

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
March 10, 2022, 7:00 PM
New Durham Town Hall
APPROVED May 2, 2022**

PRESENT

Terry Jarvis, Chair
Linda Callaway, member
David Bickford, member

MEMBERS ABSENT

Wendy Anderson, Vice Chair – Excused

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant
Tom Varney, Varney Engineering, LLC
Joshua Thibault, Varney Engineering, LLC
Mary Patry, applicant
Gevry Fontaine, applicant
Ann Richard, resident
Ken Lance, applicant
Stephanie Richard, Changing Seasons PPLC

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:00PM.

Chair Jarvis read into the record a letter of resignation from Board member Stephanie Richard. She stated that will leave four members of the Board and there are no alternate members.

Review and Acceptance of Case #2022-001

An application submitted by Varney Engineering LLC, on behalf for Kenneth Lance of 213 Middleton Road, Map 246 Lot 3.

The applicant is requesting a Special Exception to:

- Article VII Section A.1: Special Exceptions. Dimensional Requirements for Town of New Durham. Uses Permitted by Special Exception. He wishes to increase the hours of operation at the Brewery and Restaurant.

Chair Jarvis asked the applicant if he wants to continue with having the case heard with only three members of the Board present. Mr. Lance stated he wants to go forward.

Chair Jarvis asked if any member of the Board has a real or perceived conflict of interest with hearing the case. None was indicated.

Chair Jarvis asked if any member of the public feels a member of the Board has a real or perceived conflict of interest with hearing the case. None was indicated.

Chair Jarvis stated when this property was previously heard in another case, the Board agreed there would be a Regional Impact; she asked if with the hours of operation going from 13 hours per week to 63 hours per week, do they need to consider whether this change results in a Regional Impact. Ms. Callaway stated no; Mr. Bickford stated he doesn't know, but it was previously noted traffic comes from Middleton. Chair Jarvis stated previously, Strafford Regional Planning Commission did have concerns, but they couldn't be addressed by the local municipality. She noted no comments were received from the towns of Wolfeboro or Middleton. Ms. Callaway asked if the proposed number of hours is the maximum. It was confirmed that is correct, but they are not necessarily going to be open the maximum number of hours allowed. The Board agreed there would be no Regional Impact.

The Board reviewed the application for completeness.

Motion: *The application for Case #2022-001 is complete.* Motion by Chair Jarvis. Seconded by Ms. Callaway. There was a question as to whether all abutters were properly notified; Ms. McClain reviewed the certified mail receipts. Ms. Callaway noted the list of abutters is the same as the case previously reviewed and accepted. It was determined there are different addresses listed among different data systems and files. Staff was requested to notify the Town Administrator of the need to reconcile the discrepancies regarding the abutter information between the town's assessing and mapping systems.

Chair Jarvis withdrew her motion. **Motion:** *To continue the review for Case #2022-001 until April 12, 2022; the Town of New Durham shall be responsible for sending out an additional notice to the current mailing address of Mr. Ellis.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Motion passed, 3-0-0.**

Review and Acceptance of Case #2022-002

Application submitted by Changing Seasons Engineering PLLC, on behalf of Joseph & Mary Patry and Robert & Gevry Fontaine of 224 Kings Highway, Map 209 Lot 2.

They are requesting Variances to:

- Article V Section B.1: Dimensional Requirements for Town of New Durham. The following dimensional requirements shall apply to land within the Town of New Durham. Except as noted below, all lots shall have frontage on a Class V or better road meeting the requirements for road frontage of this ordinance. Any subdivision approval of such a lot or lots must pass a percolation test and have state approval for a septic facility prior to a building permit to be issued.
- Article V Section C: Dimensional Requirements for Town of New Durham. Road Frontage. The minimum road frontage on a road built to Town Standards and approved by the Planning Board shall be based on lot size and specified in Table 2.
- Article V Section D: Setbacks. No new building shall be less than twenty (20) feet from the road frontage property line of any road or fifteen (15) feet from the property line of an abutter.
- Article VI Section C.3.a.i: General Provisions/Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks a. No privy,

cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed: less than one hundred twentyfive (125) feet from the edge of a public water body.

- Article VI Section C.3.a.ii: General Provisions/Use Regulations for Town of New Durham. General Requirements. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed less than seventy-five (75) feet from any well, or from a dwelling other than to which it is appurtenant.
- Article XIV Section C.1.e: Shorefront Conservation Overlay District. Dimensional Requirements 1. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements. Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.
- Article XXI Section C.1: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: 1. They conform to Non-Conforming Setback and height requirements below; and,
- Article XXI Section C.2: Non-Conforming Buildings, Land or Uses. New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance.
- Article XXI Section G.1.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. The following setbacks are required for non-Conforming buildings, land and uses addressed by this Article. 1. Leach fields: Not less than seventy-five (75) feet from open surface water or hydric A wetlands or fifty (50) feet from hydric B wetlands.
- Article XXI Section G.2. No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.

Chair Jarvis asked the applicant if they want to continue with having the case heard with only three members of the Board present. They indicated they want to continue.

Chair Jarvis asked if any member of the Board has a real or perceived conflict of interest with hearing the case. None was indicated.

Chair Jarvis asked if any member of public feels a member of the Board has a real or perceived conflict of interest with hearing the case. None was indicated.

The Board reviewed the application for completeness. Chair Jarvis stated they need to determine who owns the right-of-way (R.O.W.); the deed is not clear whether there is a right-of-passage over the ROW. Ms. Richard stated it is her understanding that the ROW is owned by the Town. Chair Jarvis stated if it is owned by the Town, they may need to require the applicants to upgrade the road to Class V standards. The applicant explained there has been one deed from the original

owner to them but there is nothing in the deed; she also explained there are Town signs on the road. A copy of an older deed was presented for review. The applicant stated that currently the Town maintains the road/R.O.W. to the camp road, the point where their driveway would begin. Chair Jarvis stated if the Town is maintaining it, they need to determine to what standards.

Ms. Richard asked if the Board would look at the waiver requests. Chair Jarvis stated she doesn't feel she has enough information to make a decision on the waivers as she concentrated her research on the right-of-way issue.

Motion: *To continue the review of application for Case #2022-002 to the next meeting, April 12, 2022.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Motion passed, 3-0-0.**

Review of ZBA procedures, application and check list for compliance with the Zoning Ordinance amendments

Chair Jarvis presented draft procedures she prepared in anticipation of the passage of the Planning Board proposed zoning amendments for review by the Board. She stated any applications which come in after Tuesday, would have to meet the revised criteria of the Shoreline Conservation Overlay District ordinance.

Motion: To approve the New Durham Zoning Board of Adjustment Rules and Procedures as amended at the March 10, 2022 meeting. Motion by Ms. Callaway. Seconded by Mr. Bickford. **Motion passed, 3-0-0.**

The Board reviewed the application checklist. Edits were made.

Motion To approve the New Durham Zoning Board of Adjustment Special Exception in the Shorefront Conservation Overlay District application and check list as amended at the March 10, 2022 meeting. Motion by Ms. Callaway. Seconded by Mr. Bickford. **Motion passed, 3-0-0.**

APPROVAL OF MINUTES

Meeting of December 14, 2021– Postponed.

Next Meeting: April 12, 2022

ADJOURN

Motion: To adjourn. Motion by Chair Jarvis. Seconded by Ms. Callaway. **Motion passed, 3-0-0.**
The meeting was adjourned at 8:57PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary