

## **SANBORNTON ZONING BOARD OF ADJUSTMENT**

P.O. Box 124

Sanbornton, New Hampshire 03269-0124

### **MEETING MINUTES**

Meeting Date and Time: Tuesday, November 22 2016 at 7:00 PM

Meeting Place: Town Offices, 573 Sanborn Road, Sanbornton, N.H

### **GENERAL BUSINESS**

Present: Doug Rasp, member, Don Bormes, member, Tim Lang, Chair, Steve Cobb, alternate member, Earl Leighton, member, and Town Planner, Bob Ward.

Tim Lang opened the meeting at 7:00 p.m. and all in attendance recited the Pledge of Allegiance.

Tim Lang notified attendees that the order of the agenda will be modified, as the Board is waiting for more voting members to arrive. Steve Cobb was seated as voting member.

#### **Minutes**

Don Bormes made a **motion** to approve the minutes from 10/25/16. Doug Rasp **seconded** the motion and the **motion passed unanimously**.

### **PUBLIC HEARING**

**Case #490:** A request from Duval Family Realty Trust, as Applicants, for a Variance from the requirements of Article 5, Section A(6) of the Sanbornton Zoning Ordinance. Applicant seeks permission to allow construction/expansion of a deck closer to the front property line than is permitted. Property is located at 9 Winni Park Drive, Tax Map 11, Lot 41.

Charles Duval presented his project to the ZBA, stating that he would like to expand an existing deck along the front of his house lengthwise and create an enclosed porch, with a depth of 9 feet and length of 22 feet. The current depth of the deck is 8 feet. The home is already non-conforming in its setback of 22 feet of the private road (setback requirement is 30 feet), and with this proposed project, would be 21 feet from the road.

The ZBA reviewed the variance application against the five variance criteria and voted as follows:

**Criterion #1: The variance will not be contrary to the public interest**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #2: The spirit of the ordinance is observed**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #3: Substantial justice is done**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #4: The values of surrounding properties are not diminished**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #5: Literal enforcement of the ordinance would result in an unnecessary hardship**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Sub-Category A: “The Relationship Test” or “The Reasonable Use Test”**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Sub-Category B: “The Strict Conformance with the Ordinance Test”**

Bormes/Yes; Rasp/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

Steve Cobb made a **motion to approve** the Variance as requested in Case #490, the motion was **seconded** by Doug Rasp and passed unanimously.

**Case #491:** A request from Daniel and Carolyn Bednarek, as Applicants, for a Variance from the requirements of Article 8, Section A.(3) of the Sanbornton Zoning Ordinance. Applicant seeks permission to allow reduction of the lot frontage of an existing lot fronting on Hermit Lake Road to a dimension less than as required. Property is located at 82 Hermit Lake Road, Tax Map 3, Lot 116.

Surveyor Ron Johnson explained that the main piece of the land involved in this request is already non-conforming. The property was purchased by the Bednareks with incorrect boundary lines represented. Part of the Bednarek’s home is located on the Hasek’s land, and the Hasek’s driveway is on the Bednarek’s land. This proposal will remedy this and small pieces of land are being swapped essentially to create the correct boundary lines. No changes to actual structures will be needed.

Steve Cobb asked if all parties are in agreement about this proposal, and Mr. Johnson responded Yes. He stated that he has a notarized and signed application from all landowners which the Town Planner will receive.

The ZBA reviewed the variance application against the five variance criteria and voted as follows:

**Criterion #1: The variance will not be contrary to the public interest**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #2: The spirit of the ordinance is observed**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #3: Substantial justice is done**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #4: The values of surrounding properties are not diminished**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #5: Literal enforcement of the ordinance would result in an unnecessary hardship**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Sub-Category A: “The Relationship Test” or “The Reasonable Use Test”**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Sub-Category B: “The Strict Conformance with the Ordinance Test”**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

Don Bormes made a **motion to approve** the Variance as requested in Case #491, subject to the Town Planner receiving the signed application from all parties. The motion was **seconded** by Doug Rasp and passed unanimously.

**Case #492:** A request from Deborah Thompson, as Applicant for a Variance from Article 14, Section C.(2) of the Sanbornton Zoning Ordinance. Applicant seeks permission to allow construction of a deck closer to the shoreline than as permitted. Property is located at 65 Cogswell Rd, Tax Map 17, Lot 31.

Mark and Deborah Thompson explained that their existing deck is already closer to the shoreline than as permitted by the Ordinance, and they would just like to expand the deck lengthwise along the side of their home. It is approximately 15 feet from the water and will remain that way. Don Bormes asked if they need a State permit as this is dealing with the shoreline, and Mrs. Thompson provided a signed document of approval from DES. Mark Thompson stated that no abutters have raised any issues with the proposed construction.

The ZBA reviewed the variance application against the five variance criteria and voted as follows:

**Criterion #1: The variance will not be contrary to the public interest**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #2: The spirit of the ordinance is observed**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #3: Substantial justice is done**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #4: The values of surrounding properties are not diminished**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Criterion #5: Literal enforcement of the ordinance would result in an unnecessary hardship**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Sub-Category A: “The Relationship Test” or “The Reasonable Use Test”**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Sub-Category B: “The Strict Conformance with the Ordinance Test”**

Bormes/Yes; Anderson/Yes; Lang/Yes; Cobb/Yes; Leighton/Yes

**Case #493:** Request from Ralph and Kristin Rathjen, as Applicants, for an appeal from an Administrative Decision made by the Planning Board concerning a proposed wedding/events venue on their farm, known as KREBS Farm. Property is located at 315 Upper Bay Rd, Tax Map 10, Lot 113 and is located in the General Residential Zoning District.

Before opening this case, Chair Tim Lang asked the Rathjens how they would like to proceed, as Earl Leighton has recused himself and there are only four voting members, which could lead to a split vote (denial of request). Mr. Rathjen stated that there is a hired videographer and counsel present as well as abutters so he would like to present the case, even if the hearing is continued for voting at a later date. Chair Lang suggested presenting the case, and then polling the Board to see how they feel about voting or tabling the case, and the Rathjens agreed. Town Planner Ward mentioned that he has spoken with the Town’s attorney, Chris Bolt, who has recommended that the Board hear the Applicants and abutters and then consult with him before voting.

Brian Pratt of CLD Consulting Engineers presented the Rathjens’ site plan using aerial photos, stating that no surveying has been done as no permanent structures will be built. Mr. Pratt outlined proposed parking areas, including 60 spaces at Mountain View Church across from the

farm, as well as parking on the Rathjens' property totaling 300 spaces. He did state that the maximum event would hold 250 people. A pedestrian sign and fencing would be used if needed for event goers to cross Upper Bay Road to get to the church parking lot. "No Parking" signs would be placed on the side of the road and a parking attendant would also be present. Portable toilets would be located under an existing deck overhang and a catering set-up/vehicle location is outlined on the map.

Mr. Pratt explained that a sound impact study has been conducted on the farm, using a DJ sound system with sound readings taken from various locations on the property close to abutters. The conclusion of the sound study was that, with music on full sound, sound will be slightly audible but the loudest expected frequency is at 51 decibels. This is in the range of "typical sound levels, and is less than normal sound such as wind, rustling leaves, birds and vehicles driving by."

Doug Rasp asked about electricity and inspection by the Fire Department. Mr. Rathjen responded that previous events have used external outlets and no generators are required. He also stated that he's spoken with the Fire Chief and was told that an annual inspection and one-time soil test would be needed before erecting a tent. The Fire Chief also indicated that approval for the venue would be needed before any inspection would take place. Mr. Rathjen explained that typically tents would be erected on a Thursday or Friday for a Saturday event, and be taken down Sunday or Monday.

Chair Tim Lang asked if a police officer would need to be present. Mr. Rathjen explained that there would be no music after 11:00 and for late or high-attendance events a police officer may be present to help maintain the peace and enhance public safety. He stated that he is not sure yet if this would be necessary and that events would average 100 to 150 people.

The Rathjens' attorney, Courtney H.G. Herz of Sheehan Phinney, explained the reason for the request of the appeal of the Planning Board's decision to classify this as Commercial. She stated that she has listened to the recording of the Planning Board's November 3<sup>rd</sup> meeting and it was her feeling that the Planning Board was only given the option to choose from Home Occupancy Level 2 or Commercial, and that there should have been a third option to consider, which is Agritourism. She cited SB 345 which states that accessory uses of farms are now permitted so that farms can sustain themselves. She also stated that agriculture uses are permitted in residential zones, and the main purpose of the KREBS Farm will still be to maintain a working farm, with weddings and farm-to-table events being accessory uses. Ms. Herz also explained that the Planning Board referenced the Longlook Farm event venue in Sanbornton, but stated that this comparison is moot, as that is not a working farm. (Don Bormes decided to recuse himself at this point in the case, as he stated that he is also on the Planning Board.)

Chair Tim Lang asked for input from any abutters in the audience. Ethan Wood, attorney representing Jim and Karen Sweeting, stated that his clients agree that the proposed use should be considered Agritourism and not classified as Commercial. Abutters John and Sandra Groveman and Chris McMicken of the Mountain View Church echoed this. Earl Leighton asked if the Rathjens would be eliminating any crops to build a parking area. Mr. Rathjen responded that he may have to shift crops but will not be limiting crop growth to increase parking.

Chair Tim Lang asked voting members of the Board how they would vote if required to do so at this time. All agreed that they would be in favor of overturning the Planning Board's decision but Doug Rasp and Steve Cobb stated that they feel it would be best to discuss with the Town's attorney first. Chair Tim Lang stated that with the holidays coming up he will try coordinate a

meeting and public hearing as soon as possible to get the Applicants a decision. Steve Cobb made a motion to table Case # 493 until meeting with counsel and Doug Rasp seconded the motion, all were in favor and the motion passed. For the Variance Request, Case #494, Steve Cobb made a motion to table pending the decision of Case #493. Doug Rasp seconded the motion and all were in favor. The motion passed.

Ralph Rathjen asked if absent ZBA members can be provided a copy of the video recording of tonight's meeting, and Chair Tim Lang responded Yes.

## **OLD BUSINESS**

- a. **Update on request from Bullfish Investments LLC, as Applicant, for a Special Exception to permit operation of a commercial gravel pit as provided by Article 18, Section B(3) of the Sanbornton Zoning Ordinance. The property is located on Johnson Road and identified as Tax Map 15, Lot 58. The property is in the General Agricultural Zoning District.** – (Earl Leighton is recused from this case.) Town Planner Bob Ward provided the Board with a proposal from Terracon to drill three monitoring wells at the site of the proposed gravel pit. Don Bormes mentioned that the proposal states monitoring will take place after two inches of rainfall and that frozen ground could interfere with accurate readings. Doug Rasp made a motion to recommend to the Board of Selectmen to contract with Terracon for the new study once escrow funds are received from Bullfish. Steve Cobb seconded the motion and the motion passed unanimously.

Town Planner Ward stated that he has also spoken with Peter Knight from the Stanhope Group who specializes in property value assessments surrounding sand and gravel pits. He expects an estimate and proposal for this work within two weeks from Mr. Knight.

**Meeting Adjourned at 9:15 p.m.** Town Planner Ward will coordinate upcoming meeting with Attorney Chris Bolt and invite the Planning Board if they would like to attend (per suggestion of PB member Will Ellis).

Respectfully Submitted,

Audry Barriault, ZBA Secretary