign the letter, and if he was aware of the case, in which Mr. Kent told them yes. If 2 staff members' reports aren't accurate but Mr. Beckwith's are, why would that be?

Chuck Sumner stated 2 employees went to Mr. Kent, verified he did sign the letter, only argument is Mr. Steiner states signatures appear different, which they do, but that is just an opinion.

Suzanne Ryan stated if this authority isn't given to the Zoning Board correctly then we shouldn't be sitting here. However, that is not for the Zoning Board to decide. The attorney will have to determine where we go with this. The issue before us is Mr. Steiner arguing why Mr. Kent's appeal is incorrect.

Mr. Steiner stated for the record the memo from Mr. Pineo does not state definitively Mr. Kent signed the document, just that Miss Cline has authority. Mr. Steiner states 175-57.1 E (4) – the Planning Board found that there is an off-street parking space, it is through the Right of Way off the church parking lot. This same issue is raised under 175-129. The Planning Board did find the parking spaces shown on the plan were enough.

Sarah Silk questions saying as shown, referring to a plan that was given to the Planning Board. Requests the Town Planner show the Zoning Board the plan.

Tavis Austin stated the Town Planner emailed the entire Planning Board file to the Zoning Board and made hard copies available per Suzanne Ryan's request.

Suzanne Ryan noted information was in the box since the morning. Stated Tavis cannot testify to which plan the Planning Board used. Questioned the date on the plan. Date is 9/27/2022.

Mr. Steiner stated the appeal raises an issue with 175-128 C (2) accelerated run-off of surface water from land covered by impervious materials. The Planning Board addressed run-off with the condition that Mr. Beckwith had to construct a trench they specified the dimensions of, and Mr. Beckwith complied. Snow storage and removal, 175-134 A, addressed and approved by the Planning Board as nothing had changed from the original construction. Burden would be on appellant to prove the trench is not adequate. The Planning Board reviewed and concluded that the driveway met requirements.

Sabet Stroman asked Mr. Steiner if he had read the minutes from the Planning Board meeting or watched the video. The Planning Board assessment of the parking was only related to the parking space itself, never about impervious surface and issues that could come further down the road. The Town Planner summarized false statements to the Planning Board. One of them being he stated "no one has demonstrated an increase in volume because of anything that occurred on the Beckwith property. The majority of water is coming from the church." Believe there is a disconnect between what the Planning Board supported versus what Miss Cline is contesting.

Mr. Steiner responded that the water does and has come from the church.

Sabet Stroman stated historically it has, but from site visits, meetings, and what neighbors are saying, it comes from Mr. Beckwith's property.

Mr. Beckwith stated he has a letter from landscaping company, Goose Corner Landscape, that with the wettest year yet, there is no difference between 2022 and 2023 in the way that he prepared Mr. Beckwith's property and Mr. Hart's. Company was retained by the Beckwith's and the Hart's. Did Hart's driveway, and Mr. Beckwith's retaining wall, addressing drainage.

Chuck Sumner questioned statement from landscaper as it states, "it takes into consideration the excessive rainfall this season and pertains only to my ability to mow the lawn."

Sarah Silk noted that they still have not seen an engineer stamp.

Mr. Steiner stated it addresses the impact of water. Stated there is nothing in the Planning Board rules for approval that require an engineer, only that the criteria for approval is met. The Planning Board concluded they had the information needed and criteria had been met. If Miss Cline wants to challenge, she would need to bring an engineer before this board to prove her point.

Chuck Sumner stated that run-off is not an issue for Mr. Kent. Not applicable.

Sabet Stroman reads 175-128 C (2) which states it protects adjoining lots and the general public from hazards and nuisances such as accelerated runoff of surface water from land covered by impervious materials. There for Miss Cline is not wrong to address something that may not directly affect Mr. Kent if it is still impacting others.

Mr. Steiner responded in law for someone to have a right to an appeal they have to someone damaged. If there were neighbors who were a party to this appeal that live down stream from

Mr. Beckwith, they would have a standing. Have addressed all concerns brought by Miss Cline, does not believe they have merit.

Suzanne Ryan stated it was asked in the Planning Board meeting if the board or Town Planner had been given the Zoning Board previous decision, they had not. Believe if they had, it would have given them insight into what they were looking at.

Mr. Steiner stated decisions by the Planning Board and Zoning Board have different criteria. This is a new application. The Planning Board did make a conditional finding, and Mr. Beckwith met it.

Luke Freudenberg, Resident, 68 Center St Wolfeboro – Stated the biggest issue is jurisdiction. The Planning Board erred in their approval from the perspective of the Zoning Board. Mr. Freudenberg stated he asked AI on his phone about jurisdiction. In summary it stated Zoning Boards do not typically have jurisdiction over decisions made by the Planning Board. These two boards serve two different functions for town governments. Planning Boards create and implement land use policies and plans, review and make decisions on development plans and consider zoning regulations, community needs, long-term planning goals, and environmental impact. Zoning Boards primarily deal with zoning related matters, such as variances, appeals related to zoning regulations and exceptions. If a decision by the Planning Board is appealed or challenged it would typically be reviewed by a higher authority such as a court or legal authority. Mr. Freudenberg stated he does not believe the Zoning Board has jurisdiction to review this case.

Suzanne Ryan questioned which State of New Hampshire law Mr. Freudenberg read.

Mr. Freudenberg responded he didn't, however there is, it is in the packet the Zoning Board was given.

Sabet Stroman stated Mr. Freudenberg raised a good point with jurisdiction. Asked Suzanne Ryan if jurisdiction ever came up with Zoning Board attorney and did, they ever indicate that the Zoning Board didn't have jurisdiction.

Sarah Silk replied attorney never said we did not.

Mr. Freudenberg stated jurisdiction is the biggest issue. If this board does not have jurisdiction over this case, everything else is a waste of time. The Planning Board ruled he could do this ADU.

Suzanne Ryan reads the bottom paragraph on the notice of decision from the Planning Board from 12/5/2023. "Any person aggrieved by the decision of the Planning Board may within 30 days from the date of the decision file an appeal with the Carroll County Superior Court or were applicable file an appeal with the Zoning Board of Adjustments pursuant to 676:5-III." So, there is an avenue for the Zoning Board to review.

Mr. Freudenberg stated there was no discussion on jurisdiction. Opened the case and cannot give jurisdiction back. Needed to discuss jurisdiction and have that argument.

Suzanne Ryan responded, made a reading into the record, called for a vote, all agreed and taking advice from the attorney.

Miss Cline speaks to jurisdiction. Stated Planning Board and Zoning Board have authorities. Planning board if you look at land use regulations, those are under Planning Board jurisdiction, except when talking about something that is regulated by zoning. They have to follow the zoning ordinance or send them to the Zoning Board. Zoning Board is the final authority on how to read and apply zoning. Zoning terms or zoning items can be appealed to the Zoning Board. The Planning Board can also do conditional or special use permits, also known as creative land use controls, which cannot be appealed to the Zoning Board, those have to go to Superior Court of the Housing Board of Appeals. It is easy to see this as a conditional use which can't be heard by the Zoning Board, however this particular case in the section for ADU, 175-57.1, is a zoning section, once they meet this then they go to a conditional use requirements, but have to meet 175-57.1 A-E first. E is the one being questioned, parking falls under the Zoning Board because it's a zoning regulation. Believe zoning terms are applicable to the Zoning Board. Immediate abutters have taken their case to the Housing Board of Appeals, based on the conditional use criteria. Mr. Freudenberg's issue – the whole point of appeal is the Planning Board did not take things in the zoning ordinance into account. Site plan – original site plan for garage does not show any parking, no need for it as they were not at the point of applying for ADU. The new site plan shows a car there now, so area had to be developed to permanently park cars there.

Cate McMahon questioned if a permit is needed to have impervious material there to make a parking spot.

Miss Cline responded where it is requiring a parking space, it means the space needs to be made with something you can drive on that will last. Requires certain types of construction, yes.

Miss Cline spoke to the snow storage – there is no complete plan for this. Stated snow from the front of the house could create runoff that goes into the road and freezes. This would be a public problem with runoff, may or may not impact Mr. Kent's property but he utilizes the road all the time. Need a good workmanship plan.

Mr. Beckwith stated has had a driveway for 30 years. Runoff has not changed. Changed driveway from being long to shorter and wider. Added bigger building, put gravel, putting a big lawn adjacent to the patio. The patio is pitched, lawn will be pitched to go directing into a ditch that will hold heavy runoff.

Suzanne Ryan asked Mr. Beckwith for the continued meeting to bring record of easement or arrangement that he has with the church.

Miss Cline requested to submit 2 overhead photos from 2020 to the record.

Suzanne Ryan reads NH RSA 674:33-I (a), 674:33-II and 674:33-III. See attached. Stated decision will be made by the attorney if the Zoning Board is wrong.

Sarah Silk asked Mr. Steiner if he could show where the snow storage is on the plan.

Mr. Steiner replied he could not as what his client explained occurred. The Planning Board heard, and decided it met the criteria. Mr. Beckwith explained it as it's been the same for the last 30 years and the Planning Board accepted that.

Sarah Silk responded that Mr. Beckwith has a new parking place behind the ADU, questioned where the snow removal for this parking place is.

Mr. Steiner replied simple answer is right adjacent to where the driveway is on his property.

Sabet Stroman noted Planning Board did not discuss snow removal after reviewing the minutes.

Mr. Steiner would like to address 3 issues brought up by Miss Cline. Examples she has given do not apply to Beckwith approval. Appeal to housing board is not relevant. Road water freezing is relevant to the town, not Mr. Kent or Mr. Beckwith.

Suzanne Ryan stated would like to discuss the continuance of meeting.

Discussion on dates in February that would work for members of the board to have a quorum.

**It is moved by Suzanne Ryan to meet Thursday February 22, 2024 @ 6PM at Town Hall. Cate McMahon seconded. Roll Call vote: Sabet Stroman – yes, Sarah Silk – yes, Cate McMahon – yes, Chuck Sumner – yes, Suzanne Ryan – yes. Motion passed (5-0-0).**

### III. Adjournment

**It was moved by Suzanne Ryan to adjourn the February 5, 2024, Zoning Board of Adjustment meeting.**

There being no further business before the Board, the meeting was adjourned at 9:15 pm.

Respectfully Submitted,  
Sierra Pawnell  
Sierra Pawnell

ZBA Viewing 2-5-24

Tax Map & Lot #217-013-000

Case #02-AAD-24

Members Present: 3:00 PM Sabet Stroman, Charles Sumner, Cate McMahon (alt), 3:05 PM Suzanne Ryan, Vice-Chair & Sarah M Silk, Clerk

Others: Robert Beckwith, Property Owner

Mr. Beckwith explained that the lower gravel driveway would become grass covered, therefore no driveway would go to the garage doors on the lower level. A trench 10' long, by 2' wide, by 18" deep was built by himself approximately Dec 5<sup>th</sup> 2023 immediately following Planning Board approval.

A question was asked for its specific location as the lower area is snow-covered. Mr. Beckwith indicated it started at the rear corner of a small building on Hart's property (lot# 217-014-000) adjacent to Beckwith's property, extending further behind said building's back left corner toward the church lot (#217-09-000). The point of origin was indicated as the area where some silt fencing is exposed thru the snow.

The 18" deep trench is fabric covered with crushed stone. Mr. Beckwith called it a "French drain" and indicated there had been no engineer involved.

In response to a question, the applicant explained the parking on the upper level was immediately behind the ell. Parking was a few feet from the external stairs to the 2<sup>nd</sup> floor with the heat pump for the garage set back under the steps and screened with lattice. Access to parking is thru the First Christian Parking lot (lot #217-010-000).

When asked, Mr. Beckwith replied the crushed stone to the right of the ell (near abutter Bainton lot #217-012-000) would not be a drive thru to Libby Street.

Respectfully submitted,

Sarah M Silk, ZBA Clerk

Zba2-5-24

# TOWN OF WOLFEBORO ZONING BOARD PUBLIC NOTICE

In the Great Hall  
Monday, February 5, 2024 7:00 PM

Roger Kent – 16 Libby Street – Tax Map #217-13 -Case # 02-AAD-24 -  
Public Hearing for a Appeal of Administrative Decision under

- Chapter 175, Article XXII § 175-128 C (2) Off-Street Parking and Loading Requirements per Chapter 175, Article XIV §175.92.1 B.
- Chapter 175, Article VII § 57.1 E (4) “the minimum of one dedicated off-street parking space shall be provided for the ADU”.
- Chapter 175, Article XXII § 175.129. Issuance of Permits
- Chapter 175, Article XXII § 175-134 A. Availability of spaces

Formal Submission/Public Hearing

\*\* A Site Visit will be held at 3:00 PM \*\*\*

Plans and materials related to these applications can be  
viewed at the Planning & Development office.

1/25/24

PS-A19

95N

# TITLE LXIV

## PLANNING AND ZONING

### CHAPTER 674

#### LOCAL LAND USE PLANNING AND REGULATORY POWERS

#### Zoning Board of Adjustment and Building Code Board of Appeals

#### Section 674:33

##### **674:33 Powers of Zoning Board of Adjustment. –**

I. (a) The zoning board of adjustment shall have the power to:

(1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;

(B) The spirit of the ordinance is observed;

(C) Substantial justice is done;

(D) The values of surrounding properties are not diminished; and

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(b)(1) For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(B) The proposed use is a reasonable one.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

(3) The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

(c) The board shall use one voting method consistently for all applications until it formally votes to change the method. Any change in the board's voting method shall not take effect until 60 days after the board has voted to adopt such change and shall apply only prospectively, and not to any application that has been filed and remains pending at the time of the change.

I-a. (a) Variances authorized under paragraph I shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

(b) The zoning ordinance may be amended to provide for the termination of all variances that were authorized under paragraph I before August 19, 2013 and that have not been exercised. After adoption of such an amendment to the zoning ordinance, the planning board shall post notice of the termination in the city or town hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice. The notice shall state that variances authorized before August 19, 2013 are scheduled to terminate, but shall be valid if exercised within 2 years of the expiration date of the notice or as further extended by the zoning board of adjustment for good cause.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in

part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

III. The concurring vote of any 3 members of the board shall be necessary to take any action on any matter on which it is required to pass.

IV. (a) A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

(b) Special exceptions authorized under this paragraph shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception.

(c) The zoning ordinance may be amended to provide for the termination of all special exceptions that were authorized under this paragraph before August 19, 2013 and that have not been exercised. After adoption of such an amendment to the zoning ordinance, the planning board shall post notice of the termination in the city or town hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice. The notice shall state that special exceptions authorized before August 19, 2013 are scheduled to terminate, but shall be valid if exercised within 2 years of the expiration date of the notice or as further extended by the zoning board of adjustment for good cause.

V. Notwithstanding subparagraph I(a)(2), any zoning board of adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

(a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.

(b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance, that the variance shall survive only so long as the particular person has a continuing need to use the premises.

VI. The zoning board of adjustment shall not require submission of an application for or receipt of a permit or permits from other state or federal governmental bodies prior to accepting a submission for its review or rendering its decision.

VII. Neither a special exception nor a variance shall be required for a collocation or a modification of a personal wireless service facility, as defined in RSA 12-K:2.

VIII. Upon receipt of any application for action pursuant to this section, the zoning board of adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.

**Source.** 1983, 447:1. 1985, 103:20. 1987, 256:1. 1998, 218:1. 2009, 307:6. 2013, 93:1, 2, eff. Aug. 19, 2013; 267:9, eff. Sept. 22, 2013; 270:3, eff. Sept. 22, 2013. 2018, 75:1, 2, eff. July 24, 2018; 168:1, 2, eff. Aug. 7, 2018; 214:1, eff. Aug. 7, 2018. 2022, 272:74, eff. Aug. 23, 2022.