



**TOWN OF DURHAM**  
8 NEWMARKET RD  
DURHAM, NH 03824-2898  
603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

**NOTICE OF DECISION**  
***Minor Site Plan***

**Project Name:** Scorpion's Restaurant – Outdoor Seating  
**Action Taken:** APPROVAL  
**Address:** 39-41 Main Street – subject lot. (Scorpion's Restaurant is located at 45 Main Street)  
**Project Description:** Outdoor seating area for eating and drinking in the rear of 39-41 Main Street for customers of Scorpion's Restaurant.  
**Property Owner:** Graham Camire and Frank Silva, c/o GFAS Realty LLC  
**Map and Lot:** Map 108, Lot 16. Scorpion's Restaurant is located on Map 108, Lot 17. It is owned by Graham Camire and Frank Silva, c/o NINEANDAHALF LLC)  
**Zoning:** Central Business District  
**Date of approval:** August 24, 2023

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This minor site application is approved as stated in the application subject to the following terms and conditions. The applicant agrees to and acknowledges these terms and conditions by virtue of their acceptance of this approval letter.

- 1) The outdoor seating area is restricted to the hours that Scorpion's Restaurant is open.
- 2) The only entrance to the outdoor seating area is through the deck at the rear of Scorpion's Restaurant. Scorpion's Restaurant will post a person between the deck and the outdoor seating area to check people as they enter the outdoor seating area.
- 3) The current lighting for the outdoor seating area includes strings of light bulbs. Any significant new lighting for the outdoor seating area shall be reviewed and approved by the Planning Department to ensure that it does not cause glare or excessive light trespass onto abutters and neighbors.
- 4) There will be no music or amplified sound created within the outdoor seating area,
- 5) If there is a change in ownership or management of Scorpion's Restaurant or in ownership of either Map 108, Lot 16 or Map 18, Lot 17, then the applicant (and subsequent owners and managers) shall notify the new manager/owner: a) about this

approval and the terms and conditions of this approval; and b) that the Town of Durham requests that they meet with the Town Planner informally so that the Town Planner can review the terms and conditions of this approval with them.

- 6) The applicant shall record an appropriate document at the Strafford Registry of Deeds including the essential information from 5), above. A draft document shall be submitted to the Town Planner for review prior to recording. The document must be recorded at the registry within 60 days, by October 24, 2023.
- 7) The terms and conditions of this approval apply in perpetuity as long as the outdoor seating area is in place. Any substantive change in the conditions of the outdoor seating area as presently proposed and operated will require submission of a new application or an application for a modification or amendment to the Durham Planning Department.
- 8) In accordance with RSA 674:43 III, any party may appeal this decision to the Durham Planning Board if such appeal is filed with the Town of Durham Planning Department within 20 days of this approval, by September 13, 2023.

**Findings of Fact.** The Planning Board okayed reviewing this application as a Minor Site Application in accordance with the Durham Site Plan Regulations. An on site meeting and public hearing was held on August 10. Minutes are available for the meeting. Several issues were discussed at the meeting. The applicant agreed to the terms discussed at the meeting which are incorporated into this approval. Several neighbors expressed support for the application. One abutter located adjacent to the site on the east side expressed concerns about the proposal. The applicant agreed to several conditions incorporated into this approval (deemed reasonable by all parties) which satisfied the abutter. The outdoor seating area had been operated for approximately the prior three years (It was not brought to the attention of the Town until this time). The Durham Police Chief said that he has not received any noise complaints about the outdoor seating over the prior three years. The Town staff determined that a variance would be needed because the staff deemed the outdoor seating area to be an accessory use to the restaurant which is located on a separate lot. The Zoning Ordinance specifies that accessory uses be located on the same lot as the principal use. The Zoning Board of Adjustment dismissed the application for a variance, finding, with guidance from the Town Attorney, that the outdoor seating should actually be deemed a component of the principal restaurant use rather than an accessory use. Components of a principal use may be located on separate lots. This application was reviewed and approved as a Minor Site Application in accordance with Part II, Article 7 of the Durham Site Plan Regulations and RSA 674:43 III. Documentation on this application can be seen on the Town of Durham website under Planning Board – Completed Applications – 2023.