

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – May 19, 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, Bob Mitchell, Alternate Shane Bryant, Alternate Charles Beauregard, Sr., Alternate Sarah Tatro, and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Alternate Bryan Rudgers, and Charles Beauregard, Jr.

Others Present: Director of Planning and Community Development Sara Carbonneau, Martin Geheran, Matt Traffie of Arlen Company Construction, LLC, Krishna & Edward Pahl, Jr., Attorney Michael P. Bentley, and many residents of Lake Shore Road.

Minutes:

- **Motion** by Mitchell to approve the Minutes for the meeting of April 21, 2014, seconded by Thibault and all were in favor. **Motion passed.**

Regular Member Vacancy – Due to the death of Jerry Walker, there is now an opening on the Board for a regular member.

Motion was made by Thibault to nominate Sarah Tatro as a regular member of the ZBA taking over for the late Jerry Walker. There was a second by Mitchell and all were in favor. **Motion passed.**

Alternate Member Nominations (2)

Charles Beauregard, Sr. had been nominated and approved by motion at a previous meeting to serve with term ending 2017.

Resident Martin Geheran was nominated in a **motion** by Mitchell to serve with term also ending 2017. That motion was seconded by Thibault and all were in favor. **Motion passed.**

Both Beauregard and Geheran were sworn in by Chair Hutwelker.

PUBLIC HEARING (Variance Application)

Cheshire Oil Company, by its agent Arlen Company Construction, LLC, requests a variance from Section VI.e.1. to permit the construction of an addition that does not meet required setbacks onto an existing car wash. The property is situated at 189 West Swanzey Road, shown at Tax Map 52, Lot 1 situated in the Commercial/Industrial District.

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

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

Carbonneau attested to the posting of legal notices: notices to abutters and Department Heads and publication in the Keene Sentinel newspaper.

Matthew Traffie was present to represent Cheshire Oil. He explained to the Board that the car wash has been down for almost six months. He said that adding the extra room to host the equipment will double the life of the equipment by removing it from the harsh environment of the car wash bay. He said the equipment room addition will extend 12 feet into the 20 foot setback. He noted that the plan is to match the aesthetics of the existing building. He also noted that by moving the equipment out of the wash bay will enable windows to be added to the car bay to lower the carbon footprint of the building.

Geheran asked for background on the current car wash. Traffie said the equipment has worn out prematurely because the equipment is in the car wash bay right now. By moving that equipment out into the room, it will be protected from the harsh environment.

Discussion occurred regarding the possibility of other locations on the property for the addition. Thibault asked about creating the extra room out of the existing building; Traffie said it would be too small for the cars and not enough room to service the equipment. Thibault asked about moving the addition to the opposite side of the existing building where it would not infringe on the setback requirement. Traffie said that on that side of the car wash bay there are diesel pumps and large trucks fuel up there. Building the addition on that side would require removal of one of the pumps and create more difficulty for large trucks to maneuver. Thibault asked why the equipment could not be put on the roof of the building. Traffie said the chemicals used by the equipment would have to be hauled upstairs. Mitchell asked if the additional space could be sunken. Traffie said it would be a hardship to put it underground.

Tatro asked the age of the car wash and the response was, "ten years old." Geheran asked if the building was currently at the setback (at 20 feet), and Traffie said it is. Traffie also noted that there is a stone wall about 31 feet away from the current building and they have been maintaining the green area to the wall since they have been on the site, but it is not their property. Geheran asked about the abutter. Carbonneau said it is Cambridge Farms, and is not locally owned. Traffie said they tried to negotiate purchase of the strip of land they would need to remain within the setback but the current owner would not agree to a reasonable price.

Tatro asked about safety and Traffie said it is safer for the public and for employees servicing the equipment to have it separate from the car wash bay. No one is stationed there while the car wash is functioning.

Geheran asked about noise level of car wash. Traffie said the sound level will be about the same, but will be a little quieter in the car wash bay itself.

There was a discussion held about the underground support structures mentioned in the application – Traffie said the tanks are underground for the reclamation of water. Access to the addition will be via exterior doors. Hutwelker asked if the underground tanks would be impacted by the addition. Traffie said not much of an impact, but in future it will be easier to service the reclaim system. The piping would run outside the building to make it easier to service.

When asked what the primary benefit would be for the addition, Traffie said that the primary benefit other than extension of the life the equipment is that it is a lot safer for servicing the equipment because it is in a separate location and it is safer for the public as well. Hutwelker asked how they would build the site if they were building today. Traffie said the equipment room would be outside based on today's technology.

Chair asked for questions from the Board and the public in attendance. There were none.

Public Hearing closed by the Chair at 7:25 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?*
Members said: Tatro yes; Mitchell yes; Thibault yes; Qualified yes by Thibault, Beauregard, Sr. yes;
2. *Would the spirit of the ordinance be observed if the variance were granted?*
Members said: Beauregard Sr. yes; Thibault yes – stone wall area that they have maintained even though that is not the real property; Mitchell no; Tatro yes
3. *Would the granting the variance do substantial justice?*
Members said: Mitchell – said no and that it is a very densely developed area, and the benefit to the applicant is financial and the ordinance setbacks should not be ignored; Tatro yes; Beauregard, Sr. yes; Thibault - given the potential for safety improvements said yes;
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?*
All said: when the original design, there was no anticipation of the need. The addition would provide a safer environment and then what was best technology at the time. How it lays out on the property, there is no other satisfactory area to put the addition. 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?*
Members said: Mitchel said no – he felt the site is already intensely developed; Tatro yes; Thibault yes – he believes they are not building more than they need – the general public will not be harmed in any substantial way. They did make an effort to buy the additional land but were unable to do so. Beauregard, Sr. yes
 - b. *Is the proposed use a reasonable one?*
All 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:
not applicable

The Chair reported that **“Yes” prevailed on all five criteria.**

Motion was made by Thibault to approve the request of Cheshire Oil Company, by its agent Arlen Company Construction, LLC, for a variance from Section VI.e.1. to permit the construction of an addition that does not meet required setbacks onto an existing car wash. The property is situated at 189 West Swanzey Road, shown at Tax Map 52, Lot 1 situated in the Commercial/Industrial District. The motion was seconded by Beaugard, Sr. All were in favor except Mitchell who was opposed. **Motion passed.**

PUBLIC HEARING (Special Exception Applications)

Krishni & Edward Pahl, Jr. request a special exception from Section IV.B.2.b. permit the structure located at 20 Lake Shore Road to be utilized as a two-family dwelling. The property is situated in the Residence District and is shown at Tax Map 18, Lot 113.

Public Hearing opened by the Chair at 7:36 p.m.

Seated for this hearing were Hutwelker, Thibault, Mitchell, Tatro, and Geheran.

Carbonneau attested to the posting of legal notices: notices to abutters and Department Heads and publication in the Keene Sentinel newspaper. She noted the property is connected to public water and public sewer and is located at Lake Shore Road, not Lake Shore Drive. The lot and property owner is correct.

Carbonneau explained the dates on the assessing cards – top right corner is date that card was printed. For the card printed May 13, 2002, the property was stated as single family. On the assessing card dated 2005, there is a hand written note by the Town of Swanzey Tax Collector noting that the dwelling is a two family dwelling. In 2006, the assessing card states that the dwelling is a two family and describes it as an in-law style apartment. In April 2007, the assessing card states that the property is a two family as an in-law style apartment. In the application – there is an assessing card and that states in 2014 the property is a single family with in-law apartment.

Thibault noted the property is not an acre and a half. It was noted that the Ordinance says for a two family connected to public sewer no minimum acreage is required.

Attorney Michael Bentley was present representing the Pahl's. The Pahl's bought the property in 2004 and it was shown to them as a two family residence. Bentley said the Pahl's are not waiving any issue regarding how long the two-family has been such – they don't know and the Town's records are not more definitive. He said they would like to have the land use records conform to the actual usage and therefore the application for a special exception. A plan was not submitted with the application. He provided an enlarged version of the tax map. 1 inch equals 18 feet. The lot is .2 acres. The floor plan was provided by Bentley showing first and second floors. Bentley mentioned Vision Appraisers showing

the property as two-family. Parking – two parking spaces per dwelling unit. Building sits 22 feet from the road. And parking is between building and the road. There is ample space for four parking spaces.

Thibault asked if there is a separate entrance to the lower level and Bentley said there was. Fire safety codes regarding the building were discussed. Bentley said that the Pahls had Town of Swanzey Fire Chief and Code Enforcement look at the building and make recommendations. He said that the Pahls will proceed with fulfilling the recommendations if the approval comes from the ZBA. There needs to be secondary method of egress for the lower level. Bentley went on to say the Pahls have no problem with conditional approval based on the satisfactory completion of all recommendations of the Fire Department and Code Enforcement.

Resident Barbara Sheehan spoke up and said the dwelling has been used as a two family with five people living downstairs and cars in and out at 3:00 a.m. She pointed out that according to her understanding of the Swanzey Zoning Ordinance Section III, North Swanzey requires a single family per lot. She said that she doesn't want to see the area to be depreciated. It is zoned as a single family area, according to Sheehan. And she wants the board to maintain the area as single family area. Attorney Bentley pointed out that multi-family dwellings are permitted by Exception.

Resident Jim Jarzabek spoke to the issue of snow removal. Mr. Pahl said he plows the snow. Discussion occurred about emergency access via a door and the size of the windows. Windows in the back are not large, but they are larger than the other windows.

Jarzabek made a comment about the number of people who are living in the home. According to Pahl there are two people upstairs and one person downstairs. Jarzabek said that the one garbage can that is there is not enough as garbage is on the ground. Isabell Jarzabek at 17 Lake Shore Road said she has a concern about the square footage per occupant – Carbonneau said the board could include provisions about trash maintenance but there isn't any ordinance about square footage per occupant. Resident Bob Nadeau noted that the building should have two entrances per occupant. Thibault noted a second means of egress can be through a window. Jarzabek noted it has to be a specific distance from the other egress. Geheran said that if the Fire Chief selected the window, then it probably satisfies the distance requirements.

Blyth Colmane asked about the small size of the house able to have two apartments. She wanted to know if that was legal. Sherry Page, 16 Lake Shore Road said that it isn't like a mother-in-law apartment which is stated on the tax cards. The building has two separate families and they don't know each other at all. Carbonneau said that the Town of Swanzey Ordinance doesn't refer to a mother-in-law apartment. The Ordinance does refer to accessory dwellings and two-family dwelling (also known as duplexes).

Barbara Sheehan referred to Ordinance Section III,4 and Section IV.B.1.a. and asked how a two-family can be permitted given the way the Ordinance reads pertinent to a single family dwelling. Thibault responded that a permitted use does allow for two-family dwelling when connected to public sewer in section IV.B.2.b. of the Ordinance. Carbonneau said that the Ordinance in Section III.4 referencing that no more than one family dwelling is permitted on one lot refers to two separate buildings disallowed on one lot.

Sherry Page said she has nothing against this couple (the Pahl's) making money. Concern is the care of the property and paying attention to who is there. She said there has been a lot of trouble in that building and she is concerned about who is there when her grandchildren come to visit.

Mrs. Pahl spoke up and said the problem person was evicted. If there is a problem she said they will address the problem if they know about it. They want to hear from the neighbors and they will call the police if necessary. Mr. Pahl said that do try their best to have good people in the house. Mrs. Pahl said she wants to be aware of the number people in the house because they don't want five people using water and creating trash.

Resident Tim Foster, 21 Lake Shore Road, said his interaction with Mr. Pahl was unpleasant. Foster said that he was called a name by Pahl and told to mind his own business. Foster also said there is a lot of traffic, including foot traffic, and bicycle traffic coming to the house. He made a reference to Section 8, and said the place is not kept up. Snow plowing is an issue and garbage piles up.

Mr. Jarzabek said he is concerned about the possibility that drug dealing going on there. He said he spoke to Khris Pahl about it. He said he was writing down the plate numbers of the cars coming and going to the property. He would appreciate more careful selection of tenants.

Resident Jim Newtown spoke about a resident of the building who died and Newtown surmised that the death was perhaps caused by a drug overdose. Newtown wanted to know if the man was living at the property or just visiting.

Resident Nadeau asked for an explanation of resident district. He said he was confused. Thibault said there are multiple dwellings allowed in a resident district including multiple family dwellings under special exceptions.

Hutwelker explained that the Tax Collector noted the property as a two family but Code Enforcement and Planning Board have no record of it being a two family. ZBA is part of Planning Department. ZBA has no obligation to grant the Special Exception. ZBA will consider the residents district when considering an application and certainly look at the specifics and also consider the opinion of the residents/abutters. He explained that the resident should read the entire Ordinance. He pointed out the Ordinance isn't proposed or adopted by the Zoning Board; rather, it is an Ordinance of the Town of Swanzy as voted by the citizens of the Town. Hutwelker also said that density issues are being addressed in the future.

Jim Newton asked about distance of the building from the Wilson Pond. 125 feet is the setback, but this house is pre-existing. Hutwelker said it is a good concern.

Hutwelker asked if there were questions from the Board. Thibault asked about heating for the units and Pahl said that there are separate heating units. He also said the oil tank is outside of the building to the rear of the property.

Mitchell asked for the setback for the property from the street and Pahl responded that it is 25 feet. Mitchell asked if there are any other two-family dwellings on Lake Shore Road in this area. The residents responded that there are none. Tatro asked how it was listed as real estate offering; it was listed as a two-family house by the Masiello Group who had the listing at the time. Mrs. Pahl passed to Tatro the listing sheet. Pahl stressed the first they knew it was considered a problem was when they received the Code Enforcement letter in early 2014.

Thibault suggested a site walk to examine the property and asked if there room for parking and adequate trash containers. Several residents offered the use of their driveways for the site walk.

Motion was made by Thibault to conduct a site walk at the property at 20 Lake Shore Road on June 16, 2014 at 6:30 p.m. The motion was seconded by Geheran. All were in favor, **Motion passed.**

Motion was made by Thibault to continue the **Public Hearing** to June 16, 2014 without further public notice, and to meet at the property site for a site review, and follow up at Town Hall, second by Mitchell, and all were in favor. **Motion passed.**

Hutwelker informed the residents knew that they are welcome to be at the site walk. Residents left at 8:35 p.m.

Summer Meeting Schedule

There was a brief discussion about the summer schedule for meetings and Carbonneau suggested that the month of August could be taken off schedule at the discretion of the ZBA. A decision was made to leave the judgment as to the necessity of timing of application review by the ZBA up to Carbonneau.

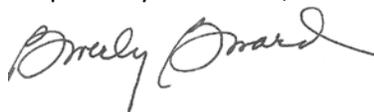
New Member Introduction

The members introduced themselves to each other with brief synopsis of their experience with zoning boards in the past.

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

Adjournment at 8:47p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary