

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
January 12, 2021
New Durham Town Hall –7:00 PM**

*In accordance with Governor's Executive Order #12, pursuant to RSA 91-A: 2
Attendees log into:*

Join Zoom Meeting

<https://us02web.zoom.us/j/88574336667?pwd=a0xIVE5qU1VMMVM2TW84cURPTEVxUT09>

Meeting ID: 885 7433 6667 Password: 836780

Or via telephone number: 1-646-558-8656; Meeting ID: 885 7433 6667 Password: 836780

Technical difficulties contact Town Administrator Scott Kinmond at skinmond@newdurhamnh.us or by phone at 603-556-1516. Assistance with Zoom application please contact Brian Cauler at ndlanduse@newdurhamnh.us or contact Zoning Board.

Note: Town of New Durham offers no security assurances to those connecting via PC to a third party software and hardware not configured or controlled by our IT Service provider.

PRESENT

Terry Jarvis, Chair– via Zoom
Wendy Anderson, Vice Chair– via Zoom
Stephanie Richard, member – via Zoom
Linda Callaway, member – via Zoom
Paul Raslavicus, member– via Zoom
Dave Wessel, alternate member – via Zoom

ALSO PRESENT

Scott Kinmond, Town Administrator – via Zoom
Tom Varney, Varney Engineering, LLC – via Zoom
Scott Arrigoni, applicant – via Zoom
Ellen Arrigoni, applicant – via Zoom
Josh Tebo, engineer – via Zoom
Hal Sanborn, resident – via Zoom
Martin Wendt, applicant – via Zoom
Jody Wendt, applicant – via Zoom
Saphsencer Lessard, applicant – via Zoom
Samantha Lessard, applicant – via Zoom
J.R. Jones, resident – via Zoom
Merle Taylor, resident – via Zoom
Robin McClain, Land Use Administrative Assistant – via Zoom

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:10PM.

Chair Jarvis stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12, the Town is authorized to meet electronically. She stated there is no physical location to observe this meeting. However, in accordance with the Order, it was confirmed that they are providing public access to the meeting by telephone, with additional access possibilities by video (Zoom); all members of the Zoning Board of Adjustment and Town Administrator have the ability to communicate contemporaneously during this meeting; the public has access to contemporaneously listen and participate via links posted on the agenda. Chair Jarvis confirmed the meeting was posted appropriately with access numbers. She stated in the event the public is unable to access the meeting, it would be adjourned and rescheduled. Chair Jarvis stated in the event they need to go into non-public session, a separate phone number will be used for the Zoning Board of Adjustment members to use and they will then reenter nonpublic session. Chair Jarvis stated all motions would be taken by roll call; roll call attendance was taken for those participating in the Zoom meeting.

Chair Jarvis asked if there were any objections to these cases being heard electronically. None were indicated.

APPROVAL OF MINUTES

Meeting of December 8, 2020 – Edits were made. **Ms. Richard made a motion to approve the minutes as amended. Ms. Callaway seconded the motion. Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Mr. Wessel – abstain; Vice Chair Anderson – aye; Chair Jarvis – aye. Motion passed, 5-0-1.

Meeting of December 15, 2020 - Edits were made. **Ms. Callaway made a motion to approve the minutes as amended. Ms. Richard seconded the motion. Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Mr. Wessel – abstain; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-1.**

Continued Review of the Application for Case # 2020-015: Saphspencer and Samantha Lessard

Applicants are requesting variances to the following:

Article VI Section C 3(b)iii: General Provisions/Use Regulations for Town of New Durham. General Requirements. Sewage Disposal and Leach field Setbacks. No part of a leach field shall be located less than: less than forty (40) feet from a property line on a one hundred fifty thousand (150,000) square feet lot.

Article XII Section F 2: Aquifer Protection Overlay District. Prohibited Uses. Automobile service stations junk or salvage yards.

They are requesting a Special Exception to: **Article VII Section A 1 (d): Special Exceptions. Commercial Use Minor Commercial Use** may also be permitted as a Special Exception in all areas of the Town of New Durham where single-family dwellings or duplexes are permitted provided an impact assessment proves to the ZBA the commercial use would have an impact equal to or less than a single-family dwelling.

The property is located at Map 257 Lot 007, 210 Route 11. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis stated the application was received in a timely manner and was first heard at the December 10, 2020 meeting; it was determined the application was missing the abutters list, assessing cards and the Board concurred the application was not complete. It was agreed by the Board that a request to variance to Article XIII was needed. The Public Hearing was postponed to December 28, 2020; a letter requesting a continuance to the January 12, 2021 meeting was received on December 20, 2020. The continuance was granted; an email was received by the Land Use Assistant on December 21, 2020 from Berry Engineering requesting the application be removed as a continuance is not necessary at this point and a future application will be submitted. Chair Jarvis read the email into the record.

Chair Jarvis stated Case #2020-015 is no longer under consideration.

Review and Acceptance of Case # 2021-001 an application submitted by Varney Engineering LLC, on behalf of Scott and Ellen Arrigoni. Applicants are requesting variances to the following:

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. 1. 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.

The property is located at Map 109 Lot 060, North Shore Road. If the application is deemed to be complete a Public Hearing may be held.

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

Chair Jarvis stated a request was received from Mr. Varney to waive the requirements that the plan contain contours, utilities, septic tank, well setbacks, wetlands drawings and landscape, drainage ways, tree lines, vegetation and lot coverage. The reasoning is that the variance request does not involve site development.

Chair Jarvis made a motion to grant the waiver request that the site plan does not include contours, utilities, septic tank, well setbacks, wetlands drawings and landscape, drainage ways, tree lines, vegetation and lot coverage. Ms. Richard seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Mr. Wessel – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 6-0-0.**

The Board reviewed the application for completeness.

Ms. Richard made a motion to accept the application for Case #2021-001 as complete. Vice Chair Anderson seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Mr. Wessel – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 6-0-0.**

Review and Acceptance of Case # 2021-002 an application submitted by Varney Engineering LLC, on behalf of Kenneth Lance. Applicant is requesting a Special Exception to the following:

Article VII Section A.1.: Special Exceptions. Dimensional Requirements for Town of New Durham. Uses Permitted by Special Exception. The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception. Refer to Article XII: Aquifer Protection Overlay District and the Article XIII: Wetland Conservation Overlay District for special exceptions required in those areas.

The applicant is also requesting a variance to:

Article VII Section B.3.b. Special Exceptions. Dimensional Requirements for Town of New Durham. General Requirements for Commercial or Industrial Uses Permitted by Special Exception. Sufficient acreage shall be included to allow the following setbacks: Side and rear setbacks shall be not less than fifty (50) feet from a building or parking lot to the lot line.

The property is located at Map 246 Lot 003, 213 Middleton Road. If the application is deemed to be complete a Public Hearing may be held.

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

The Board reviewed the application for completeness.

Ms. Richard stated an abutting property was sold and has a new owner, however, he is not listed on the list as being notified. Chair Jarvis stated it would be the decision of the applicant whether to proceed as any decisions made tonight could possibly be thrown out as the abutter was not notified.

Vice Chair Anderson noted the road is listed as “Middle Rd” instead of “Middleton Rd” and suggested the edit be made for consistency.

Chair Jarvis noted the application identifies a lot 3, however lot 3 does not have an abutter listed and lot 7 is owned by the applicant. Mr. Varney confirmed the applicant owns both lot 3 and lot 7.

Chair Jarvis made a motion that the application for Case #2021-002 is incomplete. Vice Chair Anderson seconded the motion. Discussion: Mr. Raslavicus stated Article X, Section E and D may also need variances as the property is located in the Conservation Overlay District. Chair Jarvis suggested legal counsel should be consulted on the necessity of Article X and Article VII. **Roll Call Vote:** Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Mr. Wessel – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 6-0-0.**

Continued Public Hearing for Case # 2020-014 submitted by Varney Engineering LLC, on behalf of Martin and Judy Wendt

Article VII Section A 1(a): Special Exceptions. A. Uses Permitted by Special Exception. The following uses may be allowed by Special Exception through the Zoning Board of Adjustment which requires an application and a public hearing to be held in accordance with RSA 676:7. The conditions and requirements of the Special Exception contained in this Article are in addition to other applicable provisions of this Zoning and Land Use Ordinance. See Table 4 for a summary of uses and conditions which require a Special Exception. Refer to Article XII: Aquifer Protection Overlay District and the Article XIII: Wetland Conservation Overlay District for special exceptions required in those areas.

Table 4. Special Exceptions Summary Use Area of Town Article Reference

Commercial Use (including Minor Commercial Use)	In areas designated “Developable” or “Constrained Developable” on Land Use Suitability Map.	VII.A.1. & VII.B.	
Industrial Use	In areas designated “Developable” or “Constrained Developable” on Land Use Suitability Map.	VII.A.2. & VII.B.	
Multi-Family Developments	Residential/Recreational/ Agricultural District	VII.A.4. & VII.B.	
Conditionally permitted in Town Center Mixed Use District	Mobile Home Parks	In areas designated “Constrained Developable” on Land Use Suitability Map.	VII.A.5. & VII.B.
Camping Areas and Campgrounds	In areas designated “Constrained Developable” on Land Use Suitability Map.	VII.A.6. & VII.B.	
Utilities	All Zoning Districts	VII.A.7. & VII.B.	

1. Commercial Use (a.) Commercial uses of land in the Town of New Durham may be permitted as a Special Exception in the areas designated “Developable or Constrained Developable” as shown on the Land Use Suitability Map

The property is located at Map 270 Lot 020, 397 Berry Road.

Chair Jarvis stated when this Public Hearing was opened on November 10, 2020, Mr. Raslavicus was absent so Mr. Wessel sat on the Board to hear the case and will continue to do so. She stated the application was reviewed and deemed to be complete at that time; the Public Hearing was postponed to November 25, 2020 as only three members of the Board were going to be able to hear the case on November 10.

Chair Jarvis stated when the Public Hearing was opened on November 25, 2020, there were no objections or conflicts of interest for any members of the Board. Ms. Richard recused herself from hearing the case. 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.

Chair Jarvis reopened the Public Hearing at 8:14PM.

The Board reviewed the documents for the requested Noise Study.

Mr. Varney summarized the report for the Noise Study which was completed by Reuter Associations. He stated noise contours were made around the property and suggestions were made for mitigating the dog barking noise. Mr. Varney explained the ambient noise in the woods is 35-40 decibels; when a car goes by it's about 50. The noise of a dog barking in this location was computed to be about the same as a car going by; it was note 22 dogs barking would be an extreme situation and the study reflects the worst-case scenario.

Mr. Wendt explained the plans for fencing around the property which will block views for the dogs as well as noise, noting additional visual barriers would be added if there is a problem. He confirmed the hours of operation with the kennel being open Monday through Saturday, 6:00 AM-6:00 PM; the daycare is only Monday through Friday; grooming is done on a scheduled basis. There are four cages for grooming.

There was discussion about how many kennels and cages there would be and the Board agreed clarification is needed as the application plans differ from the testimony at the last Public Hearing. It was noted vegetative buffers are not included in the plans. Mr. Wendt explained the Noise Study indicates that vegetative buffers do not block noise.

Mr. Wendt stated there are currently 24 dog runs and if they add the 8 for grooming, it's a total of 32 which could be handled at any one time by the building without expansion. There are no plans for expansion.

Chair Jarvis opened the Public Hearing to input from abutters.

Hal Sanborn, abutter, stated at a previous meeting there was discussion about the management practices for the composting and whether it would be inspected at some time. Chair Jarvis stated that would be covered as a complaint to be addressed by the Building Inspector and Health Officer. Mr. Sanborn stated they are concerned with the leaching and contamination on their property due to the elevation. Mr. Wendt stated they will be monitoring it and addressing any problems.

Chair Jarvis closed the Public Hearing at 8:44PM.

The Board members deliberating the case would be Vice Chair Anderson, Ms. Callaway, Mr. Wessel and Chair Jarvis.

Findings of Fact

- According to the Land Use Suitability Map, this property is designated "unconstrained developable" meaning the land is suitable for development- the Board concurred.
- The Special Exception shall not cause undue hazards to the health of other individuals- The Board concurred based on the NH DES approvals; it is a self-contained business; Vice Chair Anderson suggested establishing some sort of baseline information for the water quality in the area; it was noted there was business at this location previously and values went up in spite of a canine business there; there is a wetlands buffer; there are no concerns with traffic coming and going; there is a plan for handling the biohazard waste.

Chair Jarvis made a motion to approve the request for a Special Exception to Article VII Section A. 1. A. to allow commercial use of land in the Town of New Durham in areas designated as "Developable or Constrained Developable" as shown on the Land Use Suitability Map so that the applicants can operate a Doggie Day Care, Dog Boarding and Dog Grooming business at Map 270 Lot 020, 397 Berry Road; With the following conditions:

- Maximum 24 dogs in the day care and boarding per 24-hour time period and maximum of 8 dogs for grooming at any one time.
- Applicant must pay the required monitoring fees for inspections of the Best Management Practices to the Town within 30 days of this decision.

- Applicant must sign an affidavit allowing the Town of New Durham to perform annual inspections of the Best Management Practices within 30 days of this decision.
- All signs shall comply with Article XX of the New Durham Zoning Ordinance.
- The Road Agent shall approve the location of all driveways.
- Hours of operation will be restricted to 6:00AM to 6:00PM. Monday through Saturday.
- Dogs will not be allowed outside between 6:00PM and 6:00AM except for bathroom use.
- Dogs will not be allowed outside without staff supervision who are outside with the dogs.
- The surrounding area of woods and lawn/other vegetative materials shall remain.
- The lawn infiltration area is to have a minimum of 6 inches of loam and healthy grass shall be maintained in the area.
- Six-foot stockade fencing shall be installed on the parking lot side of the building in place of the chain link fence depicted on the plans.
- Screening shall be installed on the outside of all kennels & kennel runs on the front and side so as to block the dogs' view of the roads.
- All storm water measures depicted on page 2 of the site plan dated 10/13/2020 are to be implemented and maintained in proper operating condition
- Corrected plans shall be received by the Land Use Administrative Assistant within 14 days of this decision.

Mr. Wessel seconded the motion. Roll Call Vote: Ms. Callaway – aye; Mr. Wessel – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Public Hearing for Case # 2021-001

Application submitted by Varney Engineering LLC, on behalf of Scott and Ellen Arrigoni. Applicants are requesting variances to the following:

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. 1. 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.

The property is located at Map 109 Lot 060, North Shore Road.

Chair Jarvis read the case into the record.

Chair Jarvis opened the Public Hearing at 9:07PM.

Mr. Varney stated the applicants recently purchased the property; it is wooded with no structures; the driveway has been roughed in over a logging road. A building permit was denied because there is a question whether the lot has road frontage on North Shore Road. The lot is part of an 11- acre subdivision approved by the State of New Hampshire on August 31, 1987, and approved by the Planning Board on December 1, 1987. Mr. Varney stated the land between the Arrigoni property and North Shore Road was given to the Town of New Durham as part of the planning process to straighten a curve on North Shore Road. As of this time, the road has not been straightened but easements were placed in the deed to allow

for crossing the Town land. Tax maps were presented for review. Mr. Varney stated there is no road frontage on North Shore Road, but there is an easement as part of the approval process through the Planning Board.

Chair Jarvis presented copies of easements and historical meeting minutes regarding this lot for review by the Board. She referenced the process for obtaining a building permit which was outlined by the Board of Selectmen: the owner obtains a variance from the ZBA for a relief from the Class V frontage requirement, and the Board of Selectmen authorize the issuance of a building permit with the easement access over the Town's lot pursuant to RSA 674:41 I.d.

Mr. Raslavicus suggested the plans for the driveway need to be laid out, taking into consideration the rise and curve in the road.

Ms. Richard asked if the Town could consider selling the land back to the property owners. Chair Jarvis stated she would like to see the road improved and the dangerous curve removed.

Chair Jarvis opened the Public Hearing to input from abutters and the public.

Chair Jarvis closed the Public Hearing at 9:23PM.

The Board members deliberating the case would be Vice Chair Anderson, Ms. Richard, Mr. Raslavicus, Ms. Callaway, and Chair Jarvis.

Findings of Fact

- Map 109 Lot 60 does not have frontage on a Class V or better road
- Map 109 Lot 59 is owned by the Town of New Durham
- At the 8/4/1987 Planning Board meeting there was discussion of easements to allow the Town of New Durham to straighten the road in the area of North Shore, Merrymeeting and Chesley Roads.
- During the 10/6/87 Planning Board meeting George Fletcher (property owner) agreed to give the Town of New Durham an easement to "eventually improve the road".
- A deed from January 1988 reflects George and Harriet Fletcher (the property owners) giving the Town of New Durham land between Map 109 Lot 60 and the road. The deed also granted the property owners, their heirs and assigns the right of passage over the Town's property.
- The right of passage is also in the deed dated 8/31/2020.

Discussion Article V Section B.1s

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated it is not contrary to the public interest because what was supposed to happen by the Town, never happened. The Board concurred.

The spirit of the ordinance would/would not be observed because: Chair Jarvis stated the spirit is being observed; if the Town had done the work, the lot would have road frontage. The Board concurred.

Granting the variance would/would not do substantial justice because: The Board agreed granting the variance would be doing substantial justice as the Town never fixed the road and the Town did not incorporate the land into existing R.O.W. as would be expected (it was kept at a separate parcel of land)

which is unusual and would not be considered standard practice in regards to the intent of acquiring the land for changing the road alignment.

For the following reasons the values of surrounding properties would/would not be diminished: The Board agreed values would not be diminished. Values would be increased as the accessibility and salability would rise because the parcel now is legal regarding this unusual circumstance.

Unnecessary Hardship: Chair Jarvis stated this is a unique situation; the lot was sold in anticipation/understanding there would be road frontage. The Board concurred.

Chair Jarvis made a motion to grant the request for variance 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. 1. 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:

With the following conditions:

- The applicants will receive authorization for a building permit from the BOS;
- A signed release of liability for the Town for building on a private road, in a format acceptable to the BOS, shall be signed;
- The Building Inspector will be given a copy of the DES approval of the new septic system;
- A driveway permit shall be received from the Road Agent;
- The applicants will consult with the Road Agent for sight lines to determine the driveway location;
- The driveway shall comply with all requirements of the Fire Chief and Road Agent;
- The property shall be identified in compliance with the requirements of the Police Chief.

Ms. Callaway seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

NEXT MEETING

February 9, 2021, 7:00PM.

ADJOURN

Vice Chair Anderson made a motion to adjourn. Ms. Richard seconded the motion. Roll Call Vote: Ms. Callaway – aye; Ms. Richard – aye; Mr. Raslavicus – aye; Mr. Wessel – aye; Vice Chair Anderson – aye; Chair Jarvis – aye. **Motion passed, 6-0-0.**

The meeting was adjourned at 9:39PM.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary