

1 **Deering Zoning Board of Adjustment**
2 **762 Deering Center Rd**
3 **Deering, NH 03244**
4

5 **Minutes of April 25, 2019**
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7 Members Present: David LeFevre, Chair; Larry Sunderland, Vice-Chair, Phil Bryce, Rob Girard,
8 Alternate Member Doug Lalmond, Selectmen Representative Allen Belouin
9

10 Town Officials Present: Michael Borden, Code Enforcement Official/Building Inspector;
11 Captain Thomas Cavanaugh, Police Officer; Diane Kendall, Recording Secretary
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13 Others Present: Applicant and parties in interest to Case No.: 2019-02: Robert Mashioff, Danny
14 and Pamela Hutchison, Dennis Roy, Gale Lalmond, Molly Burns, Donald Wyman, Tom
15 Copadis, Katherine Jenkins, Henry Lemieux, Gary and Fay Burns, Michael Luca, Robert and
16 Denise Incao
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18 Chair LeFevre called the meeting to order at 7:00 p.m.
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20 Chair LeFevre stated the hearing is a continuation of hearing opened April 4, 2019. At that time
21 the board asked Mr. Mashioff to prepare responses to questions. Mr. LeFevre stated all
22 concerned abutters will have an opportunity to ask questions not previously asked. Mr. Mashioff
23 provided a Proposed Policy for Barn Event Venue to board and abutters. Mr. Mashioff addressed
24 each item in the proposal. Traffic would be limited to 20-25 cars and all guests would be
25 shuttled on and off the property. **Alcohol:** Mr. Mashioff said alcohol will only be provided by
26 event organizer or vendors hired by the event organizer. No alcohol would be for sale at the
27 venue. **Fire sources:** Mr. Mashioff said no open flames or smoking will be permitted inside the
28 barn. All heating and cooking will be conducted outside the barn or in a detached garage, with
29 cement floor and in compliance with all codes. A fire pit will be present at a suitable distance
30 from all standing structures and meet on all town codes. Smoking will only be permitted at the
31 fire pit. **Lights:** Mr. Mashioff said since there will be no parking in the field, lights from cars
32 will not be an issue. Chair LeFevre asked for clarification about parking location, Mr. Mashioff
33 demonstrated courtyard parking on a map. **Noise:** Mr. Mashioff explained car noise would be
34 minimized with the off-site parking. Music will be stopped at 10:00pm in accordance with town
35 noise ordinance. Mr. Mashioff described a sound test conducted with music professional,
36 Michael Luca. Mr. Luca introduced himself as a music and event professional and described the
37 sound test conducted. **Bathrooms:** Mr. Mashioff proposed to use high end portable bathrooms
38 for all events. **Property values:** Mr. Mashioff said he believed his event venue and property
39 would not lower property values and explained how the venue could contribute to the local
40 economy.
41

42 Mr. Bryce expressed concerns about noise from people outside the barn. Mr. Luca asked to speak
43 to noise. Chair LeFevre asked Mr. Luca what his relationship was with Mr. Mashioff and his

44 qualifications regarding sound. Mr. Luca responded he is live venue audio specialist with over
45 600 weddings in his experience. He was contacted by Mr. Mashioff to provide expertise in sound
46 volume. He then described decibel readings of people talking in comparison to other common
47 noises such as chain saws and lawn mowers. Ms. Burns, who is a tenant of Mr. Mashioff at 671
48 East Deering Rd, presented board members with photos of the property from abutters
49 perspective.

50
51 Chair LeFevre invited abutter Mr. Roy to speak. Mr. Roy thanked the board and expressed
52 concerns. Mr. Roy is not satisfied that his property value would not be diminished; what other
53 types of events will be allowed in addition to weddings; how will Mr. Mashioff enforce the
54 parking and shuttling; can the septic handle the additional use; will the additional use draw too
55 much water from well; what kind of fire suppression will be used; and how will pool safety be
56 handled as there is no fence around the pool?

57
58 Chair LeFevre invited attendees that were not at the initial hearing date to speak. Mr. Burns
59 spoke and introduced himself as providing mechanical and caretaker duties for Mr. Mashioff on
60 the property and described how the property is meticulously care for. Mr. Burns daughter Molly
61 is a photographer who lives on the property and would be the person effectively handling events.
62 Ms. Burns stated that she is a wedding photographer and her observation is that it is rare for
63 wedding guests to get loud and out of control.

64
65 Mr. And Mrs. Hutchison spoke stating that noise travels easily as they hear dogs barking. They
66 expressed concerns about the reality of using shuttles for guests; alcohol control; and stated they
67 want to protect rural nature of the community.

68
69 Mr. Lemieux spoke about noise stating he hears neighbors cutting wood and dogs barking a mile
70 away. He stated concerns about people staying and celebrating past 10:00pm; shuttle not being
71 enforced; guests bringing their own alcohol and handicap accessibility.

72
73 Ms. Gale Lalmond spoke saying that there is a lot of traffic on East Deering Rd now and that she
74 can hear everything; concerned about keeping Deering a bedroom community.

75
76 Captain Cavanaugh, Deering Police department spoke to concerns of abutters. Cars parked on
77 the roadway would be ticketed. Cars could be parked off roadway unless the Board of Selectmen
78 posted the road for no parking. Parking must not restrict access for EMS services. Cavanaugh
79 explained that Police Detail is not required for a private event, but could be available for an
80 hourly fee. Police will enforce the town's noise ordinance. Selectmen Allen asked if the Police
81 department could handle a crowd, Cavanaugh responded with mutual aid they could.

82
83 Chair LeFevre opened questions and comments from people who were at the initial hearing date.

84
85 Ms. Jenkins expressed concerns about commercial use in a residential area and the use would
86 require constant monitoring.

Code Enforcement Official Michael Borden spoke about building code and life safety requirements. The use is classified as a place of assembly A-2 occupancy under the 2009 International Building Code and described as for uses intended for food and/or drink consumption including, but not limited to banquet halls, night clubs, restaurants, taverns and bars. Mr. Borden further explained since the barn is attached to the home the entire square footage must be used when determining need for a fire suppression sprinkler system which is 5,000 square feet and would be required for this venue. He also explained requirement for egress, lighted exit signs, parking and pool fencing. Events over 100 people are required to have a certified crowd manager on site. Mr. Borden explained 2-foot fire pit must be 25' from building no permit is required, a 4-foot fire pit is subject to permitting; must be 50' from building and can only operate from 5:00pm to 9:00am the next morning.

Mr. Leberman, Esq, representing his client East Deering Rd, LLC, spoke saying he appreciated Mr. Mashioff efforts to test sound but not convinced that it was a proper sound test. He also appreciated the rules and restrictions Mr. Mashioff was willing to implement but doubted the enforceability. Mr. Leberman was not satisfied that Mr. Mashioff met all the requirements of Zoning Ordinance Commercial Uses special exception 3.3.2, nor was he satisfied property values would be retained.

Mr. Copadis expressed concerns of the Roy's to enjoy their property living directly across from the proposed venue.

Chair LeFevre thank everyone for their comments and closed the time for comments from attendees. Chair LeFevre explained the applicant has applied under Zoning Ordinance Article 3, Section 3 Commercial Uses, 2 All other non-agricultural business, commercial or industrial ventures may be allowed by special exception, provided that conditions a) through f) were satisfied.

Mr. Sunderland explained that 25 to 30 years ago the Planning Board made an effort to create districts that didn't come to fruition and the town is considered one district that allows commercial use by special exception. If approved the special exception stays with the property not the property owner.

The board discussed and reached consensus for the applicability of each condition (a-f). 3.3.2 (a) is determined applicable, 3.3.2 (b) not applicable as it was not new construction. The board discussed 3.3.2 (c) relative to parking. The applicant is required to meet the condition regardless of the proposal to shuttle people to and from, the condition is applicable. Condition (d) may not be applicable. Condition (e) was not discussed. Condition (f) was discussed at length and acknowledged by all that wording could have been better. All members with exception of Mr. Sunderland agreed that the condition (f) applies. Condition (g) not applicable.

Chair Lefevre polled members asking them if the applicants plan and proposal as it stands satisfied the special exception condition (f) to provide sanitary maintenance of the facility. Such

130 facilities shall at the minimum include hot and cold running water and sewerage or septic
131 service. All members with exception of Mr. Sunderland agreed the condition was not satisfied
132 because the barn did not contain bathrooms with hot and cold running water. Mr. Sunderland
133 dissented saying the house was connected, water and bathrooms were available in the house.
134

135 The board discussed condition (c) off-street parking. Chair LeFevre explained that the applicant
136 in his effort to satisfy the traffic concerns of his neighbors, proposed parking plan for 20-25 cars
137 that could not meet parking requirement of 300 square feet for each 3 anticipated patrons. The
138 proposed parking plan does not relieve the applicant of the requirement to satisfy the condition.
139 All members agreed condition (c) is not satisfied.
140

141 The board discussed condition (a) undue hazard to health, safety, or property values. Mr.
142 Sunderland stated there was no comparative market analysis to judge the effect on values and
143 members would be using a gut reaction. Mr. LeFevre commented that property value beyond
144 monetary is the value one's property contributes to quality of life. All other members agreed
145 and felt the use would negatively affect property values. The board agreed that vibration,
146 unsanitary conditions, noxious odors may not apply. The chair recognize noise as the
147 predominant complaint among the abutters. Mr. Bryce commented that certain noises are
148 accepted in a rural agricultural community such as chain saws, shooting, tractor and mowing.
149 Mr. Girard commented that one would have to compare what is at the property now, quiet, to
150 what it would be with 22 events in the summer months. The board agreed that the venue would
151 be offensive to the public because of noise and excessive traffic during a concentrated period of
152 summer months, the same time the public would be enjoying their properties.
153

154 Mr. Bryce motioned to deny the special exception for commercial use zoning ordinance 3.3.2
155 because the applicant did not satisfy the conditions (a), (c) or (f). Mr. Girard seconded the
156 motion. Roll call vote: Mr. LeFevre, aye; Mr. Sunderland, nay; Mr. Bryce, aye; Mr. Girard, aye;
157 Mr. Lalmond, aye. The motion passed 4:1, the special exception is denied is denied.
158

159 Mr. LeFevre explained to the applicant Mr. Mashioff; a written notice of decision will be sent to
160 him within 5 business days. The letter to the applicant will also outline reasons for the decision
161 and explain the appeal process.
162

163 Mr. Bryce motioned to approve the Zoning board minutes of April 4, 2019 seconded by Mr.
164 Girard. The motion passed unanimously.
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166 Chair LeFevre adjourned the meeting at 10:15pm
167

168 Respectfully submitted,
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170 Diane Kendall,
171 Recording Secretary