

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – July 22, 2013

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.

A special meeting of the Swanzey Zoning Board of Adjustment was held on Monday, July 22, 2013 at 6:00 p.m. The meeting commenced with a site visit at property shown at Tax Map 31, Lot 27 (located on the west side of Old Homestead Highway/Route 32). Immediately following the site visit, the board convened at the Swanzey Town Hall, 620 Old Homestead Highway, Swanzey, NH.

Members of the Board present at the special meeting: Chair William Hutwelker, Board members Bob Mitchell, Jerry Walker, Charles Beauregard, Sr. and Alternate Bryan Rudgers who was seated for Thibault. Also present was Beverly Bernard, Recording Secretary.

Others Present: Town Planner Sara Carbonneau, Arnie Filipi, Sharon Monahan, Conservation Commission members Steve Stepenuck, and Gary Coburn.

Absent: Vice Chair Keith Thibault, and Alternates Jim Vitous, Sarah Tatro, and Charles Beauregard, Jr.

Minutes: Motion to approve the Minutes of July 15, 2013 by Mitchell, with a second from Beauregard, and all were in favor. ***Motion passed.***

PUBLIC HEARING opened at 6:00 p.m.

1. Public Hearing (Variance Application) - Arnie Filipi requests 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. **The hearing was continued from July 15, 2013.**

The members of the Board gathered at the property at 6:00 p.m. Monahan walked the members through the wetland portions of the property pointing out the man-made ditch at the north end of the property and then the ditch at the west end of the property. The members were joined by Steven Stepenuck and Gary Coburn, both members of the Town of Swanzey Conservation Commission.

When the group gathered near where the septic field is proposed, Filipi said he was able to reposition the septic field by turning it 90 degrees from where it had been originally positioned in the plan. The

new position would now make the setback 114 feet from the wetland on the property. There were no further questions or discussion and the group proceeded to Swanzy Town Hall.

Once everyone was seated, Hutwelker asked the Conservation Commission members for input. Stepenuck said that 125 feet is a good ordinance and that he has been defending it for 25 or 30 years. Stepenuck said he takes issue with the idea that the wetland does not recharge the aquifer. He mentioned that he would like to see a second opinion from another wetlands scientist. It is wet and there were ferns there. Stepenuck went on to say that he had read the minutes from the last ZBA meeting and that it seemed to him that there was another way out of this issue – and that would be to reconfigure the land in order to meet the 125 setback requirement. Coburn agreed that the 125 wetland setback is important to maintaining the aquifer.

Hutwelker said one of the challenges he faced is comparing man-made wetlands versus natural wetlands. He said it was his understanding that the field would have no wetlands if man hadn't interfered. Stepenuck said that it is hard to find land in New Hampshire that hasn't been disturbed. Wetlands store water and recharge aquifers, man-made or not. Wetlands are valuable. He said the wetland is connected underground with the South Branch of the Ashuelot River. Rudgers made a point that if the trench/ditch wasn't on the site there wouldn't be wetlands there.

Monahan agreed that the wetland provides groundwater recharge. But she also pointed out that Filipi isn't proposing to impact the wetlands. He isn't proposing to change the wetlands, nor change their value. He is not taking away any wetland area. We are only talking about the setback requirement, she said.

Hutwelker agreed with Monahan saying that the evaluation by the Board is about the 125 foot setback. Stepenuck said he took a wetlands workshop recently where values and functions for wetlands were discussed. Monahan passed out a copy of the Values and Functions to the Board while pointing out that this analysis is usually done when the wetlands are going to be filled in. The analysis is used for mitigation purposes.

Rudgers asked Stepenuck for his opinion regarding setbacks that were 8 or 10 or so feet within the 125 foot setback. Stepenuck said that he can't say that 114 feet or 125 feet makes a difference. There was a brief discussion about where the driveway would be built and whether or not a culvert would be required. Coburn said that he and Stepenuck were there to defend the 125 foot setback requirement.

Monahan reminded everyone that the land was used for agriculture, but no longer is used in the same way. It is cut off from the rest of what once was the Belding Farm.

Filipi showed the brochure for advanced environ-septic treatment system that he is proposing placing on the property. Monahan repeated that the lots are zoned residential. The lot can meet all the residential requirements except the 125 foot setback requirement from wetlands. Mitchell asked about the status of the Belding farm where there are llamas and horses. Carbonneau said that land is conserved land.

Hutwelker asked if there any additional comments or questions. There were none. Hutwelker asked about others coming to the Conservation Commission to debate the 125 foot setback requirement.

Stepenuck said that they have had developers debate it, but it is the right way to do things. It is conservative. Coburn said that if it was changed to 100, then people would want 80 feet. Carbonneau pointed out there is a limit to how close development can come to wetlands in the State. The setback cannot be less than State of New Hampshire Department of Environmental Services (DES) regulations, which is 50 feet from poorly drained soils and 75 feet from very poorly drained soils. Waivers were mentioned briefly and Monahan said waivers are only given for existing construction, not new construction. Monahan said she is known as a conservative wetlands scientist. She feels that this is a situation that warrants a variance. The proposed septic system lines would be 115 feet, 115 feet, and 123 feet from the wetlands.

Public Hearing closed at 7:09 p.m.

Board members reviewed the information presented and discussed their reasoning regarding the request for variance.

Rudgers said that the planned system is close to meeting the 125 foot setback requirement and his view was that it would not have a negative effect on the wetlands. If were 70 or 80 feet, he wouldn't be in favor, but being within 10 feet, he did not think it was an issue.

Mitchell agreed the proposed setback is close to the requirement and there is the issue of man-made wetlands, however, if one takes a look at that part of Swanzey which has had a rural character for many years, it is important to maintaining the rural character. As he looks at this situation with the properties in the area, he said he was more conservative in this situation. Beaugard agreed with Mitchell. Walker said that both Mitchell and Rudgers made good points.

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?*
Beaugard – yes; Rudgers – yes; Mitchell – no; Walker – yes; Hutwelker – no (3 yes, 2 no)
2. *Would the spirit of the ordinance be observed if the variance were granted?*
Walker - yes; Mitchell – no; Rudgers – yes; Beaugard – no; Hutwelker – no (2 yes, 3 no)

Mitchell expanded on his reasoning: voters have voted to have a more conservative standing than the State and in a rural location like this, we need to honor the ordinance.

3. *Would granting the variance do substantial justice?*
Beaugard – no; Rudgers – yes; Mitchell – no; Walker – no; Hutwelker – no (1 yes, 4 no)

Mitchell expanded on this: he said he believed that the desires of the community outweigh that of the proposed use. He believes that there are other options open to the owners. Loss to the applicant is outweighed by the communities will.

4. *Could the variance be granted without diminishing surrounding property values?*
All agreed “yes”
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
All disagreed “no”

Rudgers repeated that the property is a section of the Town with rural character and there are wetlands throughout the area.

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 in agreement, yes

A.ii Is the proposed use a reasonable one?

All in agreement, yes

In order for a Variance to be granted, a "yes" votes on all five criteria is required. A "yes" vote did not prevail on items 2, 3, and 5.

Motion by Rudgers to deny a request for variance from Section VII.E.1 to permit the construction of a septic system that does not meet required setbacks from wetlands on property located off Old Homestead Highway, situated in the Residence district & Wetlands Conservation (overlay) district, shown at Tax Map 31, Lot 27 on the basis that all criteria were not met given the reasons above, second by Beaugard. All were in favor. **Motion passed.**

Application for Variance is denied.

Hutwelker told Filipi that he has 30 days to request a re-hearing. He informed Filipi that there will be no ZBA meeting in August, but the Board will meet in September.

Motion by Beaugard to adjourn, Mitchell seconded, all were in favor. **Motion passed.** Adjournment at 7:23 p.m.

There will be no meeting in August.

Respectfully Submitted,



Beverly Bernard, Recording Secretary