

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – February 10, 2014

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.

The regular meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 7:01 p.m. by Chairman William Hutwelker. Present were Chairman Hutwelker, Vice Chair Keith Thibault, Jerry Walker, Bob Mitchell, Alternate Bryan Rudgers, Alternate Charles Beauregard, Jr., and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Alternate Sara Tatro, Charles Beauregard, Sr., and Alternate Jim Vitous

Others Present: Director of Planning and Community Development Sara Carbonneau

Minutes: **Motion** by Mitchell to approve the Minutes for the meeting of January 20, 2014, seconded by Walker and all were in favor. ***Motion passed.***

1. Public Hearing (Special Exception Applications) –

Jacob Sirois requests a special exception pursuant to Section IV.A.1.d. to operate a farm as a business. The property is situated in the Rural Agricultural District and shown at Tax Map 28, Lot 3. The property is located off Rabbit Hollow Road.

The application was withdrawn by the applicant.

2. Public Hearing (Variance Application)

Thelma Stowell requests a variance from Section IV.A.1. to allow two detached single family dwellings to be located on the premises. The property is located at 111 Christian Hill Road and is situated in the Rural Agricultural District. The property is shown at Tax Map 58, Lot 33.

Chair Hutwelker seated himself, Thibault, Mitchell, Walker and Rudgers for Beauregard Sr. for this hearing.

Public Hearing opened at 7:05 p.m.

Carbonneau reviewed the posting of legal notices for the public hearing and noted that there were no responses from the Town's Department Heads who also received notices of the

application. She also referred to the property under discussion being shown on tax maps 58 and 59 and that a substantial amount of background information was provided to the members of the ZBA, which included Selectmen's minutes, and Code Enforcement Officer correspondence.

The following history was reviewed: in 2013 it came to the attention of the Code Enforcement Officer that there were two independent units on the property being occupied as residences. The Town's Ordinances do not permit two detached dwellings to be used as residences on a single parcel of land. After some study, the conclusion was that a building permitted in 1997 added a residential unit which created a non-conforming use. After some discussion and response by the Board of Selectmen, Stowell submitted an application for a variance.

Hutwelker asked about health and safety issues which had been reported to the Board of Selectmen. Carboneau said that neither the Health Officer nor the Fire Chief has verified the situation. Information regarding those issues was provided by a former tenant.

Hutwelker asked about the Town's understanding of use of the unit as a slaughter house. A chronology of tenants was provided by Stowell from 1981 to present day. The front unit was built in 1979, and the second unit was put on the property in 1997. The plan provided with the building permit provided in 1997 said that it was a mushroom-growing building. Carboneau said that some Town officials were aware that two dwellings were on the property. In an October 1997 letter to Stephen Stowell, Code Enforcement Officer Crombie referred to the mushroom-growing building shown on the plan, but noted that he had been to the property and it appeared that someone was living in the unit. Carboneau noted that there is no indication as to the resolution of the use of the building, other than Crombie issued the building permit for Unit #2. Rudgers noted there is a permit for both dwellings but two different uses have been indicated by the records, one for a caretakers building, but another in 1997 shown as a mushroom-growing building.

Jeannette Duhaime was present to represent Stowell who is away in Florida. Mitchell pointed out that the permit never represented two buildings were to be occupied as dwellings. Duhaime mentioned that Stowell is not available now, but she could be here if the hearing was continued. She said that the property has always been a rental property for the Stowell family to supplement their income. She referred to the list of tenants who have lived on the property starting with 1997 when unit number two was put in. As to the reference to mushroom-growing, the Stowells started mushroom-growing when they lived on Winch Hill Road. When they moved to Christian Hill they used part of one unit for mushroom growing. They only did that for six months in 1997. They did not continue mushrooms growing after that. Duhaime emphasized that Stowell relies on the rental income from the property to pay her bills.

Duhaime said that they never tried to hide the fact that the units were used for dwellings. She said the Fire Chief has been there, the Police Chief has been there, and therefore, it has not been a surprise. Duhamel said the tax cards show that the property has been taxed as a residence. The property sits back from the road, and it cannot be seen by any neighbors, and has more than enough acreage for two family residences. Duhaime continued saying that while there is enough acreage for a subdivision; Stowell would have a difficult time covering the

surveying costs. In addition, a variance would be needed to subdivide as the property does not have the required frontage.

Robert and Judy Harris, abutting neighbors, were present. Robert Harris said they were present to learn about any new construction activity like a new driveway that might be planned for the property. They said they were concerned with drainage issues. They said they now understood that no new construction was up for discussion at the hearing.

Debra Stowell Griffin, Thelma Stowell's daughter, also spoke at the hearing. It was noted that the property had designated a Home Occupation in 2000 for a slaughter business. Griffin explained that the slaughter-house was at the end of the barn. Hutwelker asked for details regarding the slaughter-house home occupation and referenced a map showing unit number one as storage and cooler in plan submitted in 2000. The members reviewed the maps from the home occupation application in 2000. The plan says "storage and cooler" and the approval went through the Planning Board not the ZBA.

Harris asked about the relevance of what happened in 1997 versus the variance being asked for now, trying to understand the issues involved and whether or not it would have any impact on his family. Hutwelker said that what is happening now should have been done in 1997. He explained that the Town's ordinance does not permit more than one single family detached dwelling on any property in Town. Hutwelker went on to explain that the Zoning Board did not ask Stowell to ask for a Variance. The Code Enforcement Officer brought it to the attention of the ZBA.

Carbonneau noted the implication that once a variance is given, it goes with the property, and the owners could expand in the future which could impact on the Harris family in the future. Hutwelker affirmed Carbonneau's point that a future owner could expand or completely change one of the units, i.e. there are long term implications when granting a variance. Hutwelker also noted that while the ZBA does consider the testimony from abutting property owners, it does not base its opinions on neighbors opinion, the Board has to look at the application based on the Town's ordinance.

Carbonneau noted that the language in the application summary of how two family houses were defined in 1997 is different from the language used today.

Hutwelker asked Duhaime if she would address the safety issues that were raised. She responded that the Health Officer or Fire Department from the Town is welcome to come out and visit the property to inspect it. Hutwelker asked about the propane tank. When a question arose about when an inspection is needed for a propane tank, Carbonneau said the movement of a tank from inside to the outside of the unit would have required an inspection by the Fire Department. A question was raised regarding Stowell's ability to fund repair of life safety issues. Duhaime said Stowell would find the resources to repair them to the Town's satisfaction.

Beauregard, Jr. asked about the assessment for the second building and whether or not it was being assessed as an out-building, not as a residence. Carbonneau said the assessing cards are

less than clear, but the value on the unit is fairly low anyway, so whether it is being used as a dwelling or not does not make a significant difference.

A discussion was held regarding the life safety issues: oil tank being under the trailer and only one smoke detector inside the building, and exposed wires. Health Officer needs to go out and look at the dwelling so that it is safe. Beauregard Jr. said it is a major concern. Duhaime said that Stowell is fine with that.

Rudgers confirmed with Griffin that no further business is operating up there and no camper being used as a dwelling.

Hutwelker asked the Board to address the rationale for making an exception for this property since multiple detached dwellings are not permitted anywhere in the Town of Swanzey. He addressed Duhaime and asked her to help the Board with a reasonable argument for granting approval of the variance.

Duhaime said that the acreage is sufficient for multiple families and it is not causing any hardship for the neighbors. Hutwelker reviewed with Duhaime the checklist that the Board uses to determine approval or denial for variance applications and how it might impact on their decision. Duhaime asked if the Board could grant a variance with stipulation that nothing change on the property. Hutwelker responded that would not be appropriate for the situation in question. Duhaime mentioned the oversight on the part of Code Enforcement.

Hutwelker said that Stowell has had a benefit over the years that others did not have who were denied the same type of variance. Duhaime focused on the fact that a former Code Enforcement Officer was on the property and did not follow through with a request for a variance. According to Duhaime, Stowell had no idea that she needed to comply with an ordinance. Duhaime said it is her opinion that it is unfair. Duhaime stated that the Town made a mistake, not Stowell. Hutwelker said he cannot resurrect what was done in the past. Stowell has benefited by the oversight. Carbonneau said that it wasn't an oversight. The Code Enforcement Officer did write a letter to Mr. Stowell about it. She went on to say there is no documentation from Ted Crombie, who was Code Enforcement Officer in 1997, as to a response to that letter from the Stowells. Carbonneau said the Town has no idea how unit #1 was represented at the time the building permit was issued in 1997. Beauregard, Jr. related a story about his own family where the Town made an error and restitution could not be made to his mother's satisfaction.

Harris asked about what happens when a property is declared in violation. Would that person be asked to remove one of the buildings? Hutwelker responded by referring to an application that was denied in the past.

Duhaime asked if the hearing could be continued when Stowell returns to New Hampshire. Carbonneau asked what information could be provided by Stowell that isn't being provided tonight. She noted that the reason for a continuance should be based on additional information being provided at a later date that could not be provided at the time of the original hearing.

Hutwelker spoke to the issue of creating a precedent for future applicants which is difficult to defend without a compelling reason.

Mitchell said he isn't too interested in the history but it is worth mentioning that when the home occupation was requested the map provided by the Stowells failed to identify two dwellings. There is evidence, he said, that the history is not clear on both sides.

A reference was made to whether or not Stowell would be able to pay her taxes on the property should the Town not grant the variance and require one of the dwellings to be vacated. Hutwelker said it isn't relevant as to whether Stowell can pay or not pay her taxes. Hutwelker stressed that the Board must focus on the Ordinances of the Town. Discussion on what a two-family dwelling is defined as. In the Rural district, a two family dwelling must be connected by a common wall, such as in a duplex, in order to be permitted.

Rudgers – asked Duhaime when Stowell could be there – response was after April 2nd. When asked if a “Cease and Desist” order was in effect, Carbonneau said it is the policy of the Selectboard to allow current use of the property to continue so long as they are seeking a variance.

Hutwelker **moved** to continue the public hearing for a variance from Section IV.A.1. to allow two detached single family dwellings to be located on the premises for property located at 111 Christian Hill Road and situated in the Rural Agricultural District as shown at Tax Map 58, Lot 33 to April 21, 2014 at 7:00 p.m. at Swanzy Town Hall. The motion was seconded by Rudgers. Hutwelker, Walker, Rudgers, and Mitchell were in favor, Thibault was not. **Motion passed, four in favor and one against.**

3. Other matters as may be required

Carbonneau noted that with terms up for two current members of the Board there are a total of three alternate vacancies. Carbonneau will post notices.

Motion to adjourn made by Thibault, seconded by Rudgers and all were in favor. **Motion passed.**
Adjournment at 8:20p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary