**NEW DURHAM ZONING BOARD OF ADJUSTMENT**

**New Durham Town Hall**

**September 12, 2017, 7:00p.m*.***

**Present**

Terry Jarvis, Chair

Wendy Anderson, Vice Chair

Joan Martin, Member

Stephanie Richard, Member

Art Hoover, Member

David Shagoury, Alternate Member

Paul Raslavicus, Alternate Member

**Also Present**

Laura Zuzgo, Administrative Assistant

Bill Bailey, resident

Robert Bickford, resident

Tom Varney, Engineer/Varney Engineering

Sue Carroll, resident

Ted Carroll, resident

Meghan Bickford, resident

Deborah Randall, Architect

**Call to Order**

Chair Jarvis called the meeting to order at 7:00pm.

**Approval of Minutes**

Meeting of August 8, 2017- Edits were made. **Mr. Shagoury made a motion to approve the minutes as amended. Ms. Martin seconded the motion. Motion passed, 7-0-0.**

**Application 2017-004- Lot 215, Lot 17, Request for Variance to Article VIII, Section B.5.**

Chair Jarvis asked if any member of the Board knows of a real or perceived conflict of interest. None was noted from the Board or members of the public.

Mr. Hoover disclosed he has worked with the applicants for many years. No objection was given for Mr. Hoover or other members to hear this case for conflict of interests.

Chair Jarvis stated the request is to have a structure for raising and propagating pigs within 250’ of another residence. The application was reviewed for completeness. Receipts for notification of abutters was verified although there was not a complete list of all abutters. Ms. Martin asked what the procedure is for reviewing an application when the property owner changes. It was noted the change is not recorded with the registry of deeds at this point. Mr. Hoover stated the application does not seem to be complete for public hearing as the list of abutters is not provided. Laura Zuzgo provided members with the list of abutters.

**Ms. Richard made a motion to accept the application as complete. Ms. Anderson seconded the motion. Motion passed, 6-0-0.**

Chair Jarvis opened the public hearing for input by members of the board, followed by abutters. It was noted there is no prohibition for the building as long as it meets the setback requirements but the issue is with raising pigs. Chair Jarvis concurred and stated they need to determine if the use is grandfathered with the ordinance. Ms. Zuzgo stated the ordinance was established in 1975. The applicable ordinances were reviewed and discussed. Maps and building diagrams were also reviewed. It was determined the building location is within the 75’ setback from the river; it was suggested to have a condition requiring grading away from the river so runoff and drainage be sloped away from the river to avoid contamination.

Meghan Bickford, applicant, stated they have already discussed this with the Planning Board but no one knows why the ordinance was put in place initially. Chair Jarvis replied there is likely an obscure law, which dictates location of pigs that supported the ordinance initially. Ms. Anderson suggested it’s definitely something to think about changing. There was discussion of the “spirit” of the ordinance and possible variances.

Sue and Ted Carroll, resident, stated they have had no problems from the pigs being across the street.

Meghan Bickford, resident, stated she grew up on the farm and has no problem with the pigs.

Chair Jarvis closed the public hearing at 7:45pm.

Members to participate in the deliberation of the case are Ms. Richard, Ms. Martin, Mr. Hoover, Ms. Anderson and Chair Jarvis.

The board reviewed the 5 criteria for the variance applicable to this case.

***Discussion-***

*Granting the variance would/would not be contrary to the public interest:* Ms. Martin stated it has been a well run farm, no complaints, it enhancing the quality of life for the local town. Ms. Anderson stated it’s important to encourage one of the last remaining farms in Town that provides many different products.

*The spirit of the ordinance would/would not be observed because:* Chair Jarvis stated the activity of raising pigs could be grandfathered and the property has been well kept; keeping pigs on the property has never been an issue. Ms. Anderson stated the spirit of the ordinance” is hard to determine; Mr. Hoover stated the spirit is to allow pigs. The board agreed the purpose for this ordinance is unclear. Chair Jarvis stated the proposed use is reasonable.

*Granting the variance would/would not do substantial justice because:* Chair Jarvis stated granting the variance would be a beneficial justice to the property owner and allow them to continue operation of the farm. The owners would have to do significant work with relocation of the pigs and more hardship would be imposed with regards to runoff control into the nearby waterway.

*For the following reasons the values of surrounding properties would/would not be diminished*: Mr. Hoover stated that pigs have been at the property for over ten years now so if there is any depreciation in property value it occurred ten years ago.

*Unnecessary Hardship:* Ms. Anderson stated the pigs are not the problem, it’s the manure and the public is getting something better by granting this variance. Chair Jarvis stated it would maintain the agricultural heritage of the Town, noting no contrary comments were made from abutters. It was agreed preserving one of the Town’s remaining farms is a priority as well as ensuring they are not making unnecessary hardships for the farmer.

Chair Jarvis suggested adding the condition to grade the property so runoff goes away from the river. Ms. Richard stated they don’t know what is there now or what would be required to do so.

**Mr. Hoover made a motion to approve the request for a variance for application ZBA Case # 2017-004- Map 250, Lot 17 variances to Article VIII, Section B.5. Ms. Martin seconded the motion. Motion passed, 5-0-0.**

Mr. Raslavicus questioned whether the motion as approved, while granting the variance to raise pigs, did address the need of written permission from abutters. The Chair stated that the variance as voted involved granting a variance from all the requirements of Article VIII, Section B.5 including the need for a written permission.

**Case 2017-005 – Map 121, Lot 044 Request for Variances to Article XIV Section C.1.b. and Article XXI Section E.2.**

Chair Jarvis stated this property is owned by the Bailey Family Ltd. Trust, and asked if any member of the Board knows of a real or perceived conflict of interest. Mr. Hoover stated he has worked with Mr. Varney on many cases in the past. No concern was noted from the Board or members of the public. The Board reviewed the application for completeness. Ms. Martin asked why only the overhang is being discussed. Chair Jarvis stated according to the application the building is being torn down and rebuilt in the same footprint except for the 14 square foot overhang which is what they are hear to discuss. It was clarified the setbacks and conditional use permit are being reviewed by the Planning Board.

**Mr. Hoover made a motion to accept the application as complete for 2017-005 – Map 121, Lot 044 Request for Variances to Article XIV Section C.1.b. and Article XXI Section E.2. Ms. Richard seconded the motion. Motion passed, 6-0-1.** Chair Jarvis abstained.

Tom Varney, engineer with Varney Engineering, explained the proposed plans by the property owner which involves demolishing and rebuilding a structure, involving a 14’ encroachment on the 75’ shoreline setback and explained the septic and well are existing and will not be changed. He stated a conditional use permit has been presented to the Planning Board and presented map plans for the project. It was clarified the building footprint will remain the same except the 14’ overhang and Chair Jarvis noted the new structure will make a non-conforming lot, even more non-conforming. The pertaining ordinances were reviewed and discussed. It was noted no response has been received from New Hampshire Municipal Association regarding nonconforming structures and setback. Interpretations of the ordinances and statutes were discussed and suggested legal interpretation may be necessary. It was agreed the focus of the Zoning Board of Adjustment is the additional 14’ on the proposed rebuilt structure as steep slopes and conditional use permit is addressed by the Planning Board.

Deborah Randall, architect and designer presented a 3D model for review by the Board. She explained the roof is being raised to a second level as well as trying to maintain a single roof line. Ms. Randall explained the reasons for keeping simple roof lines.

Bill Bailey, applicant, stated they want to improve the overall condition of the property and this was considered by Mr. Varney and Ms. Randall in their plans and designs. He noted the plans are all designed around redirecting water and runoff from the roofs away from the shoreline.

There was further discussion of the proposed plans and how the ordinances apply.

Chair Jarvis proposed continuing the public hearing until the next meeting to allow for input from the public as well as obtain further input from legal counsel. The Board concurred with having Chair Jarvis obtaining input from legal counsel.

**Chair Jarvis made a motion to continue the public hearing until October 10, 2017 at 7:00pm at the Town Hall for ZBA Case #2017-005 – Map 121, Lot 044 Request for Variances to Article XIV Section C.1.b. and Article XXI Section E.2. Ms. Martin seconded the motion. Motion passed, 7-0-0.**

**Mail/Correspondence**

Chair Jarvis distributed brochures for upcoming municipal training seminar sessions on September 23 and October 13. It was noted funds are available for training to cover registration expenses and mileage.

**2018 Proposed Budget**

The budget expenses year-to-date were reviewed and discussed. Ms. Zuzgo stated posting and registry filing costs are charged to applicants although the costs have to be covered in the budget. The Board reviewed the proposed ZBA 2018 budget. Chair Jarvis noted the current budget total is $1,351. It was agreed to maintain funding for the books line and discussion of increasing the mileage line.

**Chair Jarvis made a motion to approve the proposed 2018 ZBA Budget in a total amount of $1351. Mr. Hoover seconded the motion. Motion passed, 7-0-0.**

Ms. Zuzgo asked that a member of the Board attend next week’s Planning Board meeting for the Bailey hearing. Chair Jarvis and Mr. Raslavicus replied they would be present.

Mr. Shagoury stated someone asked about becoming an alternate on the Board and he referred them to Town Administrator Kinmond. Chair Jarvis stated the Planning Board currently has no alternates and she would like to see more for the ZBA.

**Adjourn**

**Mr. Shagoury made a motion to adjourn. Ms. Martin seconded the motion. Motion passed, 7-0-0.**

Respectfully Submitted,

Jennifer Riel, Recording Secretary