

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT**

September 14, 2021, 7:00p.m.

New Durham Town Hall

Approved October 28, 2021

PRESENT

Terry Jarvis, Chair – excused absence

Wendy Anderson, Vice Chair

Stephanie Richard, member

Linda Callaway, member

David Bickford, member

ALSO PRESENT

Robin McClain, Land Use Administrative Assistant

Tom Varney, Varney Engineering, LLC

Josh Thibault, Varney Engineering, LLC

Ben Johnson, North and South Construction

Erik Dodier, applicant

Lynne LaRochelle, applicant

John LaRochelle, applicant

Brad Jones, Jones and Beach Engineers

Ann Richard, resident

Ken Lane, resident

Jim Beuparlant, applicant

Kelli Beuparlant, applicant

Sarah Barley, resident – via Zoom

Susan Glenny, resident – via Zoom

Peter J. – via Zoom

Heather – via Zoom

CALL TO ORDER

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

Vice Chair Anderson stated since only three members of the Board are present, applicants have the option to continue their case to the next meeting. She asked applicants and their representatives if there were any objections to having their case heard by only three members.

Mr. Varney, representative for applicants Kenneth Lance and Jim and Kelli Beuparlant stated they want to continue their case.

Vice Chair Anderson asked members of the Board if they have any real or perceived conflicts with hearing any of these cases. None was indicated.

Stephanie Richard, member, joined the meeting.

Mr. Varney stated that with Ms. Richard present, they would proceed with the cases with the four members.

Vice Chair Anderson asked members of the public if they have any real or perceived conflicts with any Board members hearing any of these cases. None was indicated.

Review and Acceptance of Case #2021-020

Application submitted by North and South Construction, on behalf for Erik Dodier of 376 South Shore Road, Map 114 Lot 024.

The applicants are requesting variances to:

Article V Section E: Dimension Requirements for Town of New Durham. 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 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 G.2.b: Non-Conforming Buildings, Land or Uses. Non-conforming setback: 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 Board reviewed the application for completeness. Vice Chair Anderson noted the plans indicate the lot is in a steep slopes area but the application does not indicate impact to steep slopes activity. She noted there is no 20 in. scale large plans; abutting properties are not shown on the plans. She questioned whether the narrow spaces indicated on the maps are lots or easements. It was explained the lots are owned by the same owners and are strictly an easement for the lot across the street, so if the lot was sold, it would go with the lot across the street. The Board agreed a deed would be beneficial in this case to confirm the lot ownerships. Clarification is needed for the lot lines and easements.

The Board agreed the application is incomplete due to the missing information and lack of clarification with the lots. It was also noted variances would be needed for the steep slopes. It was explained by the applicant that the garage would not be in the steep slopes area. Vice Chair Anderson explained it still needs to be indicated on the application.

Vice Chair Anderson noted the signature copies need to be owners as well. She noted there is no signature on the authorization for the agent.

The Board agreed variances are also needed for Article XIV, C.1.b and XXI, G.2.b.

Motion: *The application for Case #2021-020 is incomplete.* Motion by Vice Chair Anderson. Seconded by Mr. Bickford. **Motion passed, 4-0-0.**

Vice Chair Anderson stated all materials will be need to be submitted 21 days prior to the meeting of October 12, 2021.

Review and Acceptance of Case #2021-021

Application submitted by Varney Engineering, on behalf of Kenneth Lance of 213 Middleton Road, Map 246 Lot 003.

The applicant is requesting a special exception to:

Article VII Section A.1: Special Exceptions. Dimensional Requirements for Town of New Durham. Uses Permitted by Special Exception.

Applicant wants to add outdoor seating at the brewery and restaurant when it was prohibited as a condition of prior approval of a Special Exception by the Zoning Board of Adjustment.

The Board reviewed the application for completeness. Mr. Bickford stated he recused himself last time this applicant and property came before the Board due to being on the Planning Board as well, but since that time Town Counsel has indicated it is not an issue. He stated this is a new case but wants everyone to be aware. The applicant indicated he does not see a conflict of interest with Mr. Bickford being on the Board for this case.

Ms. Callaway noted a greenhouse was to be removed with the other plans and the greenhouse now proposed for removal is different than the one in the original approved plans. The Board agreed this is a different greenhouse.

Motion: *To accept the application for Case #2021-021 as complete.* Motion by Ms. Richard. Seconded by Ms. Callaway . **Motion passed, 4-0-0.**

Review and Acceptance of Case #2021-022

Application submitted by Varney Engineering, on behalf for Kelli and James Beauparlant of 323 Merrymeeting Road, Map 118 Lot 46.

The 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. 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.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 Board reviewed the application for completeness.

Motion: *To accept the application for Case #2021-022 as complete.* Motion by Ms. Richard. Seconded by Ms. Callaway. **Motion passed, 4-0-0.**

Review and Acceptance of Case #2021-023

Application submitted by Jones and Beach Engineering on behalf of John and Lynne LaRochelle of 153 South Shore Road, Map 121 Lot 70.

The applicants are requesting variances to:

Article XIV Section C.1.e: Shorefront Conservation Overlay District. Dimensional Requirements 1. Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements. Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.

Article XXI Section G.1.a: Non-Conforming Buildings, Land or Uses. Non-Conforming Setbacks. Leach fields: a. Not less than ten (10) feet from a lot line.

Article XXI Section G.2.c: Non-Conforming Buildings, Land or Uses. 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.

Article XXI Section G.2.d: Non-Conforming Buildings, Land or Uses. 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 Board reviewed the application for completeness. Vice Chair Anderson noted there is no assessing card included with the application; they also need to confirm whether variances are needed for Article XXI, Section C.1 and C.2. Ms. Richard noted the owner did not sign the authorization for the representative. Mr. Jones noted both owners of the property are present for this meeting and can sign as needed. Vice Chair Anderson stated they still need the assessing card. Ms. Callaway stated she thinks the complete variance list needs to come back as well. Vice Chair Anderson stated the applicants have the option to come back at a later date for the additional variances.

Motion *The application for Case #2021-023 is incomplete.* Motion by Vice Chair Anderson. Seconded by Ms. Callaway **seconded the motion. Motion passed, 2-2-0.** Ms. Richard and Mr. Bickford opposed. Vice Chair Anderson stated since the motion did not carry, the application is not considered complete.

PUBLIC HEARING of Case #2021-021

Application submitted by Varney Engineering, on behalf for Kenneth Lance of 213 Middleton Road, Map 246 Lot 003.

The applicant is requesting a Special Exception to:

Article VII Section A.1: Special Exceptions. Dimensional Requirements for Town of New Durham. Uses Permitted by Special Exception.

Applicant wishes to add outdoor seating at the brewery and restaurant when it was prohibited by the Zoning Board of Adjustment as a condition of a prior Special Exception approval.

Vice Chair Anderson read the public notice into the record and opened the public hearing at 8:24PM.

Tom Varney, Varney Engineering, LLC, stated a Special Exception was granted by the Board on April 13, 2021 to allow a brewery restaurant at Muddy Road Brewery with a condition on the approval that there would be no outdoor seating. He explained Mr. Lance would like to remove that restriction as it is an important part of the business; customers enjoy being outside and there is ample room for tables. Mr. Varney stated they went to the Planning Board after the Zoning Board approval; outdoor seating was approved by the Planning Board contingent on the Zoning

Board restriction being removed. Plans were presented showing the proposed design and layout of the outdoor seating area. Mr. Varney stated the same number of customers would be served, which is 102 seats. Mr. Lance explained they are not asking for additional seats; seating would be moved from inside to outside as needed. He stated no additional parking is requested or needed.

Vice Chair Anderson opened the public hearing to input from the public. None was indicated. Mr. Bickford stated he is concerned about possible entertainment and noise levels with things being moved outside as this is a residential area. Mr. Lance stated they could have entertainment but they would abide by the Town's noise ordinances. He verified the hours of operation would be 3:00-8:00PM on Saturday and Sunday.

Vice Chair Anderson closed the public hearing at 8:43PM.

Mr. Varney stated they would also like to request the hours of operations be changed from 12:00PM to 8:00PM, Monday through Sunday. Vice Chair Anderson explained the public hearing has already been closed and this request was not included on the application. The Board agreed the hours of operation would need to remain the same as there was no discussion and new plans would need to be submitted.

The members deliberating the case will be Ms. Callaway, Ms. Richard, Mr. Bickford and Vice Chair Anderson.

Findings of Fact:

- Conditions were made with the approval of the Special Exception granted previously by the Zoning Board of Adjustment: one condition was that there would be no outdoor seating, and this is being requested to be removed.
- The new plans show hours of operation would be 12:00 to 8:00PM, Monday through Sunday.
- The total number of parking spaces is 37.
- The number of seats is 102 total, to include both indoor and/or outdoor.
- There are five employees.
- The brewery will be located in the restaurant.
- The building now listed as a shed will be for storage.
- The area that is existing next to the shed will not be seating or parking.
- The existing greenhouse remaining is the one closest to the property line.

Discussion for Special Exception:

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:

The Board agreed allowing both inside and outside seating would not affect the safety of individuals; the seating total of 102 is not changing. There will be no increase in traffic for customers or employees.

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

Vice Chair Anderson stated the abutters are far away from where this is happening. Ms. Callaway stated a traffic study was already done and no concerns were indicated. Ms. Richard noted the closest abutter has not indicated any concerns. The Board agreed the values would not be affected in any way.

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

A. Noise as evidenced by: The Board agreed there could be noise but it would not be any different than other noises before 8:00PM. Any entertainment noise will be within the acceptable hours.

B. Vibration as evidenced by: The Board agreed there would be no offensive vibration expected.

C. Excessive traffic as evidenced by: The Board agreed there would be no changes in the amount of traffic.

D. Unsanitary conditions as evidenced by: The Board agreed sanitary conditions are addressed.

E. Noxious odor as evidenced by: The Board agreed there should be no noxious odors.

F. Smoke as evidenced by: The Board agreed there is no expected smoke.

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

Motion: *To grant the request for Special Exception to Article VII Section A.1 submitted by Varney Engineering, on behalf for Kenneth Lance of 213 Middleton Road, Map 246 Lot 003, to remove the condition that there be no outdoor seating,*

With the following conditions:

- The total number of seats will not exceed 102 seats;
- There will be a maximum of five employees including Mr. Lance;
- The public hours of operation are to remain limited to Friday 4:00PM to 8:00PM, Saturday and Sunday 3:00PM to 8:00PM.
- This is based on the plans dated August 20, 2021.

Motion by Ms. Richard. Seconded by Vice Chair Anderson. **Motion passed, 4-0-0.**

Vice Chair Anderson noted the time is now 9:20PM and no public hearings will be done past 9:30PM.

Vice Chair Anderson stated the public hearings for Case #2021-022, application submitted by Varney Engineering, on behalf of Kelli and James Beauparlant of 323 Merrymeeting Road, Map 118 Lot 46 and Case #2021-023, application submitted by Jones and Beach Engineering on behalf of John and Lynne LaRoche of 153 South Shore Road, Map 121 Lot 70, would be postponed to October 12, 2021 at 7:00PM, at New Durham Town Hall, with the understanding there will be a previous application to be reviewed by the Board before these cases are heard.

FY 2022 Budget

The Board reviewed and discussed the proposed budget. Vice Chair Anderson stated it needs to be presented to the Board of Selectmen meeting on September 27, 2021. She stated she will ask Chair Jarvis to present it to the Board at that meeting.

Motion: *To submit the budget proposal request for the Zoning Board of Adjustment for FY 2022 as follows:*

Registry costs: \$900

Printing: \$1

Advertising: \$5,875

Training: \$300

Postage: \$4500

Books: \$235

Mileage: \$100 for a total request of \$11,701.

Motion by Vice Chair Anderson. Seconded by Ms. Richard. **Motion passed, 4-0-0.**

Ms. Richard left the meeting at 9:45PM.

APPROVAL OF MINUTES

Meeting of July 15, 2021- Edits were made. **Motion:** *To approve the minutes as amended.*

Motion by Mr. Bickford. Seconded by Ms. Callaway. **Motion passed, 3-0-0.**

Meeting of August 10, 2021 – Postponed.

Meeting of August 12, 2021 – Postponed.

NEXT MEETING

October 12, 2021, 7:00PM.

ADJOURN

Motion: *To adjourn.* Motion by Vice Chair Anderson. Seconded by Mr. Bickford. **Motion passed, 3-0-0.**

The meeting was adjourned at 10:17PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary