

**TOWN OF NEW DURHAM  
ZONING BOARD of ADJUSTMENT  
December 12, 2023, 7:00 PM  
*New Durham Town Hall, New Durham, NH 03855***

**MEMBERS PRESENT**

Terry Jarvis, Chair  
Linda Callaway, Member  
David Bickford, Member  
Heather Freeman, Member  
Bill Meyer, Member

**ALSO PRESENT**

Susan Stillwell, Land Use Assistant  
Josh Thibeault, Varney Engineering  
Thomas Varney, Varney Engineering  
Eugene J. Dean (EJ), Applicant - via Zoom

**CALL TO ORDER**

Chair Jarvis called the meeting to order at 7:01 PM.

Introductions were made of the Board members.

Chair Jarvis outlined the Board's Rules and Procedures for public hearings for applicants and participants.

**Review and Determination for Completion of Case 2023-015**

*An application submitted by Thomas Varney of Varney Engineering LLC on behalf of Eugene J. Dean, Manager, for property located at Valley Road, Map 257 Lot 001.*

The applicant is requesting a Variance to:

**Article IX. Town Center Mixed Use Zoning District. Section C. 1.** Maximum footprint of an individual building or structure: 6,000 feet.

Chair Jarvis confirmed all fees were paid, abutters notified, and public postings done.

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

Chair Jarvis asked if anyone in the public has a real or perceived conflict with any members of the board hearing the case. None was indicated.

In July 12, 2022, the applicant received a Special Exemption from the ZBA allowing a commercial business in an area zoned as Residential – Rural - Agricultural. It has since been determined the property is in the Town Center Mixed Use zone. On November 11, 2022, Site Plan approval was received from the New Durham Planning Board.

Chair Jarvis stated a letter was received from Mr. Varney dated December 1, 2023, requesting a waiver to the 1" = 20' scale as required as the plans would not be manageable due to size. Chair Jarvis stated she agrees that since the property is in excess of 18 acres, it would be unmanageable.

**MOTION:** *To grant the waiver for a request for the plans to be 1" equal to 20 feet due to the size of the lot.* Motion by Chair Jarvis. Second by Mr. Bickford. **Roll Call Vote:** Mr. Bickford - aye; Ms. Freeman - aye; Ms. Callaway - aye; Mr. Meyer - aye; Chair Jarvis - aye. **Motion passed 5-0-0.**

**MOTION:** *The application for Case #2023-015 is complete and has sufficient information in the application package so the Board can make a decision.* Motion by Chair Jarvis. Second by Mr. Meyer. **Roll Call Vote:** Mr. Bickford - aye; Ms. Freeman - aye; Ms. Callaway - aye; Mr. Meyer - aye; Chair Jarvis - aye. **Motion passed 5-0-0.**

Chair Jarvis read the public notice into the record and opened the public hearing at 7:09 PM.

Tom Varney, Varney Engineering LLC, representative for the applicant, stated the property is located on Valley Road, along Route 11; the applicant purchased this property in 2022 for storage of carnival trucks and equipment. Mr. Varney stated Zoning Board of Adjustment and Planning Board approvals were obtained in 2022. An aquifer study was completed as part of the process. He stated the building will not be in view from the road; the previous approval was for four buildings. Mr. Varney explained the lot was previously an excavation pit and work was done to improve the drainage of water on the lot. The lot will be used seasonally, after fair season is over, roughly the end of October to early April. Chair Jarvis noted the previous proposal was for about 16,000 square feet of building and the new proposal is nearly 36,000. Mr. Dean explained the sizing the buildings is due to how they are engineered and constructed, and to maximize the use of the space.

Mr. Bickford asked if there is anything different for runoff from the larger buildings than the smaller ones. Mr. Varney stated he doesn't believe so; a drainage pond was added for water coming across the road through the culvert.

Chair Jarvis asked if any heavy equipment will be in use on site or in the building. Mr. Dean stated the only equipment on site will be tractors for loading and unloading materials.

Chair Jarvis stated there was previously a discussion with the Planning Board about the property owner submitting an Operations and Maintenance Manual Log to the Building Inspector as part of Best Management Practices. It was clarified that would still apply. It was confirmed the storage won't be used for any other types of vehicles.

Chair Jarvis closed the public hearing at 7:28 PM.

Discussing and deliberating this case will be: Mr. Meyer, Ms. Callaway, Ms. Freeman, Mr. Bickford and Chair Jarvis.

**Findings of Fact:**

- The applicant has received a waiver from the requirements that plans shall be 1 inch = 20 feet.
- On July 12, 2022, the applicant received a Special Exemption from the ZBA allowing a commercial business in an area zoned as Residential – Rural – Agricultural. It has since been determined the property is in the Town Center Mixed Use Zone
- On November 11, 2022, Site Plan approval was received from the New Durham Planning Board; however, new approval will be needed as the site plan has changed.
- The property is 18.69 acres.
- The property is a reclaimed gravel excavation pit and was used as a commercial endeavor. This included storing and selling mulch.
- Access to the property is from Valley Road
- The existing drive will be used as an entrance and is 15 feet wide.
- The entrance will be paved to 50 feet off Valley Road
- A gate will be installed 60 feet from the roadway for security purposes.
- There will be one large storage building of 36,000 square feet and one 3,600 square feet building for repair work.
- The proposed building coverage will be 4.8%.
- The impervious coverage will be 19.5%.
- The proposed buildings will be 33 feet in height.
- The proposed building will be 170 feet from the road.
- The building will be 210 feet from all lakes, ponds, intermittent, and perennial streams, rivers and/or vernal ponds.
- The buildings will not be visible from Route 11 or from Valley Road.
- A new well is to be installed.
- A new septic system is to be installed.
- The repair building will have a bathroom.
- The building floor is to be partially paved to capture drippings from the equipment.
- There will be a maximum of 5 employees.
- Five parking spaces (9 feet by 21 feet) will be provided.
- There will be no public hours of operation.
- There may be up to 60 trailers or pieces of equipment stored there.
- Equipment may be stored there from mid-October to early April.
- In 2022 a stormwater management plan was completed and sent to New Durham for approval.
- The owner will submit an “**Operations and Maintenance Manual Log**” for stormwater management to the Building Inspector/Code Enforcement Officer each December.
- The owner will submit an “**Operations and Maintenance Plan Certificate**” to the Building Inspector/Code Enforcement Officer before the Certificate of Occupancy shall be issued.
- The “NH DES “**Best Management Practices for Groundwater Protection**” shall be followed at all times.

***Discussion Variances Article IX, Section C. 1.***

*Granting the variance would/would not be contrary to the public interest:* Chair Jarvis stated it would not be contrary to the public interest and she understands the need to make changes to the previously approved plans and prefers to see one building instead of multiple buildings. Mr. Meyer stated it's not contrary and is not visible from the road, so it maintains the rural character. Ms. Callaway stated it is not contrary because it is a large lot, and it will be well hidden. Ms. Freeman stated it is a good use for the property and is not contrary. Mr. Bickford agreed it is not contrary.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated it is in the spirit of the ordinance because it is improving what is there. She stated most of the activity will occur a couple times per year. Mr. Meyer stated it is in the spirit because there won't be a visible change in the neighborhood. Ms. Callaway stated it is a good use for the property with one building. The Board agreed.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated it will do justice to the property owner and makes the lot more taxable. The Board agreed.

*For the following reasons the values of surrounding properties would/would not be diminished:* The Board agreed values would not be diminished as the building won't be visible from the roadways; no objection was received from abutters.

*Unnecessary Hardship:* The Board agreed the size of the property is unique. Chair Jarvis stated the restriction would be more appropriate for a denser area. Ms. Callaway stated it is an appropriate use for the lot. Ms. Freeman stated there are limited ways for this property to be repurposed as the previous use was a commercial gravel pit. Mr. Bickford agreed this is an appropriate use.

**MOTION:** *Based on the plans dated November 20, 2023, the application signed November 17, 2023, tonight's Public Hearing, the Findings of Fact and Evidence in the Record to grant a variance to:*

***Article IX Section C. Dimensional Requirements. 1. The following dimensional requirements represent minimum requirements within the Town Center Mixed Use District. (See Table 5) Dimensional requirements in Article V apply unless specifically identified in this Article. At the discretion of the Planning Board,***

***Table 5: Dimensional Requirements for Town Center/Mixed Use District: Maximum Footprint of an Individual Building or Structure is 6,000 feet. This variance will allow for a structure of 36,000 square feet.***

***With the following conditions:***

- The applicant shall obtain a New Hampshire Department of Environmental Services Septic System approval.
- The applicant shall receive approval from the New Durham Health Officer for the septic system.

- The applicant shall receive revised Site Plan approval from the New Durham Planning Board.
- The applicant shall comply with all applicable federal, state, county and municipal laws, regulations, and ordinances.
- The applicant shall submit “As Built” plans to the New Durham Building Inspector at the conclusion of construction before a Certificate of Occupancy is issued.
- The applicant shall have all drainage/stormwater construction plans signed by the plan designer and the Building Inspector.
- The owner will submit an “**Operations and Maintenance Manual Log**” for stormwater management to the Building Inspector/Code Enforcement Officer each December.
- The owner will submit an “**Operations and Maintenance Plan Certificate**” to the Building Inspector/Code Enforcement Officer before the Certificate of Occupancy shall be issued.
- The NH DES “**Best Management Practices for Groundwater Protection**” shall be followed at all times.

Motion by Chair Jarvis. Second by Mr. Bickford. **Roll Call Vote:** Mr. Bickford - aye; Ms. Freeman - aye; Ms. Callaway - aye; Mr. Meyer - aye; Chair Jarvis - aye. **Motion passed 5-0-0.**

***Update: Location of New Septic Tanks***

Chair Jarvis stated that a request was received from the Building Inspector that septic tanks no longer be required to be 125 feet from a water body; she stated this request was sent to the Town Engineers, Weston and Sampson, by the Planning Board for their consideration. A response dated December 4, 2023 was reviewed by the Board. It was agreed that the NH DES standards are appropriate to follow, and the Town Engineers have no problem if the Town wants to adopt those standards. It was noted consideration will need to be given to the current leach bed setback requirements. The Planning Board will continue to do research to determine appropriate leach bed changes. Mr. Varney stated it will make it easier to fit the septic systems on to the smaller lots; he stated the reduced setbacks will also reduce the properties that need to come before the Board. The Board discussed the changes in the setbacks over the years as well as the changes in septic system technologies.

***Response from NHMA Regarding Changes to Plans After Approval***

Chair Jarvis stated she has discussed some suggestions with the Planning Board Chair and will be forwarding them to Town Counsel. She stated she wants to avoid cases bouncing back and forth between the boards multiple times.

***Information from October 2023 OEP Program***

Chair Jarvis stated Ms. Callaway and Ms. Freeman attended the training; the information brought up at the training was reviewed and discussed by the Board.

***Planning Board Chair’s Proposed Zoning Ordinance Changes***

The Board reviewed proposed zoning ordinance changes by the Planning Board. Chair Jarvis stated the changes are to the Shoreline Conservation Overlay District Ordinance, Article XIV and relative to grandfathering.

The public hearing is scheduled for January 2, 2024.

***Review of Adjusted Fee Sheet (Adjusted for Postage)***

The Board reviewed the proposed adjustments to the fee schedule. Chair Jarvis explained a public hearing is not needed because the adjustments are for costs being recouped such as filings and advertising public notices. She stated she has asked Ms. Stillwell to track her time for cases over the next few months so we can determine if the application and other fees are appropriate.

**APPROVAL OF MINUTES**

Meeting of November 14, 2023 – Edits were made. **MOTION:** *To approve the minutes as amended.* Motion by Mr. Meyer. Second by Ms. Callaway. **Roll Call Vote:** Mr. Bickford - aye; Ms. Freeman - aye; Ms. Callaway - aye; Mr. Meyer - aye; Chair Jarvis - aye. **Motion passed 5-0-0.**

**CORRESPONDENCE**

The Board reviewed the following:

- Notice of Decision from Planning Board RE: Map 113, Lot 052 & 059 (Federico)
- Notice of Decision from Planning Board RE: Map 253, Lot 044 (Meetinghouse)
- Notice of Decision from Planning Board RE: Map 108, Lot 022 (Brault & DeMarino)

**NEXT MEETING:** January 9, 2024

**ADJOURN**

**MOTION:** *To adjourn the meeting.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 5-0-0.**

The meeting was adjourned at 9:10 PM.

Respectfully Submitted,

*Jennifer Riel*

Jennifer Riel, Recording Secretary