

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – July 15, 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 7:17 p.m. by Chairman William Hutwelker. Present were Chairman Hutwelker, Vice Chair Keith Thibault, Board members Bob Mitchell, Jerry Walker, Charles Beauregard, Sr., and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Alternate members Bryan Rudgers, Jim Vitous, Sarah Tatro, and Charles Beauregard, Jr.

Others Present: Town Planner Sara Carbonneau, James Jarzabek, Sr., Arnie Filipi, Sharon Monahan, Residents David & Sherry Page, and Resident Ken Foster.

Minutes: Motion by Thibault to approve the Minutes for the meeting of June 17, 2013, seconded by Beauregard, Sr. and were all in favor, ***motion passed.***

PUBLIC HEARINGS

1. Public Hearing (Variance Application)

James Jarzabek, Sr. requested a variance from Section IV.B.3. to permit the construction of a shed that does not meet required setbacks. The property is located at 17 Lake Shore Road and is situated in the Residence and Shoreland Protection Districts. The property is shown at Tax Map 18, Lot 125.

Public Hearing opened at 7:20 p.m.

Seated for the hearing were Chair Hutwelker, Vice Chair Thibault, Bob Mitchell, Jerry Walker, and Charles Beauregard, Sr.

Carbonneau reviewed the legal postings and publications that have been completed, as well as confirming that Town Department Heads received copies of the application. Applicant needs permit from the New Hampshire Department of Environmental Services (DES). Carbonneau pointed out that the application may be considered as complete without the state permit from DES.

Mr. Jarzabek said he has an existing 11 foot x 8 foot shed that he wants to replace. He said he wants to erect a 12 foot x 14 foot shed at the same location that would be 9 feet high. He said that the shed will be used for storage for items such as a snow blower, and a push mower. He does not have a basement, so it is all for storage.

A discussion was held reviewing photos, and a diagram showing the location of the shed. Jarzabek said that he wants to move the propane tank that is currently on the property behind the shed to get it further away from the house.

Carbonneau said that there are abutters present. David & Sherry Page, of 16 Lakeshore Road, were present and said they had no objections to the new shed and its location. Ken Foster, another neighbor, said he has no problems with the shed.

Carbonneau noted that the shed will be less than 200 sq feet and therefore does not need a building permit, but moving the propane tank probably does need a building permit. She recommended that Jarzabek speak to Code Enforcement Officer Chet Greenwood.

Public hearing closed at 7:29 p.m.

Hutwelker 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 committee members responded, "Yes"
2. *Would the spirit of the ordinance be observed if the variance were granted?*
All committee members responded, "Yes"
3. *Would granting the variance do substantial justice?*
All committee members responded, "Yes"
4. *Could the variance be granted without diminishing surrounding property values?*
All committee members responded, "Yes"
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
All said yes – the size of the lot is small. No other lot in the neighborhood is smaller.

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? Could the variance be granted without diminishing surrounding property values?

All committee members responded, "Yes"

A.ii Is the proposed use a reasonable one?

All committee members responded, "Yes"

Motion by Beauregard, Sr. to approve the application of James Jarzabek, Sr. for a variance from Section IV.B.3. to permit the construction of a shed that does not meet required setbacks,

subject to compliance with agreed upon footprint (12 ' by 14') plan as confirmed by Code Enforcement Officer for the Town of Swanzey. The motion was seconded by Walker, all were in favor. ***Motion passed.***

Application for Variance is granted.

2. **Public Hearing (Variance Application)** Arnie Filipi requested a variance from Section VII.E.1. to permit the construction of a septic system that does not meet required setbacks from wetlands. The property is located off Old Homestead Highway and is situated in the Residence district & Wetlands Conservation (overlay)district. The property is shown at Tax Map 31, Lot 27. The property is owned by Elizabeth & Kenneth Borchers.

Public Hearing opened at 7:33 p.m.

Seated for the hearing were Chair Hutwelker, Vice Chair Thibault, Bob Mitchell, Jerry Walker, and Charles Beauregard, Sr.

Carbonneau reviewed the legal postings and publications that have been completed, as well confirming that Town Department Heads received copies of the application. She noted that the lot is currently vacant.

Sharon Monahan accompanied Arnie Filipi. She identified herself as a "certified wetlands scientist" and licensed septic designer and began the discussion. She noted that Mr. Filipi is interested in purchasing the property but the purchase is dependent upon whether the ZBA grants the variance. Monahan noted that the owners of the property are aware of Filipi's intentions and did sign the application. Monahan passed out copies of the real estate listing for the lot.

Monahan asked a question: why it doesn't come under general provision 3E?Carbonneau said that Section 3E is for existing non-conforming lots of record. This lot has the required frontage and acreage. Monahan noted that the lot does conform to State of New Hampshire requirements for septic systems. She said that this lot can meet all State requirements for setbacks for wetlands. Hutwelker said that municipalities can pass statutes that are more restrictive than the State's. And there are other lots in town that cannot meet the 125 foot setback requirement and therefore the property is not unique.

Monahan reviewed the drawing for the planned development of the land and noted there are wetlands about fifty (50) feet in from the road. The wetlands are closer to the road because of a farm drainage ditch leading to the wetlands area. The land was originally part of the Belding Farm. The lot being considered is next to Town-owned land. Multiple lots were created before 1940 which were supposed to be homestead properties for the Belding heirs. This lot is one of them. Monahan claimed that the lot is unique in that it was used for agricultural purposes but can no longer be used as such since it is now split off from the main farm. She also noted that the lot is located in a residential zone.

Monahan reviewed the "Facts in support of Granting the Variance" which were written in the Application for Variance for the Town of Swanzey. Filipi passed out a drawing showing there is

no room for a septic system which would meet the 125 foot setback. The wetlands are man-made wetlands due to disturbance of the land. It is a conforming lot other than the septic setback requirement. The lot meets the state requirements for safety of water. Monahan noted that construction approval for a septic system is required from the State. In addition, to develop the property, a shoreland permit will be required from DES as a small portion of the property is located within the protected shoreland and is subject to RSA 483-B.

Mitchell asked for an explanation for the northern abutter. Carbonneau said the Town owns to the property. It provides access to conserved land (Honey Hill). The lot has 100 foot frontage. The Town owned property is 50+ acres.

Hutwelker asked members for other questions. Beaugard asked why a 4 bedroom home would be built there and wouldn't a 3 bedroom house require a smaller septic system. Filipi responded that even with a 3 bedroom house, he could not make the 125 foot setback requirement.

Thibault asked about the impact of the proposed septic system on any well that might be dug on the neighboring lot, # 26, and wouldn't that need to be noted on the deed. Filipi said that a well radius must be contained entirely within a lot's boundaries per State regulations. Therefore, the location of the proposed septic system on Lot #27 would not have a negative impact on siting a well on Lot #26.

Hutwelker said that Swanzezy has steadily observed the 125 feet setback. And while some variances have been granted for 5 feet, the issue is 25 feet, and it is a challenge to agree to a variance. Hutwelker asked if there is an opportunity to reconfigure the parcel to the south to allow both lots to be building lots. He noted that the owners have that flexibility, as both lots 27 and 26 are owned by the same parties. There is a potential option that the owners could create. It said he did not find the argument for a variance compelling. He went on to say that on South Road, there are two buildable lots for sale which are similar to the lot at issue. The unique quality is not there. Hutwelker says he is going to vote "no" because the owners can reconfigure the lots. Two 2.8 lots, could be made to 5.6 acreage. Filipi said that he didn't think that the two lots could be reconfigured so that there would be two septic systems that would both meet the 125 setback requirement.

Monahan said she disagrees with Hutwelker and the State statutes should be sufficient. Hutwelker said that Swanzezy's ordinance does not make distinction between man-made wetlands, versus natural wetlands. Carbonneau advised the board that it can, if it so chooses, to consider the differences and values between man-made wetlands versus natural wetlands. Carbonneau referred the Board to the NH Method for Evaluating Wetlands. Carbonneau said that there are different criteria such as: historic, environmental, and wildlife habitat. She noted there is very little redeeming quality for some wetlands.

Monahan went on to describe the functions and values for wetlands. The wetland at issue is not functioning as protecting ground or surface waters. It is not a recharge area and not a discharge area. Is not performing the function of water quality maintenance and there is no wildlife being supported there. She said the functions and values integrity of these wetlands would be rated

poorly. Monahan said there isn't any movement toward the branch of the river. The wetlands are isolated. Hutwelker asked if the wetlands could be removed. Monahan responded that the State won't allow that action.

Thibault made a **motion** to continue the public hearing to a site visit, and the motion was seconded by Mitchell, with all in favor. **Motion passed.**

Carbonneau suggested July 22, 2013 for the site visit. All members agreed to meet at 6:00 p.m. at the site and return to Town Hall right after the site walk to continue the meeting.

Motion by Beauregard, Sr. to continue the public hearing without further notice, to July 22, 2013 at 6:00 p.m. at the premises. Immediately following the site visit the Board will convene at Town Hall for further consideration of the application. Seconded by Mitchell. All were in favor. **Motion passed.**

3. OTHER MATTERS

Carbonneau reminded the board that Old Home Day is coming up on Saturday, July 20, 2013. Thursday, Thomas Hubka is going to be speaking at the Congregational Church and Friday night is the opening reception of the 64 Mile Exhibit at the Cheshire County Historical Society.

Thibault raised the idea of having Board member signs for the table top for Public Hearings. He said that it would be helpful to applicants when addressing the Board. Carbonneau said she would have some made.

Motion by Mitchell to adjourn, Thibault seconded, all were in favor. **Motion passed.** Adjournment at 8:25 p.m.

There will be no meeting in August.

Respectfully Submitted,



Beverly Bernard, Recording Secretary