

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
April 13, 2021, 7:00 PM**

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

Meeting ID: 889 9690 6980 Password: 784832

Or via telephone number: 1-646-558-8656; Meeting ID: 889 9690 6980 Password: 784832

*Technical difficulties or For Assistance with Zoom application please contact Land Use
Administrative Assistant Robin McClain at ndlanduse@newdurhamnh.us .*

*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
David Bickford, member – via Zoom

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant – via Zoom
Tom Varney, Varney Engineering, LLC – via Zoom
Kenneth Lance, applicant – via Zoom
Paul Raslavicus, resident – via Zoom
Ron Gehl, Chair New Durham Conservation Commission – via Zoom
Saphspencer Lessard, applicant – via Zoom
Samantha Lessard, applicant – via Zoom
Christopher Berry, Berry Engineering and Surveying Inc. – via Zoom
Dot Veisel, resident/abutter – via Zoom
Walter Shanahan, applicant – via Zoom
Carol Shanahan, applicant – via Zoom
Greg Field, resident – via Zoom
Donna Reiss, applicant – via Zoom
Joseph Reiss, applicant – via Zoom
Stephen Rollins, applicant – via Zoom
Nancy Rollins, applicant – via Zoom
Tom Carlio, resident – via Zoom

CALL TO ORDER

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

April 13, 2021

APPROVED June 17, 2021

Chair Jarvis stated that due to the State of Emergency declared by Governor Sununu and pursuant to Executive Order #12, pursuant to Executive Order 2020-004, 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 are objections to these cases being heard electronically. None were indicated.

Agenda Review

Chair Jarvis suggested moving the Approval of Minutes to the end of the meeting or to another time. The Board concurred.

Review and Acceptance of Application – Case #2021-008

Application submitted by Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan.

Applicants are requesting variances to:

Article V Section E: Dimensional Requirements for Town of New Durham. E. Flood Hazard Area and Water Body Setbacks. No new buildings, except for water-related structures, shall be located in a flood hazard area, or less than seventy-five (75) feet from any water body or river.

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 twenty five (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.b: Shorefront Conservation Overlay District. Dimensional Requirements. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements: Building

Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high water level.

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.

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.b: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Buildings: No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.

The property is located at Map 108 Lot 027 – Owls Head Point 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 asked if any Board member has a real or perceived conflict of interest with hearing this case. Ms. Richard stated she will be stepping down from this case.

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.

The Board reviewed the application for completeness.

Ms. Callaway noted the application indicates two bedrooms, while the plans show one bedroom. The Board agreed this needs to be clarified, then include a condition if the request is approved.

Stephanie Richard, Changing Seasons Engineering PLLC, on behalf of Walter and Carol Shanahan, clarified the house as it is proposed is one bedroom, however the septic is sized for two bedrooms. Ms. Shanahan stated the house will be two bedrooms, and they will be having the architect update the plans. Chair Jarvis stated that needs to be included in writing in the application. Ms. Richard confirmed she would clarify in the documents.

Motion: To accept the application for Case #2021-008, Walter and Carol Shanahan, as complete. Motion by Vice Chair Anderson. Mr. Bickford seconded the motion. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Review and Acceptance of Application – Case #2021-009

Application submitted by Varney Engineering LLC on behalf of Joseph and Donna Reiss.

Applicants are requesting Variances to:

Article XIV Section C.1.e: Dimensional Requirements. 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.

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.c: Non-Conforming Setbacks. Buildings: The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot.

The property is located at Map 105 Lot 005, 29 Cedergren 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 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.

The Board reviewed the application for completeness.

Chair Jarvis stated this property was previously reviewed with ZBA Case #2021-004 and at that time, the Board granted some of those variances; the Board now needs to determine if the application is materially different from the application for Case #2021-004.

Chair Jarvis outlined the findings of fact for Case #2021-004 in contrast to the current application:

- The building coverage was previously 15.6%; it is now 14.0%;
- Impervious surface was 29.3% and is now 28.2%;
- The distance from the lake was 29.5' and it is now 34';
- The decreases in the space are due to the removal of the shed and impervious patio area.

Mr. Varney noted the building was also made smaller and moved further back from the lake.

The Board agreed the application is materially different.

Motion: *The application for Case #2021-009, submitted by Varney Engineering, LLC, is materially different from the application submitted for Case #2021-004.* Motion by Chair Jarvis. Seconded by Ms. Richard. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – abstain; Chair Jarvis – aye. **Motion passed, 4-0-1.**

Motion: *To accept the application for Case #2021-009, submitted by Varney Engineering, LLC, as complete.* Motion by Ms. Richard. Seconded by Vice Chair Anderson. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Review and Acceptance of Application – Case #2021-010

Application submitted by Varney Engineering on behalf of The Rollins Family Trust, Stephen and Nancy Rollins, representatives.

Applicants are requesting variances to:

Article XIV Section C.1.e: 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 G.2.d: Non-Conforming Setbacks. Buildings: No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces.

The property is located at Map 101 Lot 007, 24 South 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 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.

The Board reviewed the application for completeness.

Chair Jarvis stated the application for Case #2021-006 was reviewed at the March 11, 2021 meeting. It was determined there was a need for variances for coverage greater than 20%; the variances requested at that time were granted with the condition the applicants would need to apply for the additional variances. She stated there is no need to determine if the application is materially different.

Motion: *To accept the application for Case #2021-010 as complete.* Motion by Vice Chair Anderson. Seconded by Mr. Bickford. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

CONTINUED PUBLIC HEARING- Case #2021-002

Application submitted by Varney Engineering LLC, on behalf of Kenneth Lance.

Applicant is requesting a Special Exception to:

Article VII Section A.1: Special Exceptions. 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. See Table 4 Special Exception Summary for uses and conditions which require a Special Exception.

Applicant is requesting a Variance to:

Article VII Section B.3.b.: Special Exceptions. 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.

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

Chair Jarvis stated this application was originally received January 12, 2021; review was postponed as it was determined all abutters were not notified and additional information was needed from Town Counsel. The question submitted to Town Counsel was in reference to the property possibly being in the Conservation Overlay District. At the Zoning Board of Adjustment meeting on February 9, 2021, the Board reviewed a letter from Mr. Varney which outlined why the Conservation District Overlay is not applicable as the business is less than two acres which makes the article non-applicable. Town Counsel reviewed Mr. Varney's letter; the response from Town Counsel indicated that since it is less than 2 acres or less of proposed development, the applicant needs to demonstrate this on the plans that Article X is not required. At the same meeting in February, there was a request to deem this a project of regional impact; information was sent to the Strafford Regional Planning Commission. A response was received on March 9, 2021 from SRPC. It was noted that if a Special Exception or Variance is granted, the Site Plans would need to be revised to specifically reflect the square footage involved for the restaurant, brewery, parking, etc. The public hearing was scheduled for February 18, 2021 however only three Board members were present and the applicant requested a continuance. At the Zoning Board of Adjustment meeting of March 11, 2021, the application was determined to

be complete and the public hearing was opened. Issues were identified with the Conservation Overlay and the Board had questions regarding impact on roads, the district and safety services. The Board authorized the Chair to send a request for information to the Police Chief, Fire/EMS Chief, the Road Agent and the Conservation Commission.

The public hearing was continued to the meeting of April 13, 2021.

Chair Jarvis read the series of letters received from the department heads into the record.

Chair Jarvis reopened the public hearing at 7:51PM.

Chair Jarvis asked for additional comment from the applicant's representative in response to the input received from the department heads.

Tom Varney, Varney Engineering LLC, stated Mr. Lance is limited to three parking spaces so his objective in this whole thing is to get more; he stated Mr. Lance is also regulated by home occupation and home brewery rules. Mr. Varney stated currently only beer can be served but Mr. Lance wants to serve food as well with his brewery business. He stated he defined this plan as a "restaurant" but should not have it is not a restaurant but is really a brew pub; would have limited food, which is how other breweries operate. The operation would only be open three days a week and Mr. Varney stated the septic design would still be for a food service facility in accordance with the septic rules, but it is not a restaurant. Mr. Varney stated that in regard to the traffic and safety concerns, he is asking for a special exception in this neighborhood. He has not done a drainage study yet but will provide more details on how the wetland will be protected when he gets to that stage with the Planning Board. He noted the traffic study from SRPC showed 500 cars per day and Mr. Lance's business would be 50 cars at most per day.

Chair Jarvis asked for clarification whether the application for a "brewery and restaurant" should be withdrawn and resubmitted for a "brewery and brew pub". Mr. Varney suggested continuing and if there is approval, to attach conditions. He stated it is not a restaurant in the usual sense.

Ms. Richard asked where the food will be prepared and whether there will be a commercial kitchen. Mr. Lance confirmed it would be an on-site commercial kitchen with a grill and crockpots.

Ms. Richard asked for clarification on the three parking spaces. Mr. Varney stated the home occupation rules with the Town of New Durham limit him three parking spaces. It was confirmed the proposed plans include space for up to 30 vehicles, which include parking for employees.

Chair Jarvis noted there is a porta-potty indicated on the plans even though a septic system is to be installed. Mr. Varney confirmed the porta-potty is to be removed.

Chair Jarvis asked why more parking is not being put to the right of the barn or removing the second greenhouse and putting parking there which would put it back past the 50' setback. Mr. Lance stated he plans to continue using the greenhouse. Ms. Callaway stated it looks like the parking could be set away from the boundary lines as well as the wetlands/intermittent stream.

Chair Jarvis stated if they moved the parking spaces, they could get it outside of the setback.

Mr. Varney stated the wetlands, rich with surface water, they can move the parking spaces if needed. Mr. Lance stated the green house was put up just a couple years ago and they want to continue to be a vegetable farm.

Chair Jarvis asked Ms. Richard if there are any requirements for setbacks for parking areas from wetlands. She replied there are none she is aware of. Vice Chair Anderson asked the slope between the lawn below the house and the proposed restaurant building; she asked how that would affect ADA access. Mr. Varney replied it is probably about 5-6%.

Chair Jarvis asked where and how trash will be stored. Mr. Varney stated it would be inside the building; there will be no dumpster. The plan for heating the building will be a propane heater.

Ron Gehl, Conservation Commission Chair, stated he would encourage the Board to continue to explore moving the parking further from the wetlands. He stated on behalf of the Commission, if there were a way to preserve the natural buffer and the developed areas of the property, that would be preferable; if not they would want some engineering controls to ensure runoff is contained or treated before flowing into the wetland's areas.

Chair Jarvis opened the public hearing to comment from the public.

Paul Raslavicus, resident, stated regardless what they call this, it is still a place where food is served on the premises. He stated he is also concerned about this being a mixed use with both residential and commercial uses and it is not allowed in this area of Town, by ordinance. Mr. Raslavicus suggested a variance is needed to allow a mixed use on this property. He stated he also sees a problem with the parking being so close to the wetlands; there should be a 50' buffer. He suggested a special exception should be required for the parking as the ordinance says what is being proposed is not allowed.

Mr. Varney stated commercial use is allowed in this district, as long as the plans meet the suitability map in the zoning ordinance, which is met in this case and only needs a special exception.

Mr. Bickford stated he agrees with Mr. Varney on the zoning, but he is concerned about the parking issue. To allow parking along the wetlands could generate problems in the future with others wanting variances along wetlands, and Mr. Bickford suggested sticking to the ordinance, particularly with an operation of this size.

Tom Carlio, resident, stated he is very familiar with this property, and this particular entity brings a great destination to an area which is fantastic for the Town; he stated he is impressed with what Mr. Lance brings to the area and the Town and wants an opportunity like this to be encouraged. He suggested the Board see the site before making a decision.

Chair Jarvis closed the public hearing.

Chair Jarvis stated the members deliberating this case would be Vice Chair Anderson, Ms. Richard, Ms. Callaway and Chair Jarvis.

Chair Jarvis stated she believes this is the kind of small business they want to encourage in Town; she stated there are no concerns by the police, fire/EMS and highway departments relative to the impact on the area. She stated she is concerned about the parking area. as far as allowing a brewery and restaurant under a special exception, she is in favor of it. Vice Chair Anderson

stated she agrees with Chair Jarvis. She stated she too is concerned about the parking and there seems to be options to look into. The Board concurred.

Findings of Fact:

- Currently has a home occupation and proposes to expand to a brewery and restaurant.
- The current barn is to have an addition and become the restaurant.
- - Currently there are 15 to 20/day when open. It is estimated there will be 80 cars/day.
- Maximum staff including the owner to be 5 per day.
- Hours of operation: Fri 3 PM to 8 PM; Sat & Sun: 4 PM to 8 PM.
- One greenhouse is being removed.
- Parking lot requires a variance. The proposed location is very near wetlands.
- Will be installing a 10' X 80' rain garden to mitigate runoff from parking lot.
- Parking lot will be 23+/- feet from the property line & adjacent to the forested wetland on the property.
- According to the Conservation Commission the potential for negative impact to the wetlands comes from the expanded parking area which borders wetland throughout its entire length.
- According to the Conservation Commission maintaining the 50-foot setback as required by the Zoning Ordinance would provide more favorable protection of the wetlands.
- Additional parking near the brewery itself is also near the wetlands.
- A state approved septic system is to be installed and the current porta-potty removed.

Discussion - Article VII Section A.1: Special Exceptions. Uses Permitted by Special Exception

According to the "Land Use Suitability Map" what is the designation of the area in question?

Chair Jarvis stated per the application, the land is listed as "unconstrained, developable." The Board agreed.

This special exception shall not cause undue hazards to- A. The health of other individuals as evidenced by: or B. The safety of other individuals as evidenced by:

Chair Jarvis stated she doesn't see how the brewery or restaurant could cause undue hazards to health or other individuals; although the wetlands could be affected. She noted the business will require a license from the NH Liquor Commission as well as NH Health and Human Services and an assembly permit from the Fire Chief. Ms. Richard noted that per the letters received from the Town department heads, there are no safety concerns. The Board agreed.

This special exception shall not diminish the property value of other land owners as evidenced by:

Chair Jarvis stated she doesn't see how it would affect the values, provided there is sufficient protection of the wetlands. Ms. Richard stated her only thought is in regards to the increase in traffic which could affect the other people who live on the road. Chair Jarvis stated the highest volumes, per the traffic study, were not during the house the brewery/restaurant would be open. The Board agreed.

This special exemption is not offensive to the public due to:

A. Noise as evidenced by: The Board agreed the noise may be reduced as the seating will move from outdoors to indoors so it would not.

B. Vibration as evidenced by: The Board agreed it would not.

C. Excessive traffic as evidenced by: The Board agreed, with the input from the Town safety officials, it would not.

D. Unsanitary conditions as evidenced by: The Board agreed that if refuse is kept inside the building, it would not.

E. Noxious odor as evidenced by: The Board agreed it would depend on what is being cooked but opinion of “noxious” could vary among individuals. Ms. Richard noted the removal of a porta-potty, and installation of an approved septic system will improve any odors.

F. Smoke as evidenced by: The Board agreed it would not be an issue as it is prohibited by State law.

G. Other similar reason as evidenced by: The Board agreed there is no other reason.

Motion: *To grant the request for a Special Exception under Article VII Section A.1: Special Exceptions. 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. See Table 4 Special Exception Summary for uses and conditions which require a Special Exception.*

With the following conditions:

- No outdoor seating at the brewery and restaurant.
- There will be a maximum of 102 seats inside the restaurant.
- There will be a maximum of 5 employees, including Mr. Lance.
- The public hours of operation of the brewery and restaurant are limited to Friday 4 - 8 PM, Saturday and Sunday 3 - 8 PM.
- Receive approval from the New Durham Planning Board for site plan review.
- Receive approval from the New Hampshire Department of Environmental Services for a septic system.
- Receive a Place of Assembly Permit from the New Durham Fire Chief.
- The Owner will submit a Stormwater Management Plan to the Building Inspector/Code Enforcement Officer on an annual basis.
- The Owner will submit a copy of the liquor license to the Building Inspector/Code Enforcement Officer on annual, bi-annual or whenever renewals are issued.
- The Owner will submit copy of the Department of Health and Human Services Environmental Sanitation License as a restaurant annually or bi-annually as renewed.
- The porta-potty currently located near the brewery will be removed.
- Only sand will be used on the driveway for snow, ice and weather conditions.

- There will be a 50-ft vegetative buffer between the wetlands and the parking area.

Motion by Chair Jarvis. Seconded by Ms. Callaway. **Discussion:** Vice Chair Anderson asked if the spray-on road salts are environmentally friendly and questioned the restriction for sand-only.

Motion: *To withdraw the condition requiring only use of sand on the driveway and parking area and replace it with the condition that sand or other environmentally acceptable substances will be used as deicers on the driveway and parking areas and to withdraw the condition of a 50 foot vegetative buffer between the wetlands and the parking area.* Motion by Chair Jarvis.

Seconded by Vice Chair Anderson. **Amendment Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Amendment passed, 4-0-0.**

Amended Motion Roll Call Vote: Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 4-0-0.**

Variance Discussion Article VII Section B.3.b.

Granting the variance would/would not be contrary to the public interest: Chair Jarvis stated granting the variance would not be in the public interest; the proposal is in the Conservation Overlay District and not subject to the article as it is less than two acres, however, the proposed parking is extremely close to wetlands. She stated it is also extremely close to intermittent streams and an area designated as Cocheco headwaters, subject to State supervision. Chair Jarvis stated she believes there are alternatives to where the parking can go. Vice Chair Anderson stated it would be contrary; the parking being so close to the wetlands and not having an immediate buffer is concerning for the potential of contamination. Ms. Richard noted there are no issues with property line setbacks. Ms. Callaway concurred.

The spirit of the ordinance would/would not be observed because: Ms. Richard stated the spirit would be observed. Vice Chair Anderson stated the spirit is to keep parking away from abutting properties and in this case, with them being so close to wetlands, there is no buffer for flow into other peoples' properties. Ms. Callaway concurred with Vice Chair Anderson. Chair Jarvis stated she doesn't believe the spirit will be preserved and is concerned with the preservation of the Cocheco headwaters.

Granting the variance would/would not do substantial justice because: Chair Jarvis stated it would not do justice for the reasons previously outlined. Vice Chair Anderson stated she is concerned about the difficulty of grading from one end of the parking and the wetlands. She stated the public is not gaining anything for the parking lot being there. Ms. Richard stated while there are other options for where the parking could go, she believes there would be more substantial disturbance to the surrounding areas.

For the following reasons the values of surrounding properties would/would not be diminished: Chair Jarvis stated she doesn't think surrounding properties will be diminished; this property is set back from the road and assurances have been received from department heads which indicate they don't expect significant impact on the area. The Board concurred.

Unnecessary Hardship: Chair Jarvis stated she believes there is a fair and just relationship between the ordinance and applying it to this case; she stated she doesn't believe it would result in unnecessary hardship. Vice Chair Anderson stated she concurred, and there are other options for moving forward with the project. The Board concurred it is a reasonable use and there is not a hardship.

Motion: *To deny the request for a variance to Article VII Section B.3.b.: Special Exceptions. 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.* **Motion by Chair Jarvis. Seconded by Vice Chair Anderson. Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – no; Ms. Callaway – aye; Chair Jarvis – aye. **Motion passed, 3-1-0.**

The Board felt granting the variance:

- Would be contrary to the public interest due the close proximity of the parking area to the wetlands, streams and the Cocheco River headwaters, which are subject to state supervision.
- Would not meet the spirit of the ordinance due to there not being enough of a buffer between the parking area and the wetlands, and that if there was runoff it would not only affect the abutters property, but other properties downstream as well.
- Would not do substantial justice, as the owner is gaining the convenience of the location of the parking area with not enough buffer to protect the wetlands.
- Would not diminish the value of the surrounding properties, however, if there was an accident or runoff into the wetlands, it could affect properties downstream.
- The majority of the Board feels that a hardship would not be created in denial, as there are other options available that would not prevent the project from going forward.

Chair Jarvis stated that due to the time, they will not be able to complete all the public hearings and review of the minutes.

The Board agreed to a special meeting on April 22, 2021, 7:00PM to discuss cases #2021-007, #2021-008, #2021-009 and #2021-010. It was confirmed with applicants and applicants' representative they are available for April 22, 2021.

CONTINUED PUBLIC HEARING Case # 2021-005

Application submitted by Berry Engineering LLC, on behalf of Saphspencer and Samantha Lessard.

Applicants are requesting variances to the following:

Article VII Section A.1.(b) Special Exceptions. Uses Permitted by Special Exception. 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.

Article VII Section A.1.(d): Special Exceptions. 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.

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.

Article XV Section C.2.(a) Table 8: Water Quality Protection Overlay District.
Dimensional Requirements Riparian Buffer Zone Setback Requirements: Riparian areas are generally defined as those areas that influence or are influenced by aquatic systems. For the purposes of Article XV. Water Quality Protection Ordinance, a Riparian Buffer Zone shall be defined as an upland area that is contiguous, and within the buffer setback requirements outlined in Table 8: Buffer Setback Distances in Feet by Resource and Use Category, to a water resource that is considered jurisdictional by the NH Wetland Bureau as defined in RSA 482-A, the boundary of which has been delineated by a Certified Wetland Scientist, and the definition of which shall include vernal pools. a. Table 8: Buffer Setback Distances by Resource and Use Category below identifies the base buffer setback requirements for each identified resource type. Buffer setback distances in Table 8 refer to the total horizontal distance in one direction from a water resource Reference Line. In cases where an area qualifies under more than one resource category, the largest buffer/setback distance shall apply.

The property is located at 210 NH Route 11, Map 257, Lot 007-001.

The application was originally reviewed on February 9, 2021 and found to be complete. Due to the lateness of the hour, the review could not be completed and was postponed to February 18, 2021. Only three members were present, so it was continued to March 3, 2021 and the public hearing was opened at that time. Shortly before 10:00PM, the Board motioned to continue the case to April 14, 2021. Prior to the March meeting, the Board requested documentation in regards to the Planning Board declaring this to be an application that had the impact equal to or less than a single-family dwelling. It was clarified that this was done during the Planning Board meeting of March 2, 2021.

Chair Jarvis read a letter into the record from Kathy Turner, a member of the family who previously owned the property,

Chair Jarvis reopened the public hearing.

Christopher Berry, Berry Surveying and Engineering, representative for the applicants, stated if approved, there will be more work put into the storm water management plan in accordance with the Planning Board regulations. He stated in response to Ms. Turner's letter, he disagrees in the structural analysis of the site; they have done test pits and although sandy, it does not seem to be over a pile of stumps. This was also determined in the past for a previous property owner. Mr. Berry clarified this is not going to be a full-service station nor a junk yard. He stated the applicants are also willing to do what is necessary to protect the surrounding wetlands, proven by the fact they have worked with a building designer to come up with construction plans that will keep all possible containments inside the building and additional barriers and containments at the entrance of the bay doors. A spill prevention plan has been proposed, although it is not required. He stated they have made concentrated efforts with regards to buffer zones and storm water management.

Chair Jarvis asked if there would be an operations and maintenance manual and log from DES, along with an operations and maintenance certificate. Mr. Berry stated that because of the size of the operation, and the fact there won't be large volumes of materials stored on sight, it is not required but he will confirm. Chair Jarvis asked if there will be any state or federal inspections for this business. Mr. Berry replied there would be a state inspection process for the vehicle inspection station.

Vice Chair Anderson asked about the stability or instability of the sand and soils on the site; she asked as the pad gets older and cracks may happen in the floor, how any leaks would be mitigated. Mr. Berry stated there is no perceived structural stability issue; a slab will be required a full frost wall plus at least 6" of concrete on top; it will be meshed and secured to the side. It is not like a slab for a shed and will be built to modern specifications. Vice Chair Anderson stated she is concerned that since the variances go with the land, what if someone takes over this property in the future, how weather changes could affect the property in the future. Mr. Berry explained how flood predictors are set and stated they use the latest storm water predictions, designing projects to the 100-year storm event standards.

Ms. Richard asked the maximum capacity this could be used for in the future. Mr. Berry suggested the Board consider the application and proposals presented and if someone wants to put in something more, they would have to come to the Board again for approval.

Ms. Callaway noted the area is considerably lower than the road and is concerned about the amount of impervious surface. She noted there are vegetative buffers but they are tight for such a large building in a small spot. She asked how many vehicles coming and going is expected, and what will be on the cars coming off the highway and depositing on the impervious surface and in the bays. Mr. Berry stated there are only three bays, and explained how there would be vehicles in those bays while waiting for parts so multiple cars can be worked on in a day. Mr. Berry stated they expect 2-3 cars coming in on average per day but that is probably a high estimation for what a single person will be working on per day. He noted this is a State DOT controlled highway so studies will need to be done for their review and permit approval.

Ms. Callaway stated she is concerned about the filtration indicated on the plans before runoff makes it to the wetlands. Mr. Berry stated from a grading and drainage point of view, they need to elevate the building site. He presented plans showing the proposed storm water management

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measures including drip edges on the roof, revegetation, a constructed buffer and planted areas. The buffer will 15'.

Chair Jarvis asked Ron Gehl, Chair of the Conservation Commission if he has any concerns with this proposal. Mr. Gehl stated nothing at this time.

Mr. Raslavicus, a resident, suggested a condition that this approval be for the current owner of the property only. Chair Jarvis concurred. After discussion, it was agreed ZBA approval would be needed for any future changes of the use.

Mr. Bickford stated he has a problem with the whole project; he stated he was on the Planning Board when the subdivision for this lot was presented. He stated he was opposed due to the lot being so small and it never should have been subdivided and there isn't enough space to do what is being proposed, noting many of the setbacks are not met. He stated it was a 3-2 Planning Board vote for subdivision approval.

Dot Veisel, an abutter, stated Mr. Berry's presentation addressed many of her concerns but she is still concerned about the traffic, particularly with the close proximity to the intersection with Tash Road where there have been many horrific accidents. She stated she is also concerned about signage. Chair Jarvis noted the signage would have to be in compliance with the Zoning Ordinance.

Chair Jarvis noted the time is now 10:07PM at which time a public hearing would be continued and asked the Board whether they think it can be concluded now. Vice Chair Anderson suggested a Site Walk may be helpful. The Board concurred. The Site Walk was set for April 18, 2021 at 6:00PM.

Motion: *To have a Site Walk of the property for Case #2021-00 on Sunday, April 18, 2021 at 6:00PM.* Motion by Chair Jarvis. Seconded by **Ms. Callaway.** **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

Motion: *To continue the public hearing for Case #2021-005 to Thursday, April 22, 2021 at 7:00PM.* **Motion by Chair Jarvis. Seconded by Ms. Callaway.** **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

APPROVAL OF MINUTES

Meeting of February 9, 2021 – Postponed.

NEXT MEETING

April 18, 2021, 6:00PM – Site Walk for Case #2021-005

April 22, 2021, 7:00PM – Regular Meeting

ADJOURN

Town of New Durham Zoning Board of Adjustment

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Motion: *To adjourn.* Motion by Chair Jarvis. Seconded by Mr. Bickford. **Roll Call Vote:** Vice Chair Anderson – aye; Ms. Richard – aye; Ms. Callaway – aye; Mr. Bickford – aye; Chair Jarvis – aye. **Motion passed, 5-0-0.**

The meeting was adjourned at 10:18PM.

Respectfully Submitted,

Jennifer L. Riel

Jennifer Riel, Recording Secretary