

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – May 16, 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 7:01 p.m. by Chair William Hutwelker. Present were Chair Hutwelker, Keith Thibault, Sarah Tatro, Bob Mitchell, Bryan Rudgers, Alternate Adam Mulhearn and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Alternate Marty Geheran, Alternate Shane Bryant and Alternate Charles Beauregard, Sr.

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Timothy Cloutier, Ryan Kottke, Attorney Steven Bonnette, Daniel Shustock, Diane Dunham, Steve Buswell, Paul Thomas, Jonah Ketola, Diane Bennett, Nathan Chamberlain, P.E., and Darren Naeck

**MINUTES**

Meeting Minutes for April 18 2016 were considered. **Motion** was made by Mitchell to approve the meeting minutes of April 18, 2016. There was a second to the motion by Thibault. No further discussion was held and all were in favor. The ***motion passed.***

**APPOINTMENT OF ALTERNATE MEMBER – one term to expire at Town Meeting 2018**

Nominee Eric Kallio was present and said he has a background in zoning and planning and would like to serve as an Alternate to the Board. The Chair thanked Kallio for offering his services.

Motion was made by Mitchell to appoint Eric Kallio to serve as Alternate member of the Zoning Board of Adjustment until Town Meeting 2018. There was a second by Mulhearn. All were in favor. ***Motion passed.***

The Chair swore in Kallio and he was seated at the table.

**PUBLIC HEARINGS**

**Public Hearing Request for Variance**

Timothy Cloutier and Ryan Kottke request a variance from Section III.S.12 to permit the installation of freestanding signs for businesses that are not located on the premises. The location of the signs is on property shown at Tax Map 3, Lot 4, owned by Kate Donovan, LLC. The lot is situated in the Business District. The hearing is a continuance from April 18, 2016 at the request of the applicants.

The Chair seated himself, Thibault, Mitchell, Mulhearn, and Tatro for Bryant for this hearing. Rudgers said to note in the record that he is not seated for this hearing.

**Public Hearing opened at 7:12 p.m.**

Attorney Bonnette referred to the uniqueness of the property located at 386 Massey Hill Road and is in the Business Zone, but is also on a dead-end road. He pointed out that the location for the sign that is being requested is on a busy road. Bonnette stepped through the application for a variance with facts in support of granting the variance. He noted that it is proper for businesses in the Business District to be able to advertise and promote their business. He also noted that the sign requested is located on State Route 12 which is a busy road. Bonnette suggested that allowing this sign would not promote sign clutter. He noted that the property owner could raise a sign on the property, permissible by ordinance.

Bonnette referred to Maple Hill Nursery gaining an off-premise sign with a variance granted and he noted they have two such signs. He said if the variance is not granted, the applicant would not have an opportunity to advertise his business. He also referred to a significant loss to the applicant without a significant gain to the general public of the Town should the variance not be granted. He also referred to other off-premise signs that currently exist. Bonnette referred to the EZ-Zone sign indicating the industrial area of the Town and Whittemore Farm Road sign at the intersection with State Route 10. He noted that Nick's Restaurant also was granted an off-premise sign. He said it is important for a business to advertise especially during tough economic climate. He said denying a variance would be an injustice to Cloutier.

Carbonneau said that the EZ-Zone sign is in the Town's right-of-way of Safford Drive and that the Town is exempt from its own zoning regulations. Carbonneau also referred to Maple Hill Nursery being given a variance when State Route 10 was relocated and the State mandated the sign being moved. She also said a differentiating factor is that Maple Hill does have an easement on the property upon which its sign is located and Mr. Cloutier does not have any rights to the Donovan property.

The Chair asked the Board for questions and asked those present for questions. Thibault asked about using internet-based directions and getting wrong directions at the other end of Massey Hill Road (off Route 32). Cloutier said customers cannot get to the Cloutier shop from the other end of Massey Hill Road (Route 32 end).

Hutwelker said his concern is that the applicant bought the property knowing there was no frontage on a busy road. Bonnette noted that a right-of-way is not ownership. Bonnette said that most people don't think of the value and the reason Cloutier didn't think of it originally because he owned another business prior to this, and only recently created a new business. Mitchell spoke about his concern for setting a precedent. The issue he said he has is the spirit of the ordinance was meant to reduce proliferation of signs. He noted the uniqueness of the business on a dead-end street and said the request is a reasonable one. Bonnette spoke about precedent. Bonnette also said that this situation is not setting a precedent since every applicant has to meet all of the criteria each time a request is made. Bonnette said that Massey Hill is perhaps the only road on a dead-end that is in the Business District and it would be hard for someone else to make the same argument.

Chair asked for more questions and there were none.

**Public hearing closed at 7:40 pm.**

Discussion: Kallio looked at a sketch of the sign. Mulhearn said that he is sympathetic to anyone struggling to run a business in Swanzezy and to grow the business. Hutwelker said that this is a self-inflicted situation, not a change in zoning which would force the applicant to request a variance. Thibault said that there are two different businesses involved and that the KGP Performance business is not driven by signs. However, he noted Blue Water would have more retail business. Thibault said he didn't know if there are other Business Zoned businesses without drive-by traffic. Thibault said the ordinance is quite clear.

Chair Hutwelker considered the requests of Timothy Cloutier and Ryan Kottke for a variance from Section III.S.12 to permit the installation of freestanding signs for businesses that are not located on the premises, and which are located on property shown at Tax Map 3, Lot 4, owned by Kate Donovan, LLC in the Business District.

He 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: four yes and one no by Hutwelker**

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

**Members said: three yes and two no (Thibault and Hutwelker)**

*Would the granting the variances do substantial justice?*

**Members said: four yes and one no by Hutwelker**

*Could the variances be granted without diminishing surrounding property values?*

**Members said: yes by all**

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

**Members said: four yes and one no by Hutwelker**

- 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: Mitchell said yes because he accepts the argument of a dead-end road being in the Business District, Mulhearn yes, Tatro yes, Thibault yes, and Hutwelker yes**
- b. *Are the proposed uses a reasonable one?* **Members said: four yes and one no by Hutwelker**
- 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: four yes and one no by Hutwelker**

The Chair reported that “yes” prevailed and he entertained a motion to grant the request for Variance from Section III.S.12.

**Motion** was made by Mitchell to grant the requests of Timothy Cloutier and Ryan Kottke for a variance from Section III.S.12 to permit the installation of freestanding signs for businesses that are not located on the premises, and which are located on property shown at Tax Map 3, Lot 4, owned by Kate Donovan, LLC in the Business District. There was a second by Mulhearn and no further discussion. All were in favor except Thibault and Hutwelker who both voted “No”. **Motion passed three to two.**

**Public Hearing Request for Variance**

Public Hearing – Request for variance. Daniel Shustock requests a variance from Sections IV.B.3. and XI.B. to permit the expansion and re-construction of a home that does not meet required setbacks. The property is located at 440 Homestead Avenue and is situated in the Residence District. The property is shown at Tax Map 70, Lot 15. Continued from April 18, 2016.

The Chair seated himself, Mulhearn, Thibault, Rudgers, and Mitchell for this hearing.

**Public Hearing opened at 7:49 pm.**

Shustock referred to a letter from Freihofer Septic design and it was noted by the Chair that the copies were printed such that information was cut off and therefore unreadable. A decision was made by the applicant to continue the meeting to next meeting when he could have better documentation in support of his application.

**Motion** was made by Mitchell to continue the public hearing for the request of Daniel Shustock for a variance from Sections IV.B.3. and XI.B. to permit the expansion and re-construction of a home that does not meet required setbacks on property located at 440 Homestead Avenue and situated in the Residence District to June 20,2016, second by Rudgers. All were in favor. ***Motion passed.***

**Public Hearing Request for Variance**

Diane Dunham requests a variance from Section XI.B.1. to permit the expansion of a non-conforming structure; specifically, the addition of a basement to the structure. The property is located at 86 Westport Village Road and is situated in the Residence District. The property is shown at Tax Map 88, Lot 26.

The Chair seated himself, Tatro, Rudgers, Mitchell, and Thibault for this hearing.

**Public Hearing opened at 7:52 pm**

Carbonneau referred to notices sent out to Department Heads and to abutters. She said this property is on private water and septic. Diane Dunham was present. She said she has a partial basement with block and stone walls that are collapsing and she wants to do a full basement to fix the problem. The property is grandfathered but too close to the property lines.

The Chair asked the Board for questions and asked those present for questions. Kallio asked about drainage. She said there will be perimeter drainage to take water away from the basement.

**Public Hearing closed at 7:57 pm**

The Board discussed the request to approve a full foundation which will increase the square footage. Mitchell said that when dealing with a non-conforming property, he looks at what the applicant is asking for and whether it is unrelated or related to the non-conforming status. He said that in this case the volume does not seem germane to encroachment of setbacks. Thibault noted the structural integrity of the building is in question and there are probably safety issues involved.

Chair Hutwelker considered the request of Diane Dunham for a variance from Section XI.B.1. to permit the expansion of a non-conforming structure; specifically, the addition of a basement to the structure on property located at 86 Westport Village Road, situated in the Residence District and shown at Tax Map 88, Lot 26.

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

1. *Could the variances be granted without being contrary to the public interest?*  
**Members said: five yes**
2. *Would the spirit of the ordinance be observed if the variances were granted?*  
**Members said: five yes**
3. *Would the granting the variances do substantial justice?*  
**Members said: five yes**
4. *Could the variances be granted without diminishing surrounding property values?*  
**Members said: five yes**
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*  
**Members said: Hutwelker said that there is a health and safety issue with this property which would be improved if the variance was granted. Five yes**
  - d. *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: five yes**
  - e. *Are the proposed uses a reasonable one?* **Members said: five 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.

**Motion was** made by Tatro to grant the request of Diane Dunham for a variance from Section XI.B.1. to permit the expansion of a non-conforming structure; specifically, the addition of a basement to the structure on property located at 86 Westport Village Road, situated in the Residence District and shown at Tax Map 88, Lot 26. There was a second by Mitchell and no further discussion. All were in favor. **Motion passed.**

#### **Public Hearing Request for Variance**

Ketola Contracting, LLC requests a variance from Section XI.B.1. to permit the construction of a new house that expands the volume of the current non-conforming structure (which will be demolished). The property is located at 39 Lake Shore Road and is situated in the Residence and Shoreland Protection Districts. The property is shown at Tax Map 18, Lot 117 and is owned by James & Kathleen Newton.

The Chair seated himself, Thibault, Rudgers, Mitchell, and Tatro for this hearing.

**Public Hearing opened at 8:01 pm**

Carbonneau said the property is on public water and sewer. This is a grandfathered non-conforming structure. She noted that no determination has been made regarding frontage on Lake Shore Road.

Jonah Ketola spoke about wanting to demolish the existing the structure and build on the footprint, but volume will be increased to raise the roof for upstairs which today does not meet Code requirements. He said the need is to increase the roof pitch. He said the design would not obscure the view of the water. There will be no basement for the building, it will be slab on grade with radiant heat and therefore there will not be concerns about discharging water that might be in the basement. He spoke about the height of the water table being an issue. He said they have obtained a Shoreline Protection Permit from the State of New Hampshire. They will be adding stone around the perimeter of the structure so that any water would be dissipated into the ground. Footprint adjustment – there is no bulkhead said Ketola. He said the garage is remaining as is. Cubic footage question by Rudgers – Ketola said the height is six feet to the ridge. Kallio asked about septic company that was referred to in the application. Ketola stated that Monday Septic Design was retained to complete the Shoreline Protection Permit Application. They will be tying into the sewer. Mitchell asked about egress windows on a second floor. If it is a bedroom, a window is required for emergency egress said Ketola – which meets life safety requirements.

Diane Bennet asked to speak. She said she is an abutter to the property and she said she doesn't have any objections but wanted to know about the question regarding frontage on Lake Shore Road. She said her property goes across the road to the fence line of this property. As an abutter, she said the design doesn't interfere with her view and because of the change to orientation of the building – there might be a gain of water view from some properties.

The Chair asked the Board for more questions and asked those present for questions and there were none.

**Public Hearing closed at 8:15 pm**

Chair Hutwelker considered the request of Ketola Contracting, LLC for a variance from Section XI.B.1. to permit the construction of a new house that expands the volume of the current non-conforming structure (which will be demolished) on property located at 39 Lake Shore Road, situated in the Residence and Shoreland Protection Districts, shown at Tax Map 18, Lot 117 and owned by James & Kathleen Newton.

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

7. *Could the variances be granted without being contrary to the public interest?*  
**Members said: five yes**
8. *Would the spirit of the ordinance be observed if the variances were granted?*  
**Members said: five yes**
9. *Would the granting the variances do substantial justice?*

**Members said: five yes**

10. *Could the variances be granted without diminishing surrounding property values?*

**Members said: five yes – Thibault said that there is no evidence to the contrary – Mitchell said it appears to be a significant improvement**

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

**Members said: Hutwelker said the redesign addresses a health and safety issue – and the volume increase does address those issues said Mitchell**

*f. 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: five yes*

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

12. *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.

**Motion was** made by Thibault to grant the request Ketola Contracting, LLC for a variance from Section XI.B.1. to permit the construction of a new house that expands the volume of the current non-conforming structure (which will be demolished) on property located at 39 Lake Shore Road, situated in the Residence and Shoreland Protection Districts, shown at Tax Map 18, Lot 117 and owned by James & Kathleen Newton. There was a second by Mitchell and no further discussion. All were in favor. **Motion passed.**

#### **Public Hearing – Request for special exception**

Steve Buswell requests a special exception from Section IV.B.2.d. to permit the construction of an accessory building (garage) in excess of 1,000 s.f. The property is located at 162 Cobble Hill Road and is situated in the Residence District. The property is shown at Tax Map 82, Lot 3-2.

The Chair seated himself, Thibault, Rudgers, Mitchell, and Tatro for this hearing.

#### **Public Hearing opened at 8:19 pm**

Carbonneau said the property is on private water and septic system and has almost 6.5 acres of land and it lies within both the Residence District and Rural Agricultural District.

Steve Buswell was present to speak to adding a three-car garage onto the home that is present on the site.

Carbonneau said the concern is having a “mega garage” on a 1 acre lot, which is not the case here. Having a structure this large could have an impact on abutting properties. They tend to get used for something other than parking cars – like a commercial garage.

Buswell said there would be three different bays and the siding will match the siding of the house. It will be attached to the bump out of the house. Buswell said that there will not be water connection. Buswell said he is still contemplating whether or not to heat two of the bays. Buswell noted the garage will be attached to the house. Buswell said there will be an entry from the garage into the house. Mulhearn asked if it is considered an accessory building if attached and would it still have the limitations of 1,000 square feet.

Carbonneau said she thought the garage was going to be detached. She noted an accessory building is free-standing. She said that with the knowledge that the plan is for an attached garage, Buswell does not need a variance – just needs a building permit. Chair asked if Buswell wished to withdraw his application since he is going to attach the garage. And Buswell said yes, and he withdrew his application.

**Public Hearing closed at 8:29 pm**

### **Request for Re-hearing**

Richard Dell’Erba requests that the board grant a re-hearing on his variance application that was denied on March 21, 2016. The property is located at 85 Wilson Pond Road and is shown at Tax Map 19, Lot 26. Seated were Hutwelker, Thibault, Mitchell, Mulhearn and Tatro

The Chair noted that there will be no testimony since there is no public hearing.

Hutwelker asked the members of the Board if his comments influenced their votes at the hearing in which the application was denied and they all said that his comments did not. Chair asked the members if the Board acted in error – the consensus was that it did not. The Chair asked if there was more information provided now that should have been presented at the time of the original hearing. The members considered the information provided. Mulhearn asked about the adjacent drainage ditch and who owned the property. The Chair said it is Town-owned property. Thibault said that he didn’t see the Dell’Erba property as being unique.

**Motion was** made by Thibault to deny the request of Richard Dell’Erba that the Board grant a re-hearing on his variance application that was denied on March 21, 2016 for property located at 85 Wilson Pond Road and shown at Tax Map 19, Lot 26. There was a second by Mitchell and no further discussion. All were in favor. ***Motion passed.***

### **Public Hearing – Request for special exception**

Paul Thomas requests a special exception from Section V.B.2 to permit the construction of multi-family housing (1 existing unit and 16 new units) on property situated at 115 Old Homestead Highway. The property is situated in the Business and Shoreland Protection Zoning Districts and is shown at Tax Map 37, Lot 7.

The Chair recused himself for this hearing.

The Vice Chair seated himself, Rudgers, Mitchell, Tatro and Mulhearn for Hutwelker for this hearing.

### **Public Hearing opened at 8:39 pm**

Carbonneau said notices were provided to Department Heads and there was no response from them. She noted this is on public water and public sewer and that Aviation Way is not a public road.

Nathan Chamberlain, P.E. with Fieldstone Land Consultants presented a plan for the project showing the site opposite Wilson Pond and surrounded by the airport and the Jehovah Witnesses church. He said they would keep the existing house on frontage and the existing gravel drive that they will be using for access to the back lot units, so no new curb cuts required. He said the existing garage will be razed and in the back there was a greenhouse and a motor-cross track. He said the owner is proposing 40 feet of space between the units and the airport property. He spoke about storm water drainage. He said the condominium plan is fully engineered. They will be ranch style unit two-bedroom homes with one car garage and rear patios. He noted some disturbed area at the rear of the property. He showed the Board the grading plan. He said an Alteration of Terrain permit is not required. He said drainage will be contained on site to an infiltration basin with sandy soil. He also showed a driveway profile and a utility plan. He showed landscaping and the sewer profile and said they will need a permit from New Hampshire Department of Environmental Services (NH DES) for the sewer connection. He spoke about maintaining the trees in front. He said there will be two parking spaces per unit (1 outside and 1 in the garage). No pole lights, just lights on the buildings which will be downcast. Multi-family use is allowed in the Business District by Special Exception only. Chamberlain provided responses to the special exception questions. He noted the Edgewood Apartments are already in the zone. He said this housing is geared to young professionals and empty nesters. He said he thought would be tax positive. He spoke about the enhancing the property values nearby. He said he thought it would be a well-kept site. He spoke about site access, which will be reviewed by the New Hampshire Department of Transportation (NH DOT) and the Planning Board. He said the conservative estimate is less than 170 trips would be generated by the project and he thought the highway could handle the increased traffic. He said the site is designed to conform to the Town's regulations.

The Chair asked the Board for questions and asked those present for questions. Rudgers asked about dealing with the local FAA since the site is so near to the airport— Chamberlain said the housing roofs are below the glide slope. And he again noted the lighting would be downcast. Rudgers asked about fire protection and Chamberlain said it would be hardwired for fire alarms, but not sprinkler systems. Chamberlain said they are proposing a fire hydrant nearby. Mitchell asked about guest spaces for parking. Chamberlain said that they would park on the grass or on the side of the entryway street.

Carbonneau said that she received a message from an individual associated with the Kingdom Hall property asking about the driveway and that a privacy fence be added to separate the property. Tatro asked about snow removal. Kallio asked about talking to the FAA and wondered if that should be a condition for any granting of a special exception. Rudgers suggested that the planners speak to the FAA. Carbonneau noted she suggested providing letters from the water and sewer commissions, and NH DOT and none have been provided as yet. Rudgers said the Water Commission hasn't been consulted. Rudgers suggested Thomas approach the Commissioners. Mulhearn asked about the other multi-family housing in the area.

Darren Naeck was present; he owns 112 Old Homestead Highway and he said the planned development is across from his driveway. He said he wanted to see the plans, and his only concern is the driveway for

the development. Chamberlain said that if NH DOT requires a traffic study, they would do that. Naeck said he would not classify the road as a low volume highway during the week when school buses are travelling back and forth. He asked about Aviation Drive as a possible driveway. Naeck noted that Mr. Thomas did a fabulous job with a nearby piece of property. Mitchell said that the Board usually sees evidence of NH DOT approvals and water and sewer approvals before ruling on the special exception.

Rudgers said that this should be tabled until permissions are obtained from water and sewer and NH DOT. Mitchell said that he agreed with that. Thibault asked about concerns from the property owner and Chamberlain who said that he thought special exceptions should be granted first and he said that he believed that permissions will be granted.

Thibault asked the applicant if they would request a continuance.

**Motion** was made by Mitchell to continue the public hearing on the application of Paul Thomas for a special exception from Section V.B.2 to permit the construction of multi-family housing (1 existing unit and 16 new units) on property situated at 115 Old Homestead Highway to June 20, 2016 to determine evidence of water and sewer and NH DOT letters of adequacy. There was a second by Rudgers. All were in favor. **Motion passed.**

#### **Discussion regarding possible change in meeting time**

Mitchell said as a retired person he is agnostic on the timing of the start of the meeting. Mulhearn said that six o'clock would be difficult. Six thirty might be better. Kallio said he can make six, and he would support 6:30 pm. Thibault said he would have no family time if the meeting was a six. He would prefer keeping it at 7:00 p.m. Bernard said that 7:00 pm also works best for her. Thibault also mentioned that the number of applications that were addressed tonight is unusual.

#### **ADJOURNMENT**

**Motion** to adjourn was made by Thibault, seconded by Mulhearn and all were in favor. **Motion passed.** Adjournment occurred at 9:26 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary