

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – June 16, 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 6:30 p.m. by Chairman William Hutwelker at 20 Lake Shore Road site visit. Present were Chairman Hutwelker, Vice Chair Keith Thibault, Bob Mitchell, Alternate Bryan Rudgers, Alternate Martin Geheran, and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and the Chair read the Agenda for the meeting. Charles Beauregard, Jr. joined the meeting at 6:55 p.m. at Town Hall.

Absent: Sarah Tatro, Alternate Shane Bryant, and Alternate Charles Beauregard, Sr.

Others Present: Director of Planning and Community Development Sara Carbonneau, Krishni & Edward Pahl, Jr., Attorney Michael P. Bentley, and many residents of Lake Shore Road including Barbara Sheehan, Jim Jarzabek, Isabelle Jarzabek, Bob Nadeau, Sherry Page, Tim Foster, and Jim Newton, Richard Drew, Attorney J.R. Davis and Thelma Stowell.

Minutes:

- **Motion** by Geheran to approve the Minutes as amended as follows: Beauregard, Jr. is a full member and his name should have been listed first and the missing Alternate second, noting that the order of the existing wording could lead one to assume that Beauregard, Jr. was an Alternate member and not a full member of the Board. Also amended was page 5, showing that Attorney Bentley said there is “ample space for four parking spaces”, that Mr. Pahl said he plows the snow “over the embankment”, and that the “Fire Chief selected the window **location**” for the meeting of May 19, 2014, seconded by Thibault and all were in favor. All were in favor.
Motion passed.

PUBLIC HEARINGS

1. Special Exception Application

Krishni & Edward Pahl, Jr. request a special exception from Section IV.B.2.b. to 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. The hearing is continued from May 19, 2014.

The regular meeting of the Swanzey Zoning Board of Adjustment was reconvened and the application of Krishni & Edward Pahl, Jr. was re-opened.

Public Hearing opened by the Chair at 6:32 p.m. at 20 Lake Shore Road

Chair Hutwelker seated himself, Thibault, Mitchell, Rudgers for Tatro and Geheran for Beauregard, Jr.

The site visit began with a walk around to the rear of the property. Attorney Bentley discussed the window egress on same side as the door stating that inspection was done by Code Enforcement and the Fire Department. He pointed to the back of building where a window was replaced. Bentley said that Code Enforcement and Fire Department wanted the window in a different location, near the bedroom. He said the window to be replaced is the one farthest from the door.

Board members noted a nearby stream. Neighbor Tim Foster wanted to know how it can be safe to have both the door and an exit window on the same side of the building, should there be a fire. Attorney Bentley had the Board look to the rear of the property to a home at 3 Wilson Pond Road which abuts the property being visited and is a multi-family home. He also noted that property at 35 Wilson Pond Road is a multi-family property.

Attorney Bentley also pointed out the lack of vehicular traffic on the road.

There was a **motion** made by Rudgers to reconvene the meeting at Town Hall. The motion was seconded by Mitchell. All were in favor and **motion passed**.

The meeting was reconvened at 6:43 p.m. at Town Hall.

Bentley addressed the issue regarding parking and safety. He asked the Board to consider other properties in the area, and see that many homes are close to the road with similar parking capabilities. He offered some photographs for the house directly across the street showing vehicles parked. He asked the Board to note the lack of traffic on the road while the site visit was taking place.

He also addressed the presence of other multi-family properties in the area. The property at 3 Wilson Pond Road, at the back of the property at 20 Lake Shore Road, is a multi-family building with 3 units according to Bentley. He said that according to assessing records the property at 35 Wilson Pond Road is a multi-family residence. He also said that another property with address of 41 Wilson Pond Road has an assessing record which shows "multi-home" with five buildings on a single parcel of land on .28 acres.

Attorney Bentley then addressed the application questions:

- He said the exception is allowed by the ordinance at that it has public water and sewer.
- He said the proposed use is similar to already authorized use – at least two or three multi-family properties are in the area and one is a direct abutter. As to reducing property values, he said regarding the issues with the neighbors there was one tenant who posed a problem. He said the Pahls have owned the property for ten

years and have tried to be as selective with tenants as they can. They try to control it as best they can. His clients don't want the hassle, just like the neighbors don't want the hassle.

- Nuisance – he said it was addressed
- Code enforcement for safe operation of the facility – he noted the windows have been replaced.

There was a discussion regarding windows for egress in emergency situation. Window to be replaced is the one closest to Wilson Pond and furthest away from the door on the same side. The other two that have been replaced will remain. Edward Pahl said the windows will be 48 inches off the ground to meet safety code.

Hutwelker asked for questions from the residents.

- Barbara Sheehan asked if a 60 year old could get out the egress window. Hutwelker pointed out that the owners are doing what Code Enforcement and the Fire Department has directed them to do. Jim Jarzabek spoke briefly. Katherine Snow commented about the application for exception. She said there are no 2-family or multi-family dwellings on Lake Shore Road – all the exceptions are on Wilson Pond Road.

Geheran raised the issue of property that is injurious, offensive to the neighborhood. He noted that a single family dwelling of 800 square feet would command higher rent than two apartments each 400 square feet. The lower rent can draw in different kinds of renters than a higher rent would. Bentley said a single tenant caused the ire of the neighbors and caused the police to visit the home. The tenant was a problem. Drug transactions and license plate numbers were given to the police by the neighbors. He said there is no benefit to the Pahls to have criminal activity going on. Bentley said that it was his opinion that the same tenant in a small unit as a larger unit would have caused a problem. Bentley said people who are economically disadvantaged deserve decent accommodations. He stressed that there had been only one bad tenant in ten years. Bentley had police reports with him and indicated that the majority of the calls were between Feb. 2013 and February 2013 and involved one "bad" tenant.

Mitchell asked for police reports when other tenants were in the building. Bentley summarized the police reports – some were for calls by the property owner, one for a male tenant banging on the ceiling. Drug overdose occurred while bad tenant was there. One call was for a hand injury. Isabelle Jarzabek said that injury was due to a tenant falling off the front stoop because of lack of a railing. She stressed that no repairs are being made on the property. After ten years of the Pahls' ownership, the property is poorly maintained. She also said that landlords should drive by their property occasionally and had they done so they would have noted a camper parked in front of the property for two months with a family living in it. There was also an incident when Mr. Foster and Ed Pahl got into an argument outside. Sheehan said that she could explain what happened. Mr. Foster was asking why Mr. Pahl was dumping brush into the ravine because Foster was concerned about the water in the ravine going into Wilson pond.

Bob Nadeau wanted to ask how many people are living downstairs. Attorney said that one is living downstairs. Nadeau said he thought there were six or eight living there. Sherry Page spoke about one tenant. Page said she moved into their house in 2008, and the first night there, there was a screaming fight in the driveway where the tenant resided. It was her opinion that no family is going to want to stay at the property. Page also said that low income folks deserve housing that is standard.

Ed Pahl said that creating a one family house would make it difficult to make enough money on the rentals and he would have to advertise to college kids. He said he isn't allowing more than one person living there and he really doesn't see a one family house being any better in terms of the tenants.

Jim Newton mentioned that the three properties referred to by Attorney Bentley as multi-family homes are owner occupied. The property being discussed tonight is not owner occupied.

Isabelle Jarzabek pointed out that the street currently is residential; policing by the owners of the property now and then would be a help to the neighborhood. Hutwelker asked Carbonneau for an explanation of definitions by the Town for a two-family versus a single family with an in-law apartment. Carbonneau said the Town does recognize a duplex as a two-family dwelling, but the Town of Swanzey Ordinance does not recognize an in-law apartment. She went on to say there is reference to an accessory dwelling unit with a common wall to a single family unit. Carbonneau said that this property has never come before the land use records as having gone through the ZBA for a two-family dwelling.

Isabell Jarzabek asked if the downstairs has a bath and kitchen and the Pahls responded that it does. eBob Nadeau asked about the square footage. Pahl responded that each apartment is about 400 square feet per floor. Attorney Bentley referred to the fact that the property was on the Town's assessing records as a two-family when they bought it. The Pahls relied on the assessing records that said the building was a two-family. The property has been taxed using the status of the property as shown on the assessing card.

Thibault asked about connection to public sewer. It was noted that connection occurred, on or about 2006. It was also noted the home became a two family in 2001 or 2002 or 2003. It would not have been approved for a two-family in 2001 or 2002 or 2003 because it would have been connected to a septic system at that time.

No further questions from the Board members. Hutwelker asked about plans of the Pahls regarding trash barrels or a dumpster for collection of cans at the rear of the property. Ed Pahl said that the rear of the property has recyclable cans which the tenant sells for cash. Attorney Bentley suggested that this type of storage not be allowed. Comment by Rudgers that it is very clear language from neighbors that the Pahls not be absentee landlords. He noted that dumping anything into a public water way is not permitted.

Bob Nadeau made a comment that about a week ago at 4:30 a.m. and 5:30 a.m. and 6:00 a.m. on a Sunday morning the dog was out, and someone drove up and a loud conversation was conducted, ignoring the fact that neighbors might be still sleeping nearby.

Pahl said he is not throwing anything into the waterways. He said he does bring in fill to level the land. Hutwelker suggest that Pahl discuss this matter with his attorney.

Public Hearing closed by the Chair at 7:57 p.m.

Chair Hutwelker reviewed the ZBA Checklist for a Request for Special Exception

1. *Is the exception allowed by the ordinance?*

All said: "yes"

2. *Are the 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? – All said regarding being authorized in that District: Mitchell – "yes" in district, but not owner-occupied; Geheran – similar "yes"; Rudgers – "yes"; Thibault – "yes"*

All said regarding appropriate location: Mitchell – "no"; Geheran – "no"; Thibault – "yes"; Rudgers – "no". Rudgers said that the neighborhood is single family owner-occupied and the property in question is a two-family dwelling and not occupied by the owner. Geheran said the houses are close and designed to be single-family neighborhood. Rudgers concurred. A brief discussion followed regarding two parts to a single question and it was agreed that if one part fails, since the question reads with an "and", the entire question fails.

b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood? Mitchell – said "yes" and that the landlords have not done their best and there is evidence that the property is obnoxious to the neighbors. Geheran said "yes" and make sure that his response isn't taken as about snobbery – the street has homes well-kept up, and this home has not been kept up. This would be a drawback for purchasing a house on that street. There is enough evidence of obnoxious behavior from that residence and therefore his response to the question is "yes". Thibault said "no". Hutwelker concurred with "yes" saying there are police reports that occur before and after a particular bad tenant. As a realtor, he knows that when a property is in disrepair it lowers the value of the home. He noted the railing at the staircase going to the lower level was loose, and the abutting properties are well maintained. This property has not been maintained and therefore does reduce property values. Approval would be injurious.*

c. *Will there be a nuisance or serious hazard to vehicles or pedestrians? All said: Thibault – said he has issues with backing out of parking space but road is sparsely travelled, response to the question is "no"; Rudgers - "no"; Geheran – "no"; Mitchell – "no"; Hutwelker said "no".*

d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use? All said: Geheran asked about the definition of appropriate facilities in this case and Hutwelker said trash disposal, parking, sewer and water. Geheran – "yes"; Mitchell – "yes"; Rudgers – "yes", Thibault – "yes".*

Hutwelker reviewed the Board responses:

Question one: Yes

Question 2a – Board determined it is NOT an appropriate location

Question 2b - Board determined that it would reduce property values or be injurious or obnoxious.

Question 2c – No hazard to pedestrians

Question 2d: Adequate facilities for proposed use.

Motion was made by Mitchell based on the determination of the answers to the Checklist for Request for Special Exception to deny the special exception request from Krishna & Edward Pahl, Jr. pursuant to Section IV.B.2.b. to permit the structure located at 20 Lake Shore Road to be utilized as a two-family dwelling. The motion was seconded by Geheran. Vote in favor: Hutwelker, Geheran, Rudgers and Mitchell. Opposed: Thibault. **Motion passed.**

Hutwelker informed the applicants that they can appeal the Board's decision within 30 days.

2. Public Hearing

Variance Application

Richard Drew, agent on behalf of Forest View Estates, LLC, requests a variance from Section IV.A.3. to permit the construction of a 3-season porch that does not meet required setbacks. The property is located on Owen's Drive and is situated in the Rural/Agricultural District. The property is shown at Tax Map 79, Lot 6. Hutwelker informed the Board that he has a conflict of interest and he stepped down. Thibault took over Chair for this Hearing. Thibault seated Mitchell, Geheran for Tatro, Rudgers for Hutwelker and seated Charles Beauregard, Jr.

Public Hearing opened by the Chair at 8:17 p.m.

Discussion: Owen's Drive is a Town maintained road. Richard Drew addressed the Board. Town house units were originally two-story. The developers decided to build ranch style units because demand for two-story units decreased. The ranch-style units are a little deeper and a bit wider. Drew said an individual wants to buy unit 119 built with a three season porch. The three season porch would go where the deck would normally go, at the rear of the building. When completed the porch would extend into the setback by 4 feet. There are three season porches on some of the units already. The building units need to be similar due to the terms of the Declaration for the development. Drew said the developers desire a 4 foot variance.

Geheran said he has a problem with a setback variance in the rural/agricultural district. Drew explained there are 3 units that have 3 season porches now. The floor plans have common walls. The center building was pushed back to meet requirements for garages and parking at the buildings. The shell of the building is complete. Sheetrock is in and carpeting is in. At the corner of Unit 101 is a retaining wall so that the building could not be shifted to the right. The nearest building is 350 feet away through the woods. The setback would be 26 feet versus 30 feet. Drew mentioned that this is an enclosed area, not a porch or a deck.

Chair asked for questions from the Board and the public in attendance. There were no further questions or comments.

Public Hearing closed by the Chair at 8:30 p.m.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board. Mitchell made a comment – he tends to have flexibility on setback variances if they are small to the nearest building. He also said the developer has made an effort to make the land and buildings work even though the building design changed from townhouses to ranch-style units. Mitchell said that his opinion is that this is a minor issue in terms of the entire project.

Thibault mentioned that there is a whole side of the building that would be available for a 3 season porch. A discussion followed regarding the difficulty in getting a homeowner’s association to make any kind of change to a Declaration; building a three season porch on the side of the building instead of the rear would necessitate a change in the Declaration since one unit would not be similar to the others. Mitchell said he was President for a homeowner’s association in the past and accepts the applicant’s contention it is hard to go back and modify a Declaration.

1. *Could the variance be granted without being contrary to the public interest?*
Members said: Mitchell – “yes” the encroachment is minor relative to the 30 foot setback, and mitigated by 350 feet to the abutter. Geheran - “yes”; Rudgers – “yes”; Beaugard, Jr. – “yes”. Public wouldn’t gain much if it were denied.
2. *Would the spirit of the ordinance be observed if the variance were granted?*
All Members said: “yes” – one corner of building is involved.
3. *Would the granting the variance do substantial justice?*
Members said: Rudgers noted the variance would get the unit sold – the building has already a set footprint, and keeps the units equal. Not have to re-write the Declaration – all agreed, saying “yes”
4. *Could the variance be granted without diminishing surrounding property values?*
All Members said: “yes” – nearest property is 350 feet away
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
Members said: it’s on the end of the building and the building is shoe-horned on the property
 - 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: the property is shielded by trees- all agreed
 - b. *Is the proposed use a reasonable one?*
Members said: Geheran said all the other units can have a three season porch, not unreasonable for this unit. Members agreed with “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 a “yes” response **prevailed** on all criteria.

Motion was made by Geheran based on the determination from the Checklist for Granting a Variance to approve the request of Richard Drew, agent on behalf of Forest View Estates, LLC, for a variance from Section IV.A.3. to permit the construction of a 3-season porch that does not meet required setbacks. The property is located on Owen’s

Drive and is situated in the Rural/Agricultural District. The property is shown at Tax Map 79, Lot 6. The motion was seconded by Rudgers and all were in favor. **Motion passed.**

Request for Rehearing (Thelma Stowell)

Hutwelker rejoined the meeting at 8:40 p.m.

Thelma Stowell was present with her attorney James Romeyn Davis, Esquire.

Hutwelker, Beauregard, Jr., Thibault, Mitchell, and Rudgers for Tatro were seated for this hearing.

From the document: Attorney Davis noted that The State of New Hampshire Swanzey Zoning Board of Adjustment "*In Re: Variance Application of Thelma Stowell, Applicant's Rehearing Request*". Page 4, Paragraph 26, should read "by late 05/1998 or early 06/1998". Also Paragraph 41 is followed by a date which should read, "Dated this 20th day of May, 2014". Paragraph 6 should read "May 16, 2014."

Request for Rehearing – Hutwelker asked for questions from the Board. None had questions. Geheran said he wasn't on the Board at the time and therefore will not make comments.

After reading the document the members of the Board discussed its contents. Mitchell noted that Sections 34 and 40 was not correct in that he would not agree that the Town had knowledge of residential use. Rudgers said that Police and Fire are not Land Use officers and are not there to note if there are multiple dwellings on the property. Hutwelker noted that Sections 18, 19, 20, 21, 23 (maybe 22) refers to Code Enforcement which is land use. Mitchell asked Hutwelker to articulate his point. Hutwelker said the Office of Planning, Mr. Crombie, would have worked with or under the direction of the planner. He would be the person to determine any violations. Section 19 was discussed and Carbonneau was asked for minutes for that meeting and Carbonneau said there were no minutes in writing. Thibault said that his reading that he was led to believe that it was going to be a farming use (mushroom growing). The word "temporarily" is questioned in section 22.

Motion was made by Thibault in regard to request for a rehearing by Thelma Stowell regarding the property at 111 Christian Hill Road to deny the request. There was a second by Beauregard, and all were in favor. **Motion passed.**

Alternate Member Nomination (1 position expiring 2016)

Carbonneau informed the Board there are no applicants. Carbonneau suggested delaying posting for the opening until later in the year. The Board agreed.

Other matters as may be required.

Hutwelker suggested that the Board consider population density requirements to discuss and recommend to the Planning Board. The members agreed.

Motion to adjourn was made by Mitchell, seconded by Thibault and all were in favor. **Motion passed.** Adjournment at 9:02 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Beverly Bernard". The signature is written in a cursive, flowing style.

Beverly Bernard, Recording Secretary