

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – March 16, 2015

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 7:00 p.m. by Chair W. William Hutwelker, III. Present were Chair Hutwelker, Vice Chair Keith Thibault, Bob Mitchell, Alternate Marty Geheran, Alternate Shane Bryant, Alternate Mathew Rodeck and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and the Agenda for the meeting.

Absent: Member Sarah Tatro, Member Bryan Rudgers and Alternate Charles Beauregard, Sr.

Others Present: Director of Planning and Community Development Sara Carbonneau, and Herbert K. Smith, Sr.

Minutes:

- Meeting Minutes for November 17, 2014 were considered. Motion was made by Thibault to approve the meeting minutes of November 17, 2014. There was a second to the motion by Mitchell. No further discussion was held and all were in favor. The ***motion passed.***
- Meeting Minutes for December 1, 2014 were considered. **Motion** was made by Mitchell to approve the meeting minutes of December 1, 2014. There was a second to the motion by Thibault. No further discussion was held and all were in favor. The ***motion passed.***

PUBLIC HEARINGS

Public Hearing (Variance Applications)

1. Variance Applications – Herbert K. Smith, Sr. requests variances from Section XI.B.1. and IV.B.3. to permit the construction of a garage to replace a non-conforming garage that was destroyed by fire. The property is located at 422 Homestead Avenue and shown at Tax Map 70, Lot 4. The property is situated in the Residence District.

Chair Hutwelker seated himself, Thibault, Mitchell, and Geheran for Rudgers and Bryant for Tatro for the Public Hearing.

Continued Public Hearing opened at 7:04 p.m. continued from December 1, 2014

Carbonneau updated the Board on the plan for the garage. She noted that the house has a 3-bedroom septic design and is within setbacks. That results in the garage moving back as well. She noted that Code Enforcement recommended that the garage move closer to the southern property line and moved easterly to get it further away from the house because of potential problems with dumping of snow between the two structures. Carbonneau said that Mr. Smith is agreeable to the idea. She went on to

say that Pond Road runs south from Homestead therefore the recommendation is to move the garage to the east and south, not north.

Hutwelker asked about any impact on the well shown on the property plan. Discussion was held about the position of the well and whether it would impact on the driveway and access by a car. Smith said he will have a well house over the well to make it more easily seen.

Discussion was held about the location of neighboring houses and how close the garage might be to them if moved back to the east and a bit south.

Carbonneau said that she is correcting for the record Code Enforcement Officer Mike Jasmin's letter of March 16, 2015 stating that he would consider moving of the garage to the "south and to the east" and not to the "north and to the east."

The discussion continued on a line 10 feet off the east and south borders or at a diagonal. It was noted that there would be less impact on neighbor to the east since there is a brook there and the neighboring house is up on a hill. Carbonneau said there are no issues with wetlands with moving the garage further east, as long as the garage is not built in a wetland area.

Geheran noted that the house lots on Pond Road are quite small. Concerned was expressed with a five foot setback on the south side which bring it quite close to the neighboring house. Getting within 5 feet of east property line would be acceptable. Smith spoke about moving the garage to be 8 feet from house and garage by setting the garage back closer to the east line. The Board then discussed the idea of moving the garage to within 13 feet of the south line and five feet from the east line. This reduces the overlap between the house and the garage. After making further inquiry to the public and Board members as to further questions or considerations, the Chair closed the Public Hearing.

Public Hearing closed at 7:30 p.m.

Chair Hutwelker considered the request for variance from Section XI.B.1. and IV.B.3. for the garage. He reviewed the Checklist for Granting a Variance with the members of the Board:

1. *Could the variance be granted without being contrary to the public interest?*
Members said: yes
2. *Would the spirit of the ordinance be observed if the variance were granted?*
Members said: yes
3. *Would the granting the variance do substantial justice?*
Members said: yes
4. *Could the variance be granted without diminishing surrounding property values?*
Members said: yes
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
Members said: yes – it is a small lot and suffered a fire – and on the east side there is a brook which

cannot be built on

- 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. *Is the proposed use a reasonable one?* **Members said: yes**
6. *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*

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

Motion was made by Geheran to grant the request of Herbert K. Smith, Sr. for a variance from Section XI.B.1, and IV.B.3. to permit the construction of a garage, to replace a non-conforming garage destroyed by fire, with up to 5 foot setback on the east property line and 10 foot setback on the south property line on property located at 422 Homestead Avenue and shown at Tax Map 70, Lot 4. There was a second by Mitchell, and all were in favor. **Motion passed.**

ELECTION OF OFFICERS –

Mitchell made a **motion** to nominate the existing slate of officers and Rodeck seconded the motion. All were in favor. **Motion passed.**

DISCUSSION -

Ex Parte communications – Carbonneau spoke to the Board about speaking with citizens outside a meeting to discuss zoning matters. The Board is elected and Carbonneau said that they must be careful as to what they say. She recommended referring citizens to herself at Town Hall. She noted ZBA members should not engage in discussion regarding a pending application. Discussion focused on Carbonneau’s role to advise applicants and answering their questions. ZBA members might have to recuse themselves if they discuss zoning issues or particular applications. Mitchell pointed out that the ZBA members also do not talk among themselves about pending cases. Carbonneau pointed out that email should not be used for discussion of zoning applications.

Carbonneau noted that State of New Hampshire Legislature is considering reducing three votes required for decision-making to two votes if only 3 board members are present. She noted that the Swanzy ZBA has five elected members and up to five alternates, and potentially two members could be making a decision if the Legislature agrees, which she said is troubling.

There was a discussion about opinions from the Planner and the Code Enforcement Officer and whether they should be given at a public hearing. Carbonneau said that she doesn’t want to make recommendations to the Board, but instead to provide the tools to help them make a good decision. Geheran noted that Carbonneau does a good job of presenting the facts which helps the members understand the full situation.

Carbonneau mentioned that also under consideration by the State Legislature is allowing for non-public session when the Board is discussing a letter from an attorney. Currently an attorney must be present for the ZBA to go into non-public session.

Carbonneau said that Board members could drive to see properties when there are applications for variances and special exceptions by property owners. But she noted that members ought not to talk to the property owner, neighbors or take photographs. She suggested that it is better to site walk the property.

Thibault left the meeting at 8:04 p.m.

Carbonneau said Alternates are always part of the ZBA discussions even if not seated for a particular application. But Alternates cannot vote if not seated. Officers are voted on by all members, including Alternates. All Board members participate in the Public Hearing portion. There was a discussion about who votes for minutes. There was a reference to an official map of the Town. Swanzey does not have an official map and Carbonneau said that she believed that only three communities in New Hampshire have an official map.

OTHER MATTERS -

Zoning Board Ordinance Book

Carbonneau spoke briefly about the Zoning Ordinance 3-ring binder she passed out for the Board and its contents.

OEP Planning and Zoning Spring Conference

Carbonneau spoke briefly about this conference being held on May 2, 2015 in Concord. She noted that there are some funds available for those who might want to attend.

Motion to adjourn was made by Mitchell, seconded by Geheran and all were in favor. **Motion passed.** Adjournment occurred at 8:14 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary