



**TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT**
8 NEWMARKET RD
DURHAM, NH 03824
PHONE: 603/868-8064
www.ci.durham.nh.us

paid fee \$379
check # 5193

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JUL 19 2023

Planning, Zoning
and Assessing

VARIANCE

Prior to seeking a variance, the property owner must have been denied a building permit by the Building Inspector or denied an approval by the Planning Board.

Name of Applicant Frank Silva & Graham Camire GFAS Realty

Address: 45 Main St Durham, NH 03824

Phone # (603)946-7920 (603)769-7557 Email: fsilva1981@hotmail.com Graham.Camire@yahoo.com

Owner of Property Concerned Same
(If same as above, write "Same")

Address: Same
(If same as above, write "Same")

Location of Property: 39-41 Main St Durham, NH 03824
(Street & Number)

Tax Map & Lot number Map 108, Lot 16

A Variance is requested from Article(s) II Section(s) 175-7 of the Zoning Ordinance to permit:

Restaurant seating on a parcel directly adjacent to a restaurant

All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.

Owner Authorization and Signature:

1. I/we do hereby authorize _____ to file this application with the Zoning Board of Adjustment, to appear before the Board and to act on my/our behalf.
2. I/we do hereby authorize members of the Zoning Board of Adjustment and/or staff to enter upon the property on the afternoon prior to the Zoning Board meeting for purposes of reviewing this application.
3. To the best of my/our knowledge the information contained in this application is complete and accurate.

Owner's Signature(s): Frank Silva Date: 7/19/23
MC Date: 7/19/23

RSA 674:33 Powers of the Zoning Board of Adjustment:

I(a)The zoning board of adjustment shall have the power to:

- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
- (2) Authorize, upon appeal in specific cases, a **variance** from the terms of the zoning ordinance if:
 - (A) The variance will not be contrary to the public interest;**
 - (B) The spirit of the ordinance is observed;**
 - (C) Substantial justice is done;**
 - (D) The values of surrounding properties are not diminished; and**
 - (E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

(b)(1) For purposes of this subparagraph I(a)(2)(E), "**unnecessary hardship**" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (B) The proposed use is a reasonable one.

(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

(3)The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

EXPIRATION PERIOD FOR VARIANCES

Any Variances granted shall be valid if exercised within **2 years** from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

Tracey Cutler

From: frank silva <fsilva1981@hotmail.com>
Sent: Wednesday, July 19, 2023 6:33 PM
To: Tracey Cutler; graham.camire@yahoo.com
Subject: 5 statutory requirements for granting variance

To whom it may concern,

(A) This variance will not be contrary to public interest. It is just the opposite, it's a spot for the public to eat and drink and it does not interfere with any roads or side walks. It was approved during covid and we have used it for three years without any complaints from abutters or anyone else.

(B) We will absolutely follow any ordinance that is pertaining to this variance. We have done that for the past three years while we were able to use the space.

(C) Substantial justice is done; if granted this variance would not cause harm to the general public. It is private property and we will continue to manage it and follow any town ordinances like we have done the past three years of use.

(D) If granted this variance would not diminish the values of the surrounding properties. We will maintain the property and continue to clean and manage it like we have.

(E) If this variance is denied it is a blow financially to us. Our main goal is to eventually totally rehab/ knock down the property that is 45 main street and build a new building that would fit in well with the rest of the downtown area. The ability to use this space helps create revenue to combat rising business cost, taxes and eventually help us reach that goal of rehabbing the property.

-Frank Silva
Sent from [Mail](#) for Windows

LEASES

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The property at 39-41 Main St Durham NH 03824 owned by GFAS Properties will lease said lawn space (behind the building) to Minerva Food and Drink DBA Scorpions Bar and Grill. Scorpions can use the space as they need.

GFAS FM Sil Frank Silver 5/17/23

Minerva Food and Drink dba Scorpions Bar and Grill 5/17/23
M. Camire Graham Camire



State of New Hampshire
LIQUOR COMMISSION
Division of Enforcement & Licensing

50 Storms Street
P.O. Box 1796
Concord, NH 03302-1796
Phone: (603) 271-3521
Fax: (603) 271-3758

Chief Mark C. Armaganian
Director

Joseph W. Mollica
Chairman

Nicole Brassard-Jordan
Deputy Commissioner

Thank- you for making notification to the NH Liquor Commission- Division of Enforcement & Licensing regarding your outside area!

Again, this authorization is permitted to holders of on- premises restaurant licenses who can safely expand their seating to an outdoor area. Such areas are to include parking spaces close to the entrances, sidewalks, existing patios and lawn areas. Outdoor areas must be able to cleaned and disinfected, as appropriate. The outdoor space must be clearly defined and distanced from people walking by. If the expansion is in a shared space (i.e. sidewalk, street) you must have approval from local authorities.

Please retain this email return as your approval for your temporary extension pursuant to Emergency Order #40 Exhibit A.

Sincerely,

Chief Mark C. Armaganian
Director

New Hampshire Liquor Commission
Division of Enforcement and Licensing

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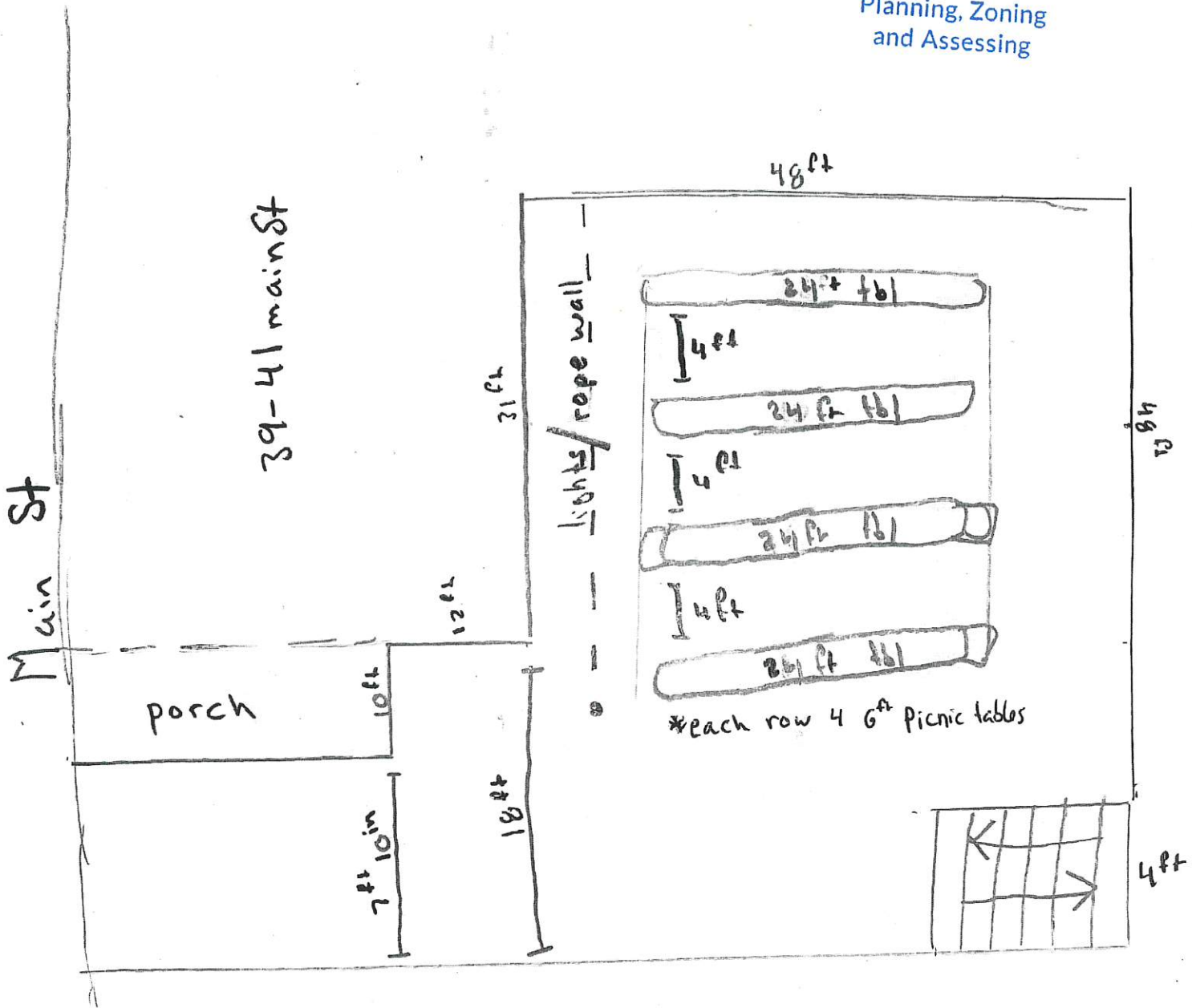
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Scorps



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898

TEL: (603) 868-8064
acline@ci.durham.nh.us

AUDREY CLINE
Zoning Administrator
Code Enforcement Officer
Health Officer

Decision or Order of the Building Inspector/Code Enforcement Officer

175-12. Administrative Appeals.

Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in his/her interpretation of the Ordinance, it shall modify or reverse the decision accordingly.

175.19. Powers and Duties

B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

Applicant: GFAS REALTY LLC, 45 MAIN STREET, DURHAM, NH 03824

Date of order: July 24, 2023

Deadline for application for appeal: August 25, 2023

Decision or Order of the Building Inspector/Code Enforcement Officer:

Building Permit Application number 23-297, for property located at 39-41 Main Street, is DENIED as the proposal does not meet the requirements of the Durham Zoning Ordinances below:

ARTICLE II DEFINITIONS

175-7;

RESTAURANT – A commercial establishment open to the general public where food and beverage are prepared, served and consumed primarily within the principal building. Adequate seating shall be provided.

DECISION: Seating for consumption of food and beverage is an accessory use to a restaurant. There is no restaurant on this property, the seating proposed is integral and accessory to the primary use of restaurant which is on an adjacent parcel.

By Durham's Building Inspector/Code Enforcement Officer:



Audrey Cline CEO