

Town of Northumberland Zoning Board of Appeals  
Wednesday,  
January 2, 2019 7:00 pm  
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**Zoning Board Members Present:** John Amidon, Bruce Bemis, Paul Becker, Carl Harrison, Vice Chairperson, Aimee Smith, Sarah Mojzer and Mark Boyce, Chairperson

**Zoning Members Absent:** Gary Applegate

**Planning Members Present:** Chair Martindale, Vice Chair Heber and Chad Reinemann

**Town Employees Present:** Richard Colozza, Code Enforcement Officer & Tia Kilburn, Zoning Board Clerk

Mark Boyce, Chairperson, called the monthly meeting to order at 7:07 PM

All in attendance stood and recited the Pledge of Allegiance.

Joint Public Hearing with Planning Board  
For public participation, full names will not be used.

Chairman Boyce introduced application #0011-18, Use Variances for DMD Landholdings / Eric Heym (Tankards Tavern).

Mr. Heym described his application as a use variance for the existing Tavern located at Route 32 and Brownville Roads, he explained he proposes to convert it to a restaurant to make it more marketable. He stated he ran a restaurant in Glens Falls for about 12 years, East End Eatery. He does not desire to run this one but to sell it. Mr. Heym explained he has put in a new kitchen and have had some people interested in buying it, it will be more of a restaurant than a pub. He added something similar to Winslow's in Wilton, his Aunt and Uncle own that. Chair Boyce asked if there were any questions from the Board, Mr. Bemis asked if Winslow's was a diner in Wilton, Mr. Heym responded a small restaurant and bar, he stated this one is at a nice location and a lot can be done with it. Chair Boyce stated this is a joint public hearing and asked if the Planning Members present had any questions or comments, Planning Vice Chair Heber stated they were here to hear what the public in attendance had to say.

Public Participation;

Ms. M reiterated Mr. Heym was not going to run it, he was only doing the application, Mr. Heym responded no, he believes it will be more than a burger joint but that is up to the new owners but probably more of an Italian restaurant. He added everything has been done by code and he has spent about another \$80,000 including a new kitchen and septic it is ready for opening what needed to be done is done.

Mr. R stated there is no guarantee it won't be a bar, Mr. Heym responded it could be a bar there is no guarantees however, a restaurant will bring more money. Mr. R asked if the new owners will have to reapply for it to be a bar because it is zoned residential, Vice Chair Heber responded it is Residential 3 acre, it was grandfathered as a bar but that may have ran out, Mr. Heym stated it is his choice it can be a bar, but it is not his choice to have a bar. Mr. R reiterated it is grandfathered as a bar, Mr. Colozza stated they still have time to use it as a bar. Mr. R asked how much time was left, Mr. Colozza stated he would have to look at the license with the Board of Health and when it completely stopped as a bar to determine. Mr. R stated he lives near there and dislikes the 12:30 – 1 am hooting and hollering in the parking lot as a bar, will the area stay residential, or a bar or restaurant. Mr. Heym stated he could have just opened it as a bar but he didn't want to. Mr. R stated the Board

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should look at the options for the Town and concerned citizens.

Chair Boyce stated the application is in consideration for a restaurant, the restrictions can be discussed by the Board. Mr. R asked if the Board had the powers for the hours of operation. Vice Chair Heber said yes the Planning Board will look at that in their review, Chair Boyce agreed and said typically it is the Planning Board. Mr. R added 12:30 – 1 a.m. is unpleasant.

Mr. P stated he 2<sup>nd</sup> that statement. He added there is encroachment on his property and he doesn't like the lights on the building at 11 pm, He stated there is a lot of activity around his house and he feels the Town is not listening to his concerns. He said he wants to be assured because things can get out of control, he stated he is concerned about the neighborhood. He then added there is increased truck traffic, noise and dust. Mr. Heym introduced himself as the owner, and said he does not and will not have any increased truck traffic on his property. Mr. P asked if the main entrance will be on Route 32 or Brownville Rd, Mr. Heym responded on Brownville Rd, Route 32 would be dangerous. Mr.P apologized and stated he was talking about his property and the neighborhood. Mr. Heym said he was confused installed a septic but there is no additional truck traffic, he said he will keep the building lit with can lights for security, he added he is willing to work with the neighbors and the Board but if he can't sell it he has to do something with it because of the money he has in it.

Mr. R asked if it was Department of Health that grandfathered it or the Planning Board, Vice Chair Heber stated more the Town not the Planning Board. Mr. Colozza interjected it's the Department Of Health approval, they kept the power and heat on so it has not run out yet, he can open a bar now if he wants but he wants a restaurant.

Ms. M asked if it is not sold what will happen, Mr. Heym stated he would open the bar but would like it to be a restaurant. Discussion ensued on a bar vs. restaurant

Mr. Heym stated he owned East End Eatery for 12 years and did well, he wanted out because it was time consuming, his Daughter now runs it and is doing well. Mr. R said he is a bordering property and the quality of life can go up or down. Mr. Heym stated he wants something nicer. Mr. R asked him and the Board to please consider the hours and the neighbors, Mr. Heym said yes, probably close at 10 p.m. but people will still be in there cleaning and prepping for the next day.

Chair Boyce asked if there were any other comments or questions. Mr. M asked how long before a decision will be made, Chair Boyce stated there is a process they have to follow, after they close the public comment period the Board has 60 days to decide, Mr. R asked if there will be a written decision, Chair Boyce said there will be meeting minutes available on the Town's website or by request.

Chair Boyce asked for additional comments, none were noted.

Mr. Becker made a motion to close the public hearing,  
Ms. Smith 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Boyce opened the regular monthly meeting at 7:35 p.m. and stated they will now consider the same application. He asked the Clerk if anything was received from Saratoga County Planning, any other correspondence and a SEQRA, State Environmental Quality Review Form submitted, The Clerk stated nothing from County due to the holidays and meeting(s) timing, no other correspondence has been received and she gave the SEQRA, State Environmental Quality Review Form to Chair Boyce for review.

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Chair Boyce asked for any discussion, Mr. Amidon stated if the question is to upgrade or leave as a bar, he feels

the upgrade is better for everyone. Chair Boyce asked Mr. Colozza if the Planning Board discussed putting limitations during their preliminary review. Mr. Colozza stated this Board can send recommendations to the Planning Board to place restrictions. Chair Boyce reiterated during the process of approval the Planning Board places restrictions and asked Mr. Colozza what the process was for the restrictions, Mr. Colozza stated any restrictions will be listed on the site plan map such as dimming the lights, restricting the hours of operation but any of that can be changed if they come back to the Planning Board or this Board can place restrictions and if they come back it will be a non-conforming use, adjusting the approval for the bar you are granting a different use. Chair Boyce asked what the definition of a restaurant was, the application is requesting a restaurant vs. a tavern to serve liquor, Mr. Reinemann stated there are two separate definitions on pages 14 and 17,

*Restaurant An establishment where food and drink is prepared, served and consumed primarily within the principal building, but may include catering.*

*Tavern An establishment used primarily for the serving of liquor by the drink to the general public and where food or packaged liquors may be served or sold only as accessory to the primary use.*

Chair Boyce stated the application for the existing Tavern be granted a variance to change to a restaurant, would that eliminate or allow for the Tavern, if it is granted as a restaurant the Tavern will not be grandfathered and the primary function serving alcohol goes away they will have to return to get back the Tavern. Mr. Colozza stated it would be opposite of the use now. Chair Boyce said Tavern vs. Restaurant, the restaurants primary use would be to serve food, they could still serve drinks. Mr. Reinemann asked if Department of Health will break it down, Mr. Colozza responded no, but it does have to be approved by Department of Health. Ms. Mojzer asked what happens if it opens to serve food and then switches to alcohol, who does the enforcement, Mr. Colozza responded not Department of Health, it is up to the Town to enforce.

Mr. Amidon asked as a restaurant how many people will be allowed, Mr. Heym stated he did not change that, he believes it is at 65 right now however, dining takes up more room and Department of Health will tell them, it will be less people than as a bar. Mr. Colozza stated the design will go through Department Of Health, they consider the kitchen and square footage per person, sitting at tables the number goes down. Mr. Amidon asked how does he know there will be enough tables and doesn't revert to a bar, Mr. Heym stated he did not do a layout; however, he believes it will be viable as a restaurant. Ms. Mojzer asked if he would address the lighting for the neighbors, Mr. Colozza responded he has down lights and the Planning Board will look at it to make sure there is no glare, he does need the lights for security and for the signage they can come back in later with the Planning Board.

Mr. Becker asked if there are restrictions on the amount of food that can be served as a Tavern, Mr. Colozza stated they only served bar food; chili, hotdogs, sandwiches it was not really a sit down and order type of place, he added people mostly went to drink and had the occasional snack to chew on. Mr. Becker asked if that was his understanding or the definition, Mr. Colozza said it is his interpretation. Mr. Reinemann asked who defines the food and drink, Mr. Colozza said a restaurant can package food for take out but not usually take out drinks. Ms. Mojzer stated it's clear the definition of Tavern (in part; *an establishment used primarily for the serving of liquor by the drink...*) sitting at a bar and restaurant is dinning vs. sitting at a bar, have to try and enforce or ensure there are guidelines and there is no good enforcement, find some way to do it. Mr. Reinemann stated when there are complaints then there can be enforcement, Mr. Colozza agreed and said whatever is in the site plan the Board requires.

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Mr. Bemis suggested to look up Caputos Bar that use to be in the hamlet, they had tables, Mr. Colozza stated there have been zoning changes and that was prior to 1976. Mr. Bemis stated he had his wedding reception there and he has been married 53 years. Mr. Amidon stated Winslow's is smaller. Mr. Reinemann stated they have a kitchen so they are going to use it. Chair Boyce stated if no action is taken by this Board it is a bar and the question is can it pass the evaluation tests, they have a tavern seeking a use variance would it be a benefit converting it, the public has concerns with it as a tavern, this Board has no jurisdiction over, so do we grant a variance for a restaurant. Mr. Amidon stated with the complaints and concerns we heard it is better as a restaurant.

Chair Boyce stated if they grant the variance it can be a restaurant, does the tavern get re-established, can the tavern be re-established or do they lose the tavern element, once it stops it is gone. Mr. Colozza stated after 18 months of a restaurant the tavern is out. Ms. Smith asked if leaving the power on and serving alcohol at a restaurant they will lose the tavern is that what an attorney would say, Mr. Colozza said it is up to them, an attorney would have to look at the receipts and see what sells more, food or alcohol and that would be considered the primary use.

Ms. Smith stated they need to do something to comfort the neighbors, Mr. Boyce stated they need to look at the use variance test as a reasonable return, Mr. Colozza interjected all agree a restaurant would be the least invasive impact on the neighborhood. Ms. Mojzer asked for the reasonable return is it better for families or only people over the age of 21.

Chair Boyce asked if the Board wanted to place limitations on Business not on the use, any discussion or default it to the Planning Board. Vice Chair Harrison and Ms. Smith agreed restrictions should be placed however, default that to the Planning Board to do.

Mr. Heym stated he does not have a problem closing at 11 p.m. but people will still be there cleaning and or prepping.

Mr. Amidon stated the neighbors are concerned with the noise, Mr. Heym said they can also do catering for things such as weddings, he added there is a nice yard but 10 p.m. is to early to close maybe 11 p.m.

Chair Boyce asked if this Board wanted to be the controlling Board for restrictions or send it to Planning, Vice Chair Harrison responded send that to the Planning Board, restrictions go on the business not on the land.

Chair Boyce asked if there were any additional discussion, none was noted, he then reviewed the short form SEQRA, State Environmental Quality Review Form.

Chair Boyce stated Mr. Hall, Architect for the applicant, completed the SEQRA, State Environmental Quality Review Form and marked yes for #9. *Does the proposed action meet or exceed the state energy code requirements?* And it says to explain. Mr. Heym said he does not know, Mr. Hall completed that. Mr. Colozza stated it should be no for the consumption of energy, there is not really any change.

Chair Boyce stated #10. *Will the proposed action connect to an existing public/private water supply?* Is marked yes and should be no. Mr. Bemis asked what kind of well was on the property, Mr. Colozza said it is approved by Department of Health a point, Mr. Bemis said a point well won't be approved by a bank. Mr. Heym stated it

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is a drilled well.

Chair Boyce stated #11. *Will the proposed action connect to existing wastewater utilities?* Is also marked yes which should be no, because it has 2 private septic systems on the property not public utilities.

Chair Boyce stated #10 & #11 need to be corrected, the applicant can either correct it or bring it back to his Architect, Mr. Hall but that will stop proceedings for this meeting.

#10 and #11 were corrected by the applicant.

Chair Boyce made a motion to declare a negative declaration on the SEQRA, State Environmental Quality Review Form,  
Ms. Smith 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Ms. Smith made a motion to approve application # 0011-18 as submitted for a use variance for a restaurant,  
Vice Chair Harrison 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Boyce asked if there were any additional business for the Board, none was noted.

Mr. Amidon made a motion to adjourn the monthly meeting at 8:30 p.m.  
Vice Harrison 2<sup>nd</sup> the motion.  
All in attendance unanimously agreed.

**FUTURE MEETINGS**

February 6, 2019, as needed.

Respectfully submitted,  
Tia Kilburn, Zoning Board Clerk