



# TOWN OF SWANZEY

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## SWANZEY ZONING BOARD OF ADJUSTMENT MEETING AUGUST 15, 2011

*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.*

### ATTENDANCE

William Hutwelker, Chair; Keith Thibault, Vice Chair; Bob Mitchell, Jerry Walker. Alternates John Arnone, Sarah Tatro, Charles R. Beauregard, Jr., Jim Vitous. Town Planner Sara Carbonneau also was present.

Chairman Hutwelker called the meeting to order at 7:00.

### MINUTES

**Motion** by Vitous to approve the minutes of the July 18, 2011 meeting. Second by Walker. Hutwelker, Mitchell, Walker, Arnone, Tatro, Beauregard, Jr., Vitous in favor. Thibault abstained, due to his absence on July 18, 2011. Motion carries.

### 1. (Public Hearing) Variance Pursuant to RSA 674:33, V.

Applicant: Stephen Bedaw

Property owner: Stephen Bedaw

Property location: 2 North Pine St Tax Map 18, Lot 230

Zoning District(s): Business District

Request: Variance from Section V.B.3. to permit the construction of a temporary ramp for handicap access.

Members seated: Hutwelker, Thibault, Mitchell, Walker. Tatro was seated for Beauregard, Sr.

Representing the application: Stephen Bedaw

Abutters present: none

Hutwelker opened the public hearing at 7:03.

Members received a copy of the application summary. Carbonneau reviewed meeting notice posting dates and locations, and stated that heads of Town departments had provided no feedback regarding the application. Carbonneau said that the property is served by private water and public sewer. Carbonneau said that the applicant's mother, Lillian Bedaw, has a life estate in the premises. Carbonneau said that the existing garage received a variance in 1962, but she had been unable to find any meeting minutes for confirmation.

Bedaw stated that the primary purpose of the proposed ramp is to improve safety for his mother, who recently fell down the stairs. Bedaw said that the ramp would be constructed at one of the two entrances to the house, and would be located on top of the existing walkway.

In response to questions from Board members, Carbonneau explained that statute provides for zoning boards to grant a variance without finding a hardship “when reasonable accommodations are necessary to allow a person or persons with recognized physical disability to reside in or regularly use the premises,” providing that the variance is in harmony with the general purpose and intent of the zoning ordinance. Carbonneau said that the ZBA may provide that the variance survive “only so long as the particular person has a continuing need to use the premises.” RSA 674:33, V.

Hearing no further questions or comments, Hutwelker closed the public hearing at 7:08.

Members reviewed the criteria for granting the requested variance.

1. Could the variance be granted without the proposed use being contrary to the public interest?

Members agreed in the affirmative.

2. Would the spirit of the ordinance be observed if the variance is granted?

Members agreed in the affirmative, noting that the ramp was proposed to cover an existing walkway.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative.

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

Members agreed in the affirmative, noting that the ramp would effectively only change the elevation of the existing walkway.

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

Citing RSA 674:33, V., members agreed that this question was not relevant.

A. Owing to the property’s distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

AND

(ii) Is the proposed use a reasonable one?

Members agreed in the affirmative.

**Motion** by Thibault to approve the variance from Section V.B.3. to permit the construction of a temporary ramp for handicap access, said variance to continue for so long as Lillian Bedaw has a continuing need to use the premises. Second by Mitchell. All in favor.

## **2. (Public Hearing) Variance**

Applicant: Bruce & Nancy Descoteaux

Property owner: Bruce Descoteaux

Property location: 126 Old Homestead Hwy Tax Map 18, Lot 167

Zoning District(s): Residence District

Request: Variance from Section IV.A.3. to permit the construction of a 24’ x 24’ garage/accessory storage structure.

Members seated: Hutwelker, Thibault, Mitchell, Walker. Charles Beauregard, Jr. was seated for Charles Beauregard, Sr.

Representing the application: Tim Sampson, Bruce Descoteaux

Abutters present: none

Hutwelker opened the public hearing at 7:12.

Members received a copy of the application summary. Carbonneau reviewed meeting notice posting dates and locations, and stated that heads of Town departments had provided no feedback regarding the application. Carbonneau said that the property is served by public water and public sewer. Board members reviewed color photographs submitted by applicant.

Sampson stated that the structure is proposed for storage of off-season items such as an older model car and a motorcycle, which would be moved into and out of the structure once a year. Sampson said that no driveway is proposed to serve the structure, which is proposed to be vinyl-sided and architecturally consistent with the neighborhood, and would have additional storage space above the stored vehicles. Sampson said that the proposed location avoids an underground sewer line serving the rear of the existing house, preserves existing plantings and gardens, and is readily accessible from the street. The irregular shape of the lot causes the primary hardship, Sampson said.

In response to questions from Board members, Descoteaux said that the existing garage (at 12' wide, large enough for only one vehicle) is located about 5 feet from the property line, and said that his neighbor's garage is on the property line.

To properly assess the hardship, Hutwelker suggested a site walk. Members concurred. **Motion** by Beauregard, Jr. to continue the public hearing at a site walk to be held at 6:00 p.m. on Monday, September 19 and upon conclusion of the site walk the meeting will move to Town Hall for deliberation by the Board. Second by Walker. All in favor.

Due to congestion in the neighborhood, Carbonneau recommended car pooling, or parking across Old Homestead Highway from the property.

### **3. (Public Hearing) Variance**

Applicant: Chad Bryant

Property owner: Chad Bryant

Property location: 15 West St Tax Map 57, Lot 9

Zoning District(s): Residence District

Request: Variance from Section XI.B.1. to permit the construction of a dormer on a non-conforming structure.

Members seated: Hutwelker, Thibault, Mitchell, Walker. Vitous was seated for Beauregard, Sr.

Representing the application: Chad Bryant

Abutters present: none

Hutwelker opened the public hearing at 7:30.

Members received a copy of the application summary. Carbonneau reviewed meeting notice posting dates and locations, and stated that heads of Town departments had provided no feedback regarding the application. Carbonneau said that the property, located on the east side of Route 10, is served by private

water and public sewer. Carbonneau said that the house—one of the first structures in that part of Swanzey--was constructed circa 1787. Board members reviewed a photograph of the house with the proposed dormer superimposed on it.

Bryant added that the house pre-dates West Street (as evidenced by photographs on file at the Swanzey Historical Museum). Bryant said that, lacking insulation, heat and adequate electrical service, and with a leaking roof, the upstairs of the old post and beam structure currently is not habitable. He said that he seeks to address health and safety issues by bringing the house up to code, hard-wiring in smoke detectors, and replacing sagging roof trusses. Bryant said that he seeks to gain additional usable, functional floor space that would have some flat walls (as opposed to the existing 4' knee walls) to accept a dresser and other furniture. Adding the dormer would make it possible to install a second bathroom, Bryant said, and would result in a gain of 140-150 sf of living space. Bryant said that there would be no alteration to the interior stairway or access to the upstairs. Bryant said that the front of the house faces south (the side that does not meet the 30' setback); the dormer is proposed for the west-facing side of the house. Bryant said that only two houses on West Street conform to the 30' setback.

Mitchell said that, by not increasing the house's footprint, the proposed dormer would not exacerbate the house's encroachment into the setback. Hutwelker said that, given the age of the house, the establishment of West Street made the house nonconforming. Hutwelker said that the proposed renovations would improve the structure of the building.

Hearing no further questions or comments, Hutwelker closed the public hearing at 7:43. Members reviewed the criteria for granting the requested variance.

1. Could the variance be granted without the proposed use being contrary to the public interest?

Members agreed in the affirmative, stating that the public would not experience a loss should the dormer be constructed.

2. Would the spirit of the ordinance be observed if the variance is granted?

Members agreed in the affirmative, stating that the dormer would not expand the pre-existing encroachment into the setback.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, for the reasons given to support criterion #1.

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

Members agreed that they had heard no evidence to the contrary.

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

Members agreed in the affirmative, citing the age of the house relative to the age of West Street, and relative to implementation of the ordinance.

A. Owing to the property's distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

AND

(ii) Is the proposed use a reasonable one?

Members agreed that the proposed use is reasonable.

**Motion** by Mitchell to approve the variance from Section XI.B.1. to permit the construction of a dormer on a non-conforming structure. Second by Vitous. Hutwelker, Mitchell, Walker and Vitous in favor. Thibault opposed. Motion passes.

#### **4. Motion for Rehearing**

Applicant: Nasir Mian, principal of Mian Swanzey Realty, LLC

Property owner: Mian Swanzey Realty, LLC

Property location: 163 Monadnock Hwy Tax Map 19, Lot 68

Zoning District(s): Residence District

Request: A rehearing of the June 20, 2011 decision rendered by the Swanzey Zoning Board of Adjustment, denying the applicant's request for a variance to install a sign that does not meet required setbacks.

Members seated: Mitchell, Walker, Arnone, Tatro, Vitous. Hutwelker and Thibault stepped down due to potential conflicts of interest, and moved to sit in the audience.

Representing the application: Attorney Tom Hanna

Abutters present: none

Acting chairman Mitchell opened the public meeting at 7:49 and confirmed that all Board members had read the documents pertaining to the case, including minutes of the June 20, 2011 meeting and a Motion for Rehearing of June 20, 2011 Decision dated July 15, 2011 prepared by Hanna. Mitchell reminded those present that comments from the public would not be permitted, and outlined the Board's standard for passing judgment: The petition needs to present new or formerly unavailable information, or to demonstrate that the Board committed a technical error.

Reviewing the Motion for Rehearing, Arnone said that the applicant's written application had supplied the Board with evidence; according to the Board's rules of procedure, it was not necessary for the applicant to be present. Arnone said that the applicant had requested a delay until 7:15, and had arrived at 8:15. Arnone said that the Board had not only delayed the hearing, but also had rearranged the agenda to accommodate the applicant's request. Vitous said that the Board had debated the issue, had examined the request from a technical standpoint, and saw no hardship. Tatro added that the Board had considered safety concerns, but had lacked information regarding dimensions of the proposed sign. Based on the application, Tatro said that Board members felt that area existed within proper setbacks where the sign could be installed.

Mitchell asked whether any member could identify a point in the Motion that he or she believed merited rehearing. Vitous said that he felt the Board's decision was clear cut. Walker said that he found no points in the motion that merited rehearing; he said the Board had considered all information that was submitted on the application.

Hearing no further questions or comments, Mitchell asked for a motion. **Motion** by Arnone to deny the motion for rehearing. Second by Walker. All in favor. Mitchell advised Hanna of the 30-days appeal period.

Hutwelker and Thibault returned to the table, and Hutwelker resumed the chair.

**5. Other matters as may be required.**

For the Board's review and consideration of incorporation into the ZBA rules of procedure, Carbonneau said that she prepared a procedure for handling requests for rehearings. Board members expressed interest in reviewing the draft language at the September meeting, and holding a public hearing at the October meeting. Carbonneau said that the Board's rules of procedure state that the rules may be amended by vote following a public hearing.

**ADJOURNMENT**

**Motion** by Walker to adjourn. Second by Tatro. All in favor. The meeting adjourned at 8:05 p.m.

Respectfully submitted,



Victoria Reck Barlow  
Recording Secretary