

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – May 20, 2013

Note: Minutes are not final until reviewed and approved 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, Bob Mitchell, Charles Beauregard, Sr., alternate member Charles R. Beauregard Jr., and Beverly Bernard, Recording Secretary.

The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Bryan Rudgers, Sarah Tatro, Jim Vitous, Jerry Walker

Others Present: Town Planner Sara Carbonneau, residents Larry Parker, Mary Hamilton

Minutes: Motion by Thibault to approve the Minutes for the meeting of February 11, 2013, seconded by Mitchell, all in favor, ***motion passed.***

On the Agenda the **Election of Alternate Members** and **Election of Officers** was to be first items to be considered by the Board, but the Board agreed to defer these two items to later in the meeting, after the Public Hearings. **Motion** to defer the Election of Alternate Members and Election of Officers until later in the meeting after the Public Hearings was made by Thibault, seconded by Beauregard, Jr., with all in favor. ***Motion passed.***

Beauregard, Jr. was seated for Jerry Walker and the Public Hearing was opened at 7:08 p.m.

Public Hearing (Request for Special Exception)

Larry Parker requests a special exception from Section IV.A.2.m to permit the construction of an accessory structure that is 1,000 square feet or greater. The property is located at 80 Taft Road. The property is situated in the Rural/Agriculture District and is shown at Tax Map 13, Lot 3.

Carbonneau reviewed the materials provided to the Board. She said that Map 13, Lot 3 and Map 13, Lot 3-2 were merged in 2001 so that the property consists of 13.24 acres. She pointed out that the plan shows the property having a common driveway running back to the former DeLuca property. According to conversations with Mr. Parker and reviewing the deed, it does not appear that the Parker property is

subject to any deeded rights to pass or repass. Mr. Parker showed the Board the location of the storage building he hopes to build. He said the property was logged the year before he bought it in 1998. Hutwelker asked about access by Parker to the proposed building. Parker noted that there is no residence on Map 13, Lot 3-3, which is owned by his son. Hutwelker asked about power and water and Parker said none were planned, just prefab steel for the building. Upon further discussion, it was suggested that having the opportunity to have electric service running to the building would be useful. Parker stated that he would not need water for the building, but would welcome the opportunity to have power run to the building. Hutwelker asked whether there were any questions from the members. Thibault asked about access and the logging road that isn't used. Hutwelker asked about frontage. Carbonneau said the property has enough frontage. The acreage is sufficient for the request. No other questions.

Public hearing ended at 7:19 p.m.

Thibault commented that large structures that are in densely settled areas could be inappropriate but here he agreed that it didn't appear to be the situation.

Hutwelker reviewed the checklist for a request for special exception with the members of the Board.

1. *Is the exception allowed by the ordinance?* The members agreed in the affirmative.
2. *Are the below listed specified conditions present under which the exception may be granted?*
 - a. *Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?*

The members agree that while large structures that are in densely settled areas could be inappropriate, in this case that wasn't the situation and the proposed use was appropriate.
 - b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?*

The members agreed that they had heard no testimony that would suggest a reduction in property values or be injurious to the neighborhood.
 - c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?*

The members agreed that there would not be a nuisance or serious hazard caused by the proposed structure.
 - d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?*

The members suggested that electrical would be needed to open garage size doors on the building, but they saw no need for plumbing, and otherwise the proposed structure is adequate and appropriate for the proposed use.

Motion was made by Beauregard, Jr. to grant the special exception from Section IV.A.2.m to permit the construction of an accessory structure that is 1,000 square feet or greater, with electricity but no plumbing, at property located at 80 Taft Road. Mitchell seconded the motion. All were in favor. **Motion passed.**

Public Hearing (Variance Application)

Mary Hamilton requests variances from Section IV.A.1 and IV.A.3 to permit the construction of a storage shed where there are no other structures on the premises and that does not meet required setbacks.

The property is located off Old Homestead Highway and is situated in the Rural/Agricultural District. The property is shown at Tax Map 26, Lot 7-6.

Beauregard, Jr. was seated for Jerry Walker

Public hearing opened at 7:25 p.m.

Carbonneau said a copy of the tax map was in the copies for review by the Board. In the site plan provided by Hamilton, wetlands were delineated in 2005 by Certified Wetlands Scientist Tom Forest. Hamilton noted that her land is subject to a "No Build" area that is 200 feet by 500 feet in the NE corner of the property. 200 feet runs along Route 32. Hamilton was asked why the proposed shed can't meet setbacks. She said that if she observes the 20 foot property line setback requirement, the shed would be in the field. The idea is to make the shed longer and narrower without encroaching on the field so that mowing of the field for hay can be done efficiently. Her idea is to take down some of the hemlocks and make the shed out of them. Proposed shed is slightly less than 200 square feet (so that the shed would not require a building permit).

When asked if there would be a foundation for the shed, she responded that the shed could be moved; it won't be on a foundation. However, she said she doesn't plan to move it.

Two variances are involved in this request: the first variance request is in regard to having an accessory structure on a lot where there are no other buildings. The second variance request is in regards to a proposed structure that does not meet setback requirements.

Thibault asked if the shed would be considered an accessory to the field (as agricultural use). Carbonneau said the board could interpret the ordinance as they wish, but in the past has required a variance for an accessory structure when there is no primary structure on the premises. There are 20 acres there. Carbonneau pointed out that abutter Rick Bachman did not express any concerns. Carbonneau also pointed out that the shed should be less than 200 square feet if there is not going to be a need for a building permit.

A discussion was held about the height of the shed. Hamilton noted that she plans on storing a wheelbarrow, chain saw, first aid kit in the shed, and not a wagon full of hay as shown in one of the submitted photographs. It was estimated that the interior height would be about eight (8) feet.

Thibault said Hamilton's plan is laudable but the problem is that as much land as she has he did not see merit in granting a variance since the shed could project out into the field a short distance and meet the setback requirement. He emphasized that the Board has to justify in their minds that this case merits a variance. In this case, the shed could be built meeting the setback requirements. Hamilton said that it would add to the cost to mow around a shed. But Thibault noted again that setbacks apply to all properties in the community and everyone is required to follow the ordinance regarding setbacks and while there are no neighbors opposed, in order to grant a variance there is supposed to be a hardship involved. He noted that a variance is a high bar to meet. He gave as an example that if the Board did not grant a variance in some circumstances, the result would take away the ability for a property owner to use the property.

Hutwelker asked for questions. There were no more.

Public Hearing closed at 8:12 p.m.

Hutwelker reviewed with the members the checklist for granting a variance in regard to an accessory building being erected where no other buildings exist. All members responded to the checklist in the positive.

Beauregard, Jr. **moved** to grant the variance to Section IV.A.1 to permit the construction of a storage shed where there are no other structures on the premises, second by Mitchell, all in favor. **Motion passed.**

Hutwelker opened the Public Hearing 8:15 p.m. for a question by Beauregard Jr. directed to Hamilton and which she responded to.

Hutwelker closed the Public Hearing at 8:17 p.m.

A discussion was held by the members regarding the size of the shed. It was noted that "Under 200 square feet" means 199 sq feet. A building that is 10 feet X 19.9 feet makes it 199 square foot building and not subject to a building permit. Hutwelker said he is uncomfortable with 8 foot ceilings. Mitchell said 7 feet is overly restrictive. With the exception of Hutwelker, the Board was comfortable with 8 feet in height with a peak of 10 feet.

Hutwelker reopened the Public Hearing at 8:20 p.m.

Hamilton was asked whether 10 feet for height of the building would work. She said her helpers are tall over 6 feet but 10 feet should work.

Public Hearing closed at 8:23 p.m.

Hutwelker reviewed the checklist for granting a variance to permit construction of a storage shed that does not meet required setbacks with the members of the Board.

1. *Could the variance be granted without being contrary to the public interest?*
One member said that it could but four members disagreed saying there was no reason that the applicant could not find another location for the shed on the acreage the owner has to work with and the loss was only the convenience of mowing. Mitchell said it would set a bad precedent.
2. *Would the spirit of the ordinance be observed if the variance were granted?*
One member said it would but four members disagreed and it said it would not.
3. *Would the granting the variance do substantial justice?*
One member said it would, but four members disagreed and it said it would not.
4. *Could the variance be granted without diminishing surrounding property values?*
One member said it could, but four members disagreed and it said it would not.
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
All the members decided it did due to the presence of a "No Build" zone on the property.
6. *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 the members said, "no" to this question.

7. *Is the proposed use a reasonable one?*

All the members agreed that it was.

The applicant failed to meet the criteria for granting of a variance.

Motion to deny the application for a variance to the setback requirements per Section IV.A.3 made by Thibault, second by Mitchell, no discussion. **Motion passed** four (4) to one (1)

Summary: The Board granted the variance to build the structure, but denied the variance for the setback requirement. Hutwelker explained the results to Hamilton. He told her she can request a rehearing or she can build within the 20 foot setback. Hutwelker suggested that Hamilton speak to Carbonneau to discuss her options in regard to a possible rehearing. Hamilton has 30 days to request a rehearing.

Election of Alternate Members

The Board has two vacancies, terms to expire at Town meeting 2015 and 2016.

An application by Sarah Tatro to fill the vacancy for an Alternate to expire 2016 was reviewed by the Board. Thibault made a **motion** to elect Tatro to the Alternate position, with second by Beaugard, Sr. All were in favor. **Motion passed.**

Carbonneau noted that there is another vacant Alternate position and called on the Board to think of residents who might be willing to serve on the Board and get back to her.

Election of Officers.

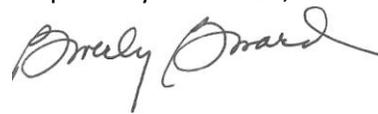
Nomination **motion** made by Mitchell to re-elect the existing officers, seconded by Beaugard Sr., no discussion, all were in favor. **Motion passed.**

Other matters as may be required.

Motion to suspend August meeting by Beaugard, Jr., second by Mitchell, all were in favor. **Motion passed.**

Motion to adjourn made by Thibault, seconded by Beaugard Jr. and all were in favor. **Motion passed.**
Adjournment at 8:45 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary