

**NEW DURHAM ZONING BOARD OF ADJUSTMENT**

**New Durham Town Hall**

**February 14, 2019, 7:00p.m.**

**Present**

Wendy Anderson, Vice Chair

Stephanie Richard, Member

Art Hoover, Member

Paul Raslavicus, Alternate Member

Linda Callaway, Alternate Member

**Excused Absence**

Terry Jarvis, Chair

David Wessel, Alternate Member

**Also Present**

John Abbott, Building Inspector

Karen Dapkus, Applicant

Michael Dapkus, Applicant

Jay MacNamee, Applicant

Dante Demichaelis, Abutter to Dapkus

**Call to Order**

Vice Chair Anderson called the meeting to order at 7:02pm. She stated it is with regret that she received notice that Ms. Martin has passed away.

**Approval of Minutes**

Site Walk of November 15, 2018 – Edits were made. **Ms. Richard made a motion to approve the minutes as amended. Mr. Hoover seconded the motion. Motion passed, 5-0-0.**

Meeting of January 8, 2019 – Edits were made. **Mr. Raslavicus made a motion to await approval of the minutes for Ms. Callaway's transcription of the meeting and to review them at the March 14 meeting. Ms. Anderson seconded the motion. Motion passed, 5-0-0.**

**Review and Acceptance: Case 2018-004 – Request for Variances from Article V, Section E; Article XIV, Section C.1.b**

The Board reviewed and discussed the application for variances. Mr. Raslavicus questioned whether the footprint would be more than 150 square feet, which is not permitted and is not in line with other parts of the Ordinance. It was clarified that any accessory structure cannot be larger than 150 square feet. The applicant explained the proposed plans and noted the structure was included when he went before the Planning Board for a conditional use permit. However, the permit approved by the Planning Board was with the removal of the structure, noting the State shoreline permit was approved

**APPROVED**

with the structure. The Board continued to review the application however the applicant will be allowed to amend the application to either remove the structure or to request an additional variance to allow the structure. It was noted the plan is not 1:20 scale and the Board concurred a waiver could be granted for that as the plans are sufficient.

**Ms. Anderson made a motion to postpone review and acceptance of the application for Case 2018-004 as it has been found incomplete regarding Article XXI, G.4.c, and the applicant can come to the next meeting of March 14, 2019 with the information required. Mr. Raslavicus seconded the motion. Motion passed, 5-0-0.**

**Administrative Appeal of Case 2018-011 – Denial of Home Occupancy Permit by Building Inspector, Map 109, Lot 54, 29 South Shore Road**

Vice Chair Anderson asked if any Board members have a conflict with hearing this case. None was noted and the applicant has no conflict with any members of the board.

Vice Chair Anderson stated this application is for an appeal of a decision made by the New Durham Building Inspector. The Board reviewed the application and packet submitted by the applicants which included an abutters list and it was stated that Ms. Zuzgo confirmed all abutters were notified of the hearing. Vice Chair Anderson outlined the process of the public hearing which begins with statements by Town officers, followed by rebuttals, public comment and then deliberations by the Board. It was noted that the applicants are trustees of the property, which is in trust.

Michael Dapkus, applicant, stated that in 2003, when he bought the business and made changes to the garage to accommodate a business, he came to the Town Hall and talked to Dave Lindberg, the then Building Inspector, going through the information about the business and changes to the property. He was told to go ahead and do what he wanted to do. He is unsure if Mr. Lindberg did any paperwork regarding it but it was on his authorization that the applicant started running his business out of the building, noting this is his 16th year doing the same business in the same building. Mr. Dapkus stated the Building Inspector told him that Mr. Lindberg did not have the authority and said a form needed to be filled out. He also explained the process and communications he has had recently with the Building Inspector; he explained the hardships that are being created for him at this point. Mr. Dapkus explained he has two part time, seasonal employees, and no retail shop; employees come and go once a day. He stated that the cease-and-desist will cost him tens of thousands of dollars to relocate.

Ms. Richard asked for detail about the complaint that is noted. Mr. Abbott stated it was a general complaint which was relayed to him by the Board of Selectmen and he was directed by them to act on all verbal complaints because people are afraid of retribution. He explained the objection was noise (compressor) in the summer time. He explained the observations by the past building inspector as well as observations he had of Ordinance violations.

**APPROVED**

Mr. Hoover stated the Town does have a noise Ordinance but it doesn't address anything like this. Mr. Abbott stated the Ordinance he is trying to enforce is the home occupation Ordinance and outlined the details regarding noise that he is interpreting and applying to this case.

Mr. Abbott reiterated his actions in this case which include investigation of any and all complaints, this one being in regards to a home occupation. He outlined the specifics of the Ordinance which is to be inside the home and operated by a resident. Mr. Abbott explained he denied the application because the applicant doesn't qualify as a resident. He stated there is also no permits on record for all the work done to the property.

The applicants explained the work done which includes putting an air conditioner in the garage, noting it is a residential home unit; Mr. Dapkus stated he is at the property full time for seven months of the year. They stated that if they had been informed of needing a permit at any point along the way, they certainly would have done so.

The applicants confirmed they are registered to vote in Nashua and it is their legal address. Mr. Raslavicus asked Mr. Dapkus if he could officially swear to the verbal direction and approval given to him in 2003. Mr. Dapkus replied he would.

Scott Demichaelis, stated his family owns 33 and 36 South Shore Road and 28 South Shore Road, which are next door and diagonally across the street from the property being discussed. He stated they have tried to sell the property at 28 North Shore Road and both times the sale fell through due to the noise of the compressors. He stated he wants to support the Dapkus' in mitigating some of the noise. Mr. Demichaelis stated the traffic is as already indicated; the noise is not much more than usual yard work. He explained in 2003 it was heavily wooded between the houses but the tornado in 2008 took out about 60 trees between the houses.

Vice Chair Anderson closed the public hearing at 9:09pm.

The Board members who will be deliberating and voting on the case include Ms. Richard, Mr. Hoover, Mr. Raslavicus, Ms. Callaway and Ms. Anderson.

Mr. Hoover stated he has serious questions about the validity of an Ordinance that doesn't cover the noise issue.

Ms. Anderson stated it's hard to define noise without a specific decibel rating; what is a nuisance to one person may not be to another.

Mr. Raslavicus summarized that this began as a simple noise complaint and when the Building Inspector followed up it was determined there were other issues that needed to be researched. He stated that he doesn't doubt the process Mr. Dapkus outlined.

*New Durham Zoning Board of Adjustment*

*February 14, 2019*

**APPROVED**

Ms. Anderson stated she also considered her definition of home includes her garage and notes the Ordinance further defines what “in the home” means which includes the garage area. She stated it’s harder to determine the full time living.

Ms. Richard stated that there seems to be an issue with the noise and something needs to be done to mitigate it. Mr. Abbott suggested he would research a reasonable decibel for an air conditioner and compressor.

The Board concurred that business should not be shut down but there should be mitigation for the noise issue. Vice Chair Anderson stated she isn’t sure how they go about overturning the decision by the Building Inspector and wants to be sure the concerns are taken care of but she understands the business has been operating for a long time with no complaints until now. Ms. Callaway referenced the state statute referencing administrative appeals and how the Board can address the issue. Mr. Raslavicus suggested the Board make a decision via motion which outlines the facts followed by a conclusion. Ms. Callaway stated this whole thing was established on a verbal contract, and if there was an Ordinance in place at the time, information was given and he went forward at that time. She stated the fact is that the property owner is at the business full time during his open season.

The Board concurred there was no documentation for what occurred at the time the business was established and the Building Inspector was not trying to persecute the business owner. He was following up on a complaint and became aware of some possible violations.

**Art Hoover made a motion that the Appeal to an Administrative Decision be granted based on the fact of the existing use of the business and noise factors have not been determined in full. Based on that understanding the Board further recommends that the parties involved engage in mitigation to agree upon a noise level. Motion was seconded by Stephanie Richard. The vote was 5-0-0. The motion passed.**

Vice Chair Anderson stated the appeal is granted.

Art Hoover was excused from the meeting at 9:42 PM.

**New Business**

Vice Chair Anderson stated the discussion for the request for a rehearing for Case 2018-010 is postponed until March 14, 2019.

Vice Chair Anderson stated Chair Jarvis is still working on the edits for the Procedures and suggested that going forward, the second Thursday in March is set as the date for the ZBA meeting. The Board agreed this would be discussed further at the next meeting.

**Future Meeting**

March 14, 2019, 7:00pm, New Durham Town Hall.

*New Durham Zoning Board of Adjustment*

*February 14, 2019*

*APPROVED*

**Adjourn**

**Ms. Anderson made a motion to adjourn. Mr. Raslavicus seconded the motion.**

**Motion passed, 5-0-0.**

The meeting was adjourned at 9:51pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary