

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – April 21, 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 7:05 p.m. by Chairman William Hutwelker. Present were Chairman Hutwelker, Vice Chair Keith Thibault, Jerry Walker, Bob Mitchell, Alternate Charles Beaugard, Jr., and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Alternate Bryan Rudgers, Alternate Sara Tatro

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Applicant Thelma Stowell, Applicant Vladimir Knorr and Mrs. Knorr and children, and Resident John Traynor.

**Minutes:**

- **Motion** by Beaugard Jr. to approve the Minutes for the meeting of March 17, 2014, seconded by Walker and all were in favor. **Motion passed.**
- **Motion** by Beaugard Jr. to approve the Minutes for the meeting of February 10, 2014, seconded by Thibault and all were in favor. **Motion passed.**

**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. Continued from February 10, 2014.

**Public Hearing opened by the Chair at 7:08 p.m.**

Chair Hutwelker seated himself, Beaugard Jr., Mitchell, Thibault, and Walker for this hearing.

The Chair informed the applicant that the hearing was to be treated as a brand new hearing so as to refresh the Board with the details of the request. Stowell was present. She discussed the Cease and Desist order she received for the rental unit on her property, one of the two detached single family dwellings located on the premises. She said the unit has been rented since 1979. She said she wrote a letter to the Town of Swanzey Code Enforcement Officer, who took the question to the Board of Selectmen, who in turn decided that she needed a variance based on the history of the use of the

property. She said she is at a loss as to her situation since her husband managed the details of their property management and he is now deceased. Hutwelker asked if Stowell had discussed her situation with Carbonneau. Stowell responded that she had and Carbonneau was helpful. Hutwelker asked about communications in the past regarding the rental of both structures.

Mitchell asked if both buildings were occupied in 1979. "No", Stowell said, "her home, house #2, has been occupied since 1997." Thibault, asked, since 1997, has the use of the house #1 been a rental, or had it been a business. Stowell said that when she and her husband sold their house on Winch Hill Road, they were starting to grow mushrooms in the building (Unit #1) and it was empty and badly needed renovation. House/Unit #1 was rented again in 1998. There was water damage that had to be repaired, she said.

Hutwelker asked about the slaughter house – the slaughter house was located in the barn; the cooler for the slaughter house was located in the west end of the building that houses Unit #1 (located at the easterly end of the building).

Thibault asked Carbonneau what the frontage requirements would be if they subdivided. The response by Carbonneau is that 225 feet of road frontage needed for each lot. The land owned by Stowell has plenty of acreage but not enough frontage according to Carbonneau. 50 feet is needed for a rear lot subdivision.

Hutwelker asked about Certificates of Occupancy (COs) for either of these two units. Carbonneau noted that in 1998, there was a building permit obtained for Unit #2, and a letter was sent to Stowell from Code Enforcement that he noticed that someone was living in the front unit (Unit #1) and questioned compliance with the Town's ordinance regarding the number of individual residential units that may exist on a given piece of property. Carbonneau said that there is no record of subsequent communication on the issue.

Beauregard asked if Code Enforcement had been out to the property since the last meeting, and Carbonneau said "no". Unit in question is the front unit. Beauregard noted that Stowell has said she is unable to keep the property if she can no longer rent the front unit. She needs the rental income. It was noted that there is one well, and there is a shared septic for both units, with one leach field.

Carbonneau mentioned there was a Home Occupation Application for a slaughter house in 2000. Nothing was mentioned in that application that Unit #1 would be or was being used as a residence. It is reflected as storage and cooler on the map for application in 2000 for use as a slaughter house home occupation. It was also noted that in 1997 the building was represented as a mushroom incubator. Therefore Unit #1 has been represented as storage and cooler unit and a mushroom incubator, but never as a rental home. When Mr. Stowell applied for building permit in 1997 for Unit #2 in 1997, Unit #1 was represented a mushroom growing facility.

It was determined by the records that in 2000, when the Town of Swanzey Planning Board reviewed the application for Home Occupation, usage for Unit #1 was stated as storage and cooler for the slaughter house. Hutwelker summarized that the presentation to the Planning Board indicated the entire building was being used for that purpose and did not state that residential usage was ongoing. The Planning

Board would not grant multi-use in a manufactured home with a shared common wall if they had been aware that residential usage was occurring in Unit #1. Hutwelker asked when did the slaughter house business cease and Stowell said when her husband passed away in September 2010 that was the end of the business.

It was noted that Unit #1 was not occupied during the mushroom growing business. Carbonneau noted that ambulance service had been to the property and other Town departments have been aware of residential use of Unit #1 but no further communication regarding the rental unit has occurred from the owners of the property.

Hutwelker asked if the use was not granted how Stowell would deal with that and Stowell said that she would have to try to sell the property. She said she needs the rental income to live on.

The Chair thanked Ms. Stowell for her testimony and then **closed the public hearing at 7:33 p.m.**

Thibault made this comment: not sure what year a Pine Street couple came to the ZBA for two houses on their property, but their request was denied so there is precedent for denying such requests. He noted that he is aware that this is a difficult situation but it is the duty of the Board to keep to the ordinance.

Hutwelker said that the Stowells were lucky to amass income during the time they had use of the second building as a rental which other citizens of the Town were not able to do. Mitchell noted that the State Supreme Court upheld Swanzey ZBA's decision in the Gocht matter, which decision did not allow for two independent dwelling units on one lot.

Chair Hutwelker 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?*  
**All said: no**
2. *Would the spirit of the ordinance be observed if the variance were granted?*  
**All said: no**
3. *Would the granting the variance do substantial justice?*  
**All said: no**
4. *Could the variance be granted without diminishing surrounding property values?*  
**All said: yes**
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*  
**Thibault said it is unique in its layout. Reduced frontage and oversized lot.**  
**All said: yes**
  - 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?*  
**All said: no**
  - b. *Is the proposed use a reasonable one?*  
**All said no, except Beauregard Jr. who 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:*

All said: no

**Motion** by Thibault to deny the request from Thelma Stowell for a variance from Section IV.A.1. to allow two detached single family dwellings to be located on the premises on property located at 111 Christian Hill Road and situated in the Rural Agricultural District and Tax Map 58, Lot 33. There was a second by Beauregard, Jr. and all were in favor. **Motion passed.**

**Public Hearing (Variance & Special Exception Applications)**

Vladimir Knorr requests a variance and a special exception pursuant to Section V.A.2.b. to permit the construction of 2 additional living units (bringing the total number of apartments to 8). A variance is required in order to grant the special exception as the property does not meet the minimum acreage required for multi-family housing connected to public sewer. The property is located at 2 Homestead Avenue, shown at Tax Map 72, Lot 1 situated in the Village Business District I.

**Public Hearing opened by the Chair at 7:41 p.m.**

Carbonneau reviewed with the Board the publication of public notices, notices sent to abutters and sent to Department Heads of the Town as well. She noted some correspondence from the Fire Department, as well as information regarding the capacity of the well. Application has been submitted for a driveway. The property is served by public sewer and public water.

Seated for the hearing were: Hutwelker, Beauregard, Keith, Mitchell, and Walker.

Mr. Knorr presented his summary. He said he is the new owner of the property. Lower basement is not being used. He would like to create two one bedroom apartments there and build a laundry room for use of the tenants. He said he had Fire Chief Skantze to the property and it was determined that parking in front of the building is dangerous; there is no place to park an ambulance. Also the building and parking are close to the busy street and exiting from the parking lot in front is dangerous to tenants and drivers using the road. Knorr said he and his wife are thinking about safety. They have identified things that need to be fixed. They will replace existing smoke alarms and the point of the new apartments is to provide additional income to support repairs. He said they want to maintain the building properly with income from the additional rentals. Move parking to the back side of the building and make the front area solely for emergency responders.

John Traynor, a neighbor, was present and noted that in the past the property's well had gone dry. His concern is whether there is enough water for the apartments. He has lived there for 26 years and the building has never been in good condition, and likes the idea of moving the parking to the back. Knorr said that he was aware that in 2010 there was a drought and there were problems with the well, but since then the water company has done fracking to increase the water flow.

John Traynor also said that the more units there are, there is more noise, and as a neighbor, he is concerned about that.

Knorr had a laptop with him which he displayed some ideas for fixing up the property to the Board. It was noted that it is a walk out basement. Sprinkler system is not required according to Knorr based on

the kind of sheetrock that will be used. Thibault asked about the total number of bedrooms. Knorr said there are 3-1 bedroom units and 3-2 bedroom units. Mrs. Knorr said that the basement needs to be renovated and noted the footprint stays the same. Knorr says it would like to approve the look of the building to make it more attractive. He plans to plant apple trees, and more greenery around the house. He repeated that his main reason to ask for the variance is to increase the safety of tenants of the building.

It was noted that the size of the lot is  $\frac{3}{4}$  of an acre. Thibault asked about community well requirement and mentioned the potential is there to serve as many as 25 people and if that were the case, then the well would be raised to the level of a community level well requiring a good deal more oversight. He noted that with the additional apartments there are only eleven bedrooms in the building. Tax card says there are 12 bedrooms today, but there are not as of today. Thibault also noted that there doesn't appear to be an egress for the third floor. Knorr said that staircase needs to be added and it is planned if they have the extra income.

Hutwelker asked if Carbonneau had reviewed with Knorr the minimum lot size for multi-family and he said that he had. Hutwelker said the lot is already substandard, and the ZBA is being asked to increase the density of a non-conforming lot.

Knorr said that there isn't enough cash coming in to pay for the improvements the building already needs. When asked where the money will come from for the new construction – Knorr said that he would have a loan from Home Depot for construction. Mrs. Knorr said the building needs other repairs and the extra apartments will help pay for that.

Hutwelker noted that setbacks from the road are not acceptable currently and the owners already have a fairly dense use of the property – Knorr has an advantage over others in the community who have not had permission to use their property as densely. Hutwelker said he is struggling to approve this because the new owner knew that the building needed repairs. The density already exceeds what the ordinance permits. Hutwelker would like to see more definition from the Fire Chief for safety reasons. We don't know if a sprinkler system is required or not.

It was noted that the capacity of storage of water from the well is 750 gallons.

Walker said his concerns are similar to Hutwelker. He didn't think the ZBA can agree to make it non-compliant by adding two more units.

No further questions. The Chair asked Knorr for other comments. Mrs. Knorr said so much needs to be done and there will be no way to get the improvements done. Beauregard said when you buy something like this, you have to have a business plan. You know the conditions going in. Right now, there is no business plan other than building more apartments. Because the building is grandfathered and the lot doesn't meet the minimum acreage required in order to move on to a special exception, they need to have the variance.

The Chair thanked the Knorrs for their testimony and **closed the Public Hearing at 8:13 p.m.**

Chair Hutwelker 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?*  
**All said: no**
2. *Would the spirit of the ordinance be observed if the variance were granted?*  
**All said: no**
3. *Would the granting the variance do substantial justice?*  
**All said: no**
4. *Could the variance be granted without diminishing surrounding property values?*  
**All said: yes**
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*  
There was a brief discussion regarding size of the property.  
**All said: no**
  - 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?*  
**All said: no**
  - b. *Is the proposed use a reasonable one?*  
**All said: no**
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:*  
**All said: no**

**Motion** was made by Beauregard Jr. to deny the request of Vladimir Knorr for a variance pursuant to Section V.A.2.b. to permit the construction of 2 additional living units (bringing the total number of apartments to 9) on property located at 2 Homestead Avenue, shown at Tax Map 72, Lot 1 situated in the Village Business District I. Second by Walker, and all were in favor.  
**Motion passed.**

The Chair noted that the Board need go no further with the Request for Special Exception since the variance was denied.

#### **Alternate Member Nominations**

Beauregard asked about Jim Vitous and Carbonneau said his application has been received to continue as an Alternate on the Board. It was also noted that Charlie Beauregard, Sr. would like to be Alternate to term to 2017.

**Motion** was made by Mitchell and second by Thibault to approve Charlie Beauregard, Sr. for Alternate member of the ZBA until term 2017. All were in favor except for Beauregard, Jr. who abstained. **Motion passed.**

#### **Other matters as may be required.**

Mr. Knorr asked about putting in a laundry in the existing footprint. The Board told him that would not be a problem but that he would need a building permit.

Walker noted that the Fire Department information that was provided was not very helpful.

**Motion** to adjourn was made by Thibault, seconded by Beauregard, Jr. and all were in favor. **Motion passed.**

Adjournment at 8:24 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Beverly Bernard".

Beverly Bernard, Recording Secretary