

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – June 17, 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 7:00 p.m. by Chairman William Hutwelker. Present were Chairman Hutwelker, Jim Vitous, Jerry Walker, Bob Mitchell, Charles Beauregard, Sr., and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Vice Chair Keith Thibault, Bryan Rudgers, alternate member Sarah Tatro, and alternate member Charles Beauregard, Jr.

Others Present: Town Planner Sara Carbonneau, Ken Greatbatch, Louise Wright

Minutes: Motion by Beauregard, Sr. to approve the Minutes for the meeting of May 20, 2013, seconded by Mitchell and all in favor, ***motion passed.***

Mitchell **moved** the Election of Alternate Member, which was #1 on the Agenda, be addressed after the Public Hearings. Beauregard Sr., seconded the motion and all were in favor. ***Motion passed.***

Public Hearing was opened at 7:02 p.m.

Due to a conflict of interest Hutwelker stepped aside and Mitchell chaired the Greatbatch Public Hearing.

Public Hearing (Variance Application)

Kenneth Greatbatch requested variances from Section XI.B.1. and V.B.3. to permit the construction of an addition onto a non-conforming structure. The property is situated at 625 West Swanzey Road and is situated in the Business Zoning District. The property is shown at Tax Map 73, Lot 28. The property is owned by G.B. Investment Holdings LLC.

Mitchell seated Jim Vitous for Hutwelker. Mitchell told Greatbatch that he will need three positive votes to get his variance from the members in attendance this evening. He also told Greatbatch that he can ask for a continuance when more members would be present. Greatbatch declined to ask for a continuance.

Carbonneau introduced the application summary informing the board that legal notices were published and sent to abutters in a timely fashion. Notice was also sent to Department Heads and no comments were received by them. Carbonneau noted that there is a State of New Hampshire approved septic system on the property that was to serve another structure that is no longer on the premises. She noted that Greatbatch will have to get permission from the State of New Hampshire Department of Environmental Services (DES) to hook up to this system.

Mitchell asked for abutters; there were none. Greatbatch spoke to the issue of the septic system. He said there was a mobile home on the lot when it was purchased, but the mobile home has been removed. The fully approved septic system was never connected to the mobile home. He said the proposed addition to the existing remaining building is small (six feet by twelve feet). Greatbatch said he wants to add space to accommodate a bathroom which will extend the visual front of the building by six feet.

Mitchell asked what kind of business would be going onto the property. Greatbatch responded that the prospective tenant does furniture restoration.

Mitchell said that the issue is distance to the street. Required setback is 75 feet. Greatbatch did not know what the setback is now. Carbonneau left the room temporarily to get the information for Mitchell. She returned to state that the building would be about 40 feet from the corner of the addition to the edge of the right of way and 42 feet from the north end of the store; this information was scaled from the septic system plan. Beauregard asked about the septic design and Greatbatch said it was designed in 2007.

Mitchell asked Beauregard if he had any questions. Beauregard asked for more information about the location of the addition, and Greatbatch pointed to the end of the building, not near the septic system. The location of the proposed addition was also indicated on the site plan provided.

Mitchell asked about the well, and any limitations on moving the building back within the radius of the well. Carbonneau said it could be moved, but noted that it may not be practical to do so. Hutwelker pointed out that the ordinance made the site non-conforming, but it was conforming in the past. Mitchell pointed out the property has been improved with the removal of the other buildings that were on the property. Vitous referred to the fact that Greatbatch will need a building permit eventually.

Beauregard wondered if the septic system has been approved by the State for use now. Greatbatch said Septic Designer Tom Forest septic designer has applied to the State for approval and is waiting for the State response. Greatbatch said the building will be a much lighter use than a mobile home

Beauregard **moved** to close the Public Hearing, which was seconded by Walker. All were in favor with no more questions. **Motion passed.** Public Hearing ended at 7:19 p.m.

Mitchell then 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 four responded "yes"
2. *Would the spirit of the ordinance be observed if the variance were granted?*

All four responded “yes” with Mitchell adding that the property would have conformed at a prior time.

3. *Would granting the variance do substantial justice?*

All four responded “yes”

4. *Could the variance be granted without diminishing surrounding property values?*

All four responded “yes”

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

All four responded “yes” with Vitous noting that the building was erected in the 1950’s and this would be an improvement keeping in line with the age of the building.

A.i. 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 four responded “yes”

Motion was made by Beaugard, Sr. to grant the variance to Section XI.B.1 and V.B.3 to permit the construction of an addition onto a non-conforming structure on property situated at 625 West Swanzey Road, also situated in the Business Zoning District, shown at Tax Map 73, Lot 28. Walker seconded the motion. All were in favor. **Motion passed.**

Application for Variances is granted.

Hutwelker rejoined the meeting as Chair at 7:24 p.m. and seated Vitous for Thibault.

Public Hearing (Variance Application Pursuant to RSA 674:33,V)

Caleb Wright requested a variance from Section IV.B.3. to permit the construction of a ramp for handicap access. The property is located at 4 North Maple Street, shown at Tax Map 18, Lot 192 situated in the Residence District. Representing the Wright family was Louise Wright, Caleb’s wife.

Public hearing opened at 7:25 p.m.

Carbonneau noted that if the Board granted a variance the variance could survive only so long as the need is there, if established by the Board as a condition of the approval. The Board could establish a condition that the ramp is removed when the person on the property no longer needs it.

Louise Wright said her husband needs the ramp now. He is using a walker now but will eventually need a wheel chair. The ramp has already been constructed over an existing walkway, and it is not attached to the house. The ramp comes out nine feet from the house. The step is cement and there is an asphalt walkway to the driveway (beneath the ramp).

Hutwelker asked about language for removal of the ramp. Carbonneau said it is up to the Board to decide if the variance is granted with conditions - such as ending the variance 30 days after the sale of the premises or that it exists only during the life tenancy of Caleb and Louise Wright. In that case anyone buying the property from the Wrights would need to get another variance to keep the ramp.

Hutwelker asked for questions from the Board members. There were none. In the ensuing discussion, Vitous said the ramp might add value to the property for someone looking for a one story, single bedroom home with access for a handicapped person. Carbonneau noted that the handicap ramp is going over the existing walkway and is not encroaching any more than the existing walkway.

Public Hearing closed at 7:35 p.m.

Hutwelker reviewed the Checklist for granting a variance with members of the Board:

1. *Could the variance be granted without being contrary to the public interest?*
All four responded "yes"
2. *Would the spirit of the ordinance be observed if the variance were granted?*
All four responded "yes"
3. *Would the granting the variance do substantial justice?*
All four responded "yes"
4. *Could the variance be granted without diminishing surrounding property values?*
All four responded "yes"
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
Carbonneau referred to statute 674:33, V that says when a ZBA is considering a variance, any ZBA may grant a variance without finding a hardship when recognizing someone with a physical disability. Therefore the Board does not have to deal with question five.

Mitchell **moved** that the Board make a finding of reasonable accommodation for handicap access for the current owners of the property, Caleb and Louise Wright, per the RSA 674:33 V. There was a second from Walker and all were in favor. **Motion passed.**

- 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 four responded "yes"
- b. *Is the proposed use a reasonable one?*
All four responded "yes"

A discussion was then held regarding the terms of the Variance to be granted and whether or not to extend it in perpetuity. Beauregard said there aren't many houses in town to accommodate disabled persons and it would be good to have a property with a ramp. Mitchell said Vitous had a point pertinent to value of the property when considering selling it.

Mitchell said he chooses to see the ramp as just an elevation of the existing walkway and that perpetuity is reasonable to him. Hutwelker said he thinks otherwise and that is primarily because of the Wilson Pond situation in which the ZBA caused an owner to dismantle a ramp. Hutwelker said he wasn't comfortable with the idea of basically permitting a farmer's porch to be built on the front of a house.

Hutwelker says a precedent is being set if the ZBA grants the variance in perpetuity. He said the ZBA is taking the owners out of the equation, and should be prepared to grant those types of variances in the future.

Mitchell said he understood Hutwelker's point. Walker said that he feels that the variance should be granted in perpetuity. Hutwelker asked the Board if the Wrights didn't have a physical disability, would the board grant the variance. Hutwelker says that it should be specific to the Wrights and any future tenant should have to come back to the Board for a variance. Beauregard suggested that the ramp should go if the Wrights no longer need it. Hutwelker stressed that the ramp should be dismantled once the need is no longer there.

Motion by Beauregard to approve the application for a variance to RSA 674:33 V for a handicapped ramp for the life tenancy of Caleb and Louise Wright and/or to be removed when no longer needed. Second by Mitchell. All in favor, ***motion passed.***

Election of Alternate Member

There is one vacancy, term to expire at Town meeting 2015. Carbonneau reported there were no applications for the open alternate position. She also noted that Sarah Tatro who is renewing at an alternate position has not yet been sworn in.

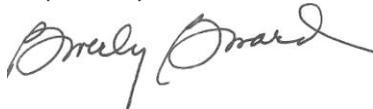
Town Email Addresses

Carbonneau introduced the Technology Policy requirement for town email addresses. She asked for passwords from Vitous, Walker, Beauregard, and Mitchell, having already received one from Hutwelker. Hutwelker said the easiest thing for the members would be the ability to transfer the entire set of email addresses for the Town into the new contact list. Carbonneau noted that email is discoverable and personal email account can be subpoenaed. Mitchell said he won't write down a password. Hutwelker asked for a short term password that could be generated by EMF Inc. and then changed online. Mitchell noted that this Board does not deliberate online. Carbonneau said there are other board and committee members who do use email to discuss issues. Other groups are not as diligent as this board. It was noted that Beauregard does not have email.

Motion to adjourn made by Mitchell, seconded by Walker and all were in favor. ***Motion passed.***
Adjournment at 8:03 p.m.

No August meeting, but a July meeting is scheduled.

Respectfully Submitted,



Beverly Bernard, Recording Secretary