

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – December 19, 2016

Note: Draft Minutes are subject to review, correction and approval by the Board. Review and approval of Minutes generally takes place at the next regularly scheduled meeting of the Board.

A meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 6:58 p.m. by Chair William Hutwelker. Present were Sarah Tatro, Bob Mitchell, Alternate Eric Kallio, Alternate Adam Mulhearn, Alternate Shane Bryant and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Vice Chair Keith Thibault, Bryan Rudgers, and Alternates Charles Beauregard, Sr., and Marty Geheran.

Others Present: Director of Planning and Community Development Sara Carbonneau, Jay Blanchard and Mr. and Mrs. Brian Stone.

MINUTES

The Board considered the minutes of October 17, 2016. **Motion** was made by Mulhearn to approve the Minutes of October 17, 2016. There was a second by Mitchell. All were in favor. **Motion passed.**

The Chair seated Bryant for Thibault and Mulhearn for Rudgers.

PUBLIC HEARINGS

- A. Variance Application-** Nickate Property, LLC seeks variances from Sections XI.B.1. and V.B.3. to permit the construction of an addition to the existing structure situated at 147 South Winchester Street. Variances are required as the addition expands a non-conforming structure and does not meet required setbacks. Seated for this hearing were Hutwelker, Mitchell, Tatro, Mulhearn and Bryant.

Public hearing opened at 7:00 p.m.

Carbonneau reviewed the notices sent to abutters. She noted the existing building on the property is non-conforming to a 75 foot setback requirement from South Winchester Street. Blanchard spoke about the addition he is proposing which is going to house a new piece of equipment. He said the business has been there since 2001. The addition is 40' X 50' to be placed at the north end of the existing building. The addition will not be closer to South Winchester Street and it will be in-line with the existing building and abutting the building.

Kallio asked about what is being added and the response from Blanchard was that a saw was being added. The work will be done during business hours and Blanchard said the noise will be less, since the saw is new technology and quieter. He said that the Occupational Safety and

Health Administration (OSHA) does not require hearing protection with this type of saw. Mitchell noted the request doesn't make the non-conforming worse than the non-conforming status of the existing building. Tatro asked about the definition of "expansion" of the business. Blanchard said the new saw will provide 25-30% more production, which is the expansion he is addressing. Blanchard said the property is unique in its triangular shape and being adjacent to State Route 10. He said he purchased the next parcel to the north to use it in the future. He said there is not a curb cut on State Route 10. Use of the property is limited due to the shape of the lot. He said the visual traffic is good for his business. He said a lot of their business is done through contractors. Hutwelker asked about the swampy area in the north parcel. Blanchard said he consulted with Tom Forest, Forest Designs, to mark out the wetlands and the useable land which is about .8 acres. Blanchard said the new addition will not be near the wetlands. Blanchard said it will be a 40' by 50' basically empty room with the saw in it.

Public hearing closed at 7:14 p.m.

Mitchell commented on the uniqueness of the property given the wetlands and the shape of the property. The issue discussed is that the current building is 35 feet from South Winchester Street, which doesn't meet the required setbacks. The addition is an expansion to a non-conforming use.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

Could the variances be granted without being contrary to the public interest?

Members said: all said yes, the business is existing and activity is ongoing

Would the spirit of the ordinance be observed if the variances were granted?

Members said: Mitchell said yes, since there is no exacerbation of the existing non-conforming use. All agreed with Mitchell.

Would the granting the variances do substantial justice?

Members said: all said yes – Kallio said the addition will help the applicant expand his business, address his customer base needs, and be more efficient. Mulhearn noted that Blanchard said that there would be harm to the business if he had to stop in order to install the new saw in the existing building. Mitchell said there is no injury to the public by adding the addition.

Could the variances be granted without diminishing surrounding property values?

Members said: all said yes

Do special conditions of the property exist that distinguish it from other properties in the area?

Members said: yes, all agreed – the shape of the property and the presence of wetlands make it unique

a. *Owing to the special conditions of the property that distinguish it from other property in the area, there is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the provision to the property?* **Members said: yes**

b. *Are the proposed uses a reasonable one?* **Members said: yes**

- c. *If the criteria in subparagraph a. and b. are not met, an unnecessary hardship will be deemed to exist if, and only if: Owing to the 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 necessary to enable a reasonable use of the property.* **Members said:**

The Chair reported that “**yes**” prevailed and he entertained a motion to grant the request for Variance from Sections XI.B.1. and V.B.3.

Motion was made by Tatro to grant the request of Nickate Property, LLC for variances from Sections XI.B.1. and V.B.3. to permit the construction of an addition to the existing structure situated at 147 South Winchester Street. Bryant seconded the motion. All were in favor.

Motion passed.

- B. Variance Application** - Brian Stone requests a variance from Section III.U.6. to permit a home occupation in excess of 300 square feet. A total of 1,013.25 square feet is requested. Should this variance not be granted, Brian Stone requests a variance from Section IV.B.1. to permit a septic pumping business to be conducted on the premises. The property is situated at 39 Goodell Avenue, Tax Map 30, Lot 5-4 situated in the Residence District. The property is owned by Brian and Deborah Stone. Hutwelker seated himself, Tatro, Mulhearn, Mitchell and Kallio for this hearing.

Public Hearing opened at 7:21 p.m.

Carbonneau provided information about published legal notices, and notices mailed to abutters and Department Heads. She said there was no feedback from Department Heads except from the Department of Public Works (DPW) and a letter from Bob Blodgett from the Police Station. She also noted a change in the proposed square footage. The original plan showed 1,013.25 square feet but now the applicant provided a revised site plan with an 18’ X 31’ building which would be 779.25 square feet including the original home occupation which was approved for 221.25 square feet in 2013. Carbonneau noted that the application has changed and made sure that the members of the Board were aware of that and that the addition is now within the required setback. She also noted that the original office space was given at 10 feet by 30 inches and the garage was 25.5 feet X 7.5 feet, which was included for the home occupation at that time. She said that anything over 300 square feet doesn’t meet the intent of the ordinance.

Carbonneau spoke about feedback. Mr. Stone brought in a response from DPW Director Lee Dunham which said he didn’t have any problem with the driveway regulations. Carbonneau noted that there is no driveway proposed for the new garage. Driveway regulations state there shall be no more than one driveway serving a parcel unless the DPW Director approves it. Carbonneau said that Dunham’s intent is not clear. Mr. Stone said he had Dunham at the site and he said Dunham approved a second driveway. Hutwelker pointed out that the email from Dunham is not clear as to his intent. Carbonneau noted that for commercial uses, no more than one entrance is allowed unless the DPW Director approves it.

Carbonneau said there are two separate variance applications to be considered:

- The first is expansion of the home occupation beyond the 300 square foot maximum per the ordinance.
- The second is for a commercial use in a residence district, which would stay with the premise should it be sold in the future.

Mr. Stone spoke about his business growing and being important in the community. He said one truck is now insufficient. He said he only wants storage of a second truck, no traffic to the site by customers. Stone said that the property is kept neat and clean and there is no equipment stored on the site. He noted that the Police Department stated there have been no traffic issues. He said he spoke to neighbors and none have a problem with expansion. He said that he understood that if family doesn't run the business and they sold the home, the business cannot continue on the premises. He said that the garage can be razed in one day and can be taken down easily. He said the only person on site is Mrs. Stone who runs the office.

Hutwelker asked about whether Stone was aware of the questions that need to be responded to and also stated that Stone needs to address those questions which the Board must consider based on State regulations. Hutwelker spoke to the issue of expanding a non-conforming use in a residential area. Hutwelker asked if there is anything unique about the property as compared to the neighbors. Stone noted Hamlin Plumbing and Heating on Goodell and other businesses on South Road, and there is a construction business on Old Richmond Road. Within a mile radius, he said there are eight to ten commercial properties.

Carbonneau noted changes in regulations and said the Planning Board feels that accessory buildings can be used but a maximum square footage, limiting home occupation to 300 square feet including accessory units. Mitchell asked Carbonneau if home occupation does not pass with the property and Carbonneau confirmed that it does not.

Hutwelker suggested to Mr. Stone that he ask for a continuance of the public hearing to January in order to find out Dunham's intent about a second paved driveway and secondly to provide information about businesses in the vicinity so there is hard evidence of such for the Board to consider. Mulhearn said he would like to know the zoning for the property where those businesses mentioned by Stone exist. Mitchell agreed with Hutwelker.

Hutwelker spoke at length about the questions and how the applicant might respond to the questions to assist the Board in their deliberation. Kallio asked Stone to provide photos of the proposed garage. Mitchell asked for an elevation image as to what it would look like from the street and he said that continuity of roof line is important to the look of the property. Mulhearn emphasized the ordinance and said he would have to be convinced that each answer responds to the question appropriately so that it fits the needs of the rest of the town. Two variances for this property have been granted in the past, said Carbonneau, on the east side only. Stone said that the east side of the house had an existing carport and they lifted the roof of a carport to make a garage for the first truck because they didn't have the money at the time to do anything else.

Mrs. Stone mentioned that the proposed garage is not a permanent structure. Carbonneau noted that Mr. Stone should speak to Code Enforcement Officer Mike Jasmin to learn of any other issues that might be involved. And she said that if Stone wants another driveway, it needs to be indicated on the plan.

Stone requested a continuance to January 9, 2017.

Mitchell **moved** to continue the application to January 9, 2017 at the request of the applicant. There was a second by Kallio. All were in favor. ***Motion passed.***

Public Hearing closed at 8:14 p.m.

Hutwelker offered advice to Stone regarding receiving assistance from Carbonneau and that he should be aware that the Board could still deny the application even when provided with new information. Stone acknowledged that the Board could deny the application at the continuance.

OTHER MATTERS

Mitchell spoke about the issue of completeness of applications. There was a discussion about pre-screening of applications and how difficult it is to get applicants to understand the need to answer the questions appropriately.

ADJOURNMENT

Motion to adjourn was made by Mulhearn, seconded by Kallio and all were in favor. ***Motion passed.***
Adjournment occurred at 8:30 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary