

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – August 15, 2016

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 meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 7:00 p.m. by Chair William Hutwelker. Present were Keith Thibault, Bob Mitchell, Bryan Rudgers, Alternate Adam Mulhearn, and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Sarah Tatro, Alternate Shane Bryant, Alternate Marty Geheran, Alternate Eric Kallio and Alternate Charles Beauregard, Sr.

Others Present: Director of Planning and Community Development Sara Carbonneau, Dr. Judson Dexter and Pamela Dexter, Dave Bergeron, and resident Michael Delisle.

MINUTES

- Meeting Minutes for July 18, 2016 were considered. ***No quorum present – tabled.***

PUBLIC HEARINGS

A. Public Hearing opened at 7:05 p.m.

David Bergeron, agent on behalf of SET Real Estate Holdings, LLC/Thomas Transportation, requests a **variance from Section VII.D.** to permit an impact of approximately 1200 square feet to a wetland area for a building expansion. The property is located at 93 Monadnock Highway and is situated in the Business and Wetlands District. The property is shown at Tax Map 18, Lot 134.

The Chair seated Mulhearn for Tatro and seated himself, Thibault, Rudgers, Mitchell and Mulhearn for this hearing.

Dave Bergeron reviewed with the Board a plan for the changes desired by Thomas Transportation. He addressed the wetlands at the rear of the property. Nothing will change at the front of the existing building except for an addition basically squaring off the building, which will cover the existing pavement and extend a bit beyond in order to accommodate a driveway around the building. Bergeron said that the main reason Thomas Transportation needs the expansion is that much of their business has become tour business using buses. He said the expansion will assist in growing that end of the business. Bergeron said that water runoff from the property will be picked up and drained to the existing retention pond to the south. No storm water is intended to run off into the wetlands.

He noted that the wetland impact is approximately 550 square feet in one location with another 400 square feet impacted. Bergeron said that the buses need to be able to maneuver around the building and the new paved area will be limited to the width necessary for that activity. He said there is no other place to expand given the existing parking is being used by airport limos, customer cars, employee cars, and the autos for a small Avis rental business, so parking is at a premium.

Bergeron addressed each of the questions associated with granting a variance. He said the site is over 2.6 acres, approximately 1 acre is wetlands, and the expansion will impact on 2% of the wetlands – he noted that allowing expansions along State Route 12 follows the Master Plan of the Town of Swanzey. He spoke about that section of town being a business district and expansion is an ordinary and customary activity and will not impact negatively on residential uses. He noted that not allowing the expansion will cause a hardship to the owner. He noted that the owner is requesting a minimum amount of expansion needed for the business.

Hutwelker asked for questions: Rudgers asked about grading the site. Bergeron said there would be two catch basins in the expanded area and will drain south to the existing retention pond. Mulhearn asked about the wall at the slope – Bergeron said it is close to a 45 degree angle for the slope and he said the ground cover would be juniper or something similar since it is too steep to mow. Michael Delisle, resident of Pasture Road, spoke. He asked Bergeron whether the holding tank would likely be moved. Bergeron said it would be moved out from beneath the building. Delisle said he lives up on the bank and he asked where the snow will be put and said he was concerned that snow would be pushed on top of his corner stake. Bergeron said he could talk to the owners about where the snow will be placed. There was a discussion about excess snow impacting on the pond – if there is too much; Bergeron said they could haul it off the site.

There was a discussion about the holding tank being separate from the septic system – they are two distinct and separate systems. Town sewer was raised. Water line is already there and not recommended to put a sewer line next to it, supposed to be ten feet apart, according to Bergeron.

Bergeron passed out photos of the proposed building expansion area.

Bergeron said he will be submitting a request for Wetland Minimum Impact Expedited Permit to Conservation Commission and to the State of New Hampshire Department of Environmental Services (NH DES).

Thibault asked for more discussion on why there is no other place for expansion. Bergeron referred to moving buses around on the site and that this design was the best location because of that bus circulation – other areas were too close to the setback lines, or too close to the driveway. This is the least amount of impact of options reviewed. Thibault asked about two bays instead of three, Bergeron said the business has three buses now and there could be more in the future.

Hutwelker asked about the elevations on the building. Bergeron said the owner is considering a homogenous front to the building.

The Chair asked the Board for questions and asked those present for questions. There were none.

Public hearing closed at 7:30 pm

The Chair considered the request of David Bergeron, agent on behalf of SET Real Estate Holdings, LLC/Thomas Transportation, for a variance from Section VII.D. to permit an impact of approximately 1200 s.f. to a wetland area for a building expansion on property located at 93 Monadnock Highway, situated in the Business and Wetlands District and shown at Tax Map 18, Lot 134.

He reviewed the **Checklist for Granting a Variance** with the members of the Board:

Could the variances be granted without being contrary to the public interest?

Members said: Mitchell: yes; Rudgers: yes; Mulhearn: yes; Thibault: yes

Would the spirit of the ordinance be observed if the variances were granted?

Members said: all said yes

Would the granting the variances do substantial justice?

Members said: all said yes; Rudgers noted that the property owner otherwise might need to find another site for their business and the Town could lose the business

Could the variances be granted without diminishing surrounding property values?

Members said: all said yes

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

Members said: yes – wetlands in this corridor of a commercial area – all agreed

- 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: all agreed. Thibault said that he felt it is hard to judge what level of impact would be detrimental – he noted it is a difficult decision, it is a subjective decision versus an objective decision. Mitchell said that this is a small wetland and with provision for underground drainage to take it away, it makes the impact potential limited.**
- b. *Are the proposed uses a reasonable one?* **Members said: all said yes**
- c. *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.* **Members said: n/a**

The Chair reported that “**yes**” prevailed and he entertained a motion to **grant** the request for Variance.

Motion was made by Thibault to grant the request of David Bergeron, agent on behalf of SET Real Estate Holdings, LLC/Thomas Transportation, for a variance from Section VII.D. to permit an impact of approximately 1200 s.f. to a wetland area for a building expansion on property located at 93 Monadnock Highway, situated in the Business and Wetlands District and shown at Tax Map 18, Lot 134 with an expectation that a conversation will be held between the owner of the

property and the abutter regarding snow storage and/or removal. There was a second by Mitchell and no further discussion. All were in favor. **Motion passed.**

- B. The Chair noted that the applicant for the following variance has requested a continuation due to being advised prior to the meeting that a full 5 member board could not be seated (Mitchell informed Carbonneau that we would be recusing himself due to a potential conflict of interest).

Mike Pappas requests **variances from Section IV.B.1.** to permit the operation of an office for an existing equestrian business and an office for a proposed construction business in the existing house; and to allow for the parking/storage of construction equipment. The property is located at 6 South Road and is situated in the Residence District. The property is shown at Tax Map 31, Lot 3. The property is owned by Eunice Pappas.

Motion was made by Thibault to continue the application of Mike Pappas for a variance from Section IV.B.1 to permit the operation of an office for an existing equestrian business and an office for a proposed construction business in the existing house; and to allow for the parking/storage of construction equipment on property located at 6 South Road and situated in the Residence District to September 19, 2016 at 7:00 p.m. without further notice. There was a second to the motion by Rudgers and all were in favor. **Motion passed.**

C. Public Hearing opened at 7:39 pm

Ash Hill Art Institute requests a **special exception from Section IV.A.2.j.** to permit an educational facility for the arts. The property is situated in the Rural/Agricultural District and is shown at Tax Map 51, Lot 8. The property is owned by the Judson K. Dexter Trust.

The Chair seated Mulhearn for Tatro and seated himself, Thibault, Rudgers, Mitchell and Mulhearn for this hearing.

Carbonneau spoke about legal notices posted and notices to abutters having been made. She said that the property has a state approved septic system and an email was received by the Town from Tom Forest of Forest Designs stating the septic system is adequate for the proposed use. She also noted there is a copy of the septic system plan in the files of the Town.

Pamela Dexter spoke about the proposed art center and the focus on educational aspects that are expected to be part of the Institute. She said the space could be used by outside artists but also open to community groups for meetings.

Mitchell asked about the possibility of other types of functions. Dexter said they might have special events to draw people to the Institute which would probably include an educational piece.

Rudgers asked about residential use. Dexter said the hope is to have an artist in residence or a caregiver partially because the property is isolated. She confirmed that it would not be an income rental unit. Rudgers asked about fire department being contacted. Dexter said that both

Fire Chief Norm Skantze and Fire Inspector Eric Mattson have been to the site and pointed out items to address which will be followed up on.

Thibault asked about the potential for someone living there having a family. Dr. Dexter said zero chance. He said the Institute will require an application to live on site with the express purpose for caretaking of the property. Thibault spoke about the email from Tom Forest of Forest Designs regarding the existing septic system, which notes a standard of 75 Gallons per Day (GPD) for a single resident. He pointed out the septic system is not a large system and with more folks, that might not be acceptable.

Pamela Dexter reviewed the plan with the Board and spoke about the buildings including the carriage barn. She noted that art work that shouldn't be done in the house can be done in the carriage barn. She said there are 20 spaces for parking that were used by the daycare business and additional parking could be achieved for another 20 spaces as you drive into the driveway. The focus will be on entering the front of the building and add landscaping to better define the front door access. Hutwelker asked about ADA issues. Dexter said that there could be a ramp added to the building. Hutwelker also asked about ADA bathrooms. Dr. Dexter said hand rails could be added. Hutwelker asked about the width of the doorways and Dexter said that he was unsure about the width of doorways. Carbonneau said that during the building permit process ADA issues would be addressed.

Thibault asked about dumpster or trash container for the business. Dr. Dexter said that there has always been one on the site and would place it where it was easy to empty but if that is of concern, another site could be determined. He noted that the plan is to visually enclose the dumpster with some kind of barricade fence.

The Chair asked the Board for questions and asked those present for questions. There were none.

Public hearing closed at 8:00 pm

The Chair considered the request of Ash Hill Art Institute for a special exception from Section IV.A.2.j. to permit an educational facility for the arts on property situated in the Rural/Agricultural District, shown at Tax Map 51, Lot 8 and owned by the Judson K. Dexter Trust.

The Chair reviewed the **Checklist for Granting a Special Exception** with the members of the Board:
*Is the exception allowed by the ordinance? **Members said: all said yes***

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? **Members said: all said yes and Rudgers noted the Humane Society is not far away and is partially educational.***
- b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood? **Members said: all said no***
- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians? **Members said: all said no***

d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?*

Members said: Four yes and one no (Thibault) and discussion followed.

Members said: septic is okay, Thibault said he was a bit concerned about the location of the dumpster and the number of parking spaces being sufficient given there is no striping on the plan. Discussion was held regarding parking spaces.

Hutwelker asked the Board if they wished to consider re-opening the public hearing in order to ask the owners more questions about parking and there was consensus to do so.

Hutwelker moved to re-open the public hearing, Rudgers seconded the motion and all were in favor. Motion passed. Public Hearing reopened at 8:06 pm

Thibault asked about the number of parking spaces. Dr. Dexter said he measured the space as 60 X 97 feet, which permits straight in parking, with ten spaces on either side (20 totally). Dr. Dexter said he designed it larger than was thought needed at the time for the Daycare business. Placement of the dumpster was discussed – Dr. Dexter said he will place the dumpster where the ZBA wants to put it and he noted it may depend somewhat on how many handicapped parking spots are required. Dexter suggested the dumpster would be behind the garage with an enclosure. Future parking would be similar size and expandable as business grows.

Mitchell moved to close the Public Hearing and there was a second by Rudgers. All were in favor and the motion passed. The Public Hearing was closed at 8:11 pm.

The Chair entertained a motion to **grant or deny** the request based on the responses to the checklist for granting a special exception.

Mitchell **moved** to grant the request of Ash Hill Art Institute for a **special exception from Section IV.A.2.j.** to permit an educational facility for the arts on property situated in the Rural/Agricultural District, shown at Tax Map 51, Lot 8, and owned by the Judson K. Dexter Trust. Mulhearn seconded the motion and there was no further discussion. All were in favor except Thibault who voted no. Four in favor of the motion and one against. **Motion passed.**

D. Public Hearing opened at 8:13 pm

Norman & Terri Skantze request a **variance and a special exception pursuant to Section III-AA** to permit the construction of a detached accessory dwelling unit on property situated at 62 Christian Hill Road. The property is situated in the Residence and Rural/Agricultural Districts and is shown at Tax Map 58, Lot 26.

The Chair recused himself from this hearing.

The Vice Chair seated Mulhearn for Tatro and seated himself, Rudgers, Mitchell and Mulhearn for this hearing.

Thibault pointed out to the applicant the fact that there were only four members present to make a decision and the applicant has a right to a continuation of review of his request with a full board of five members. Skantze was also advised that 3 affirmative votes are required in

order to prevail on the special exception application. Skantze said he was comfortable with four members present.

Carbonneau spoke about notices, abutters were notified, and published in Keene Sentinel. This property has a septic system and a well but there was no information among the Town documents about the system. She did however, point to an email from Tom Forest of Forest Designs stating that the soil is desirable soil for sewage disposal and the 2 acre lot can support the increased flow for a new septic design that would meet all Town and State of NH requirements.

Carbonneau said a detached dwelling unit (ADU) is permitted by ordinance and the ordinance calls for one common interior access while this ADU is to be connected via a breezeway. Mitchell spoke briefly about the ZBA history regarding detached dwelling units in which the Town prevailed at the State Supreme Court.

Skantze asked to present to the Board. He said that it is opinion that the ADU is attached by a roof-covered breezeway with screen walls without windows. He said there would be about 612 s.f. of living space for a family member. Carbonneau pointed out the need for at least one common interior access point between the main building and the ADU. There was a discussion about having a wall connecting the ADU to the breezeway. There was a discussion about a second door required by ordinance for the purpose of egress; Skantze said there will be adequate escape windows.

Skantze reviewed his written facts in support of granting the variance. Mitchell said that typically the ZBA looks at a common wall. And if there are hardships, the ZBA looks at what are the alternatives. Mitchell said he said he is ready to agree that the breezeway serves as the connection, then a door in the ADU would be needed into the breezeway. Skantze said that with 600 square feet, there isn't enough room to put a door into where the kitchen will be placed. Carbonneau pointed out that a 600 sf space may be a hardship in trying to fit what is needed for the ADU and how things are laid out.

There was a discussion about whether or not the new State law has an impact on these issues. Thibault listed all the requirements for an ADU:

- Secondary and accessory to a one family dwelling unit
- Does not alter the character of the principal unit
- One ADU per lot
- Owner of record resides in the one unit – can be either the principal unit or the ADU
- Additional accesses should be at side or rear of building
- Allow for possibly reincorporating into the principal unit
- At least one common interior access between ADU and principal unit
- Gross living not less than 300 sf or 25% of space in principal unit & ADU combined
- Building permit must be approved
- Interconnected fire alarm system
- Adequate off-street parking – with 3 parking spaces as a minimum
- Adequate provision for vehicle ingress and egress

- o Septic must be certified to support the ADU

There was a brief discussion about nothing being on file for the septic system and Carbonneau said that is not uncommon for older properties.

Mulhearn spoke about limited space in the ADU and how an interior door would limit the floor plan. It was noted that if the variance is denied, and the applicant changes his design at the public hearing, then a special exception can be considered.

The Vice Chair asked the Board for questions and asked those present for questions. There were none.

There was a brief discussion about the hardship element – the size of the ADU is unique and will be part of an existing structure.

Public hearing closed at 9:00 pm

The Vice Chair considered the request of Norman & Terri Skantze for a variance pursuant to Section III-AA to permit the construction of a detached accessory dwelling unit on property situated at 62 Christian Hill Road in the Residence and Rural/Agricultural Districts and shown at Tax Map 58, Lot 26.

Rudgers said his opinion has changed on two points – based on the deck versus breezeway, door on the ADU because of its size. There was a discussion about reincorporating the ADU with the principal dwelling and whether that was possible without an interior connecting door. Thibault said he doesn't see a hardship for putting in a common interior door.

The Vice Chair reviewed the **Checklist for Granting a Variance** with the members of the Board:

Could the variance be granted without being contrary to the public interest?

Members said: Mitchell, Rudgers, and Mulhearn agreed "yes", Thibault said "no"

Would the spirit of the ordinance be observed if the variance was granted?

Members said: Mitchell, Rudgers, and Mulhearn agreed "yes", Thibault said "no"

Would the granting the variance do substantial justice?

Members said: all agreed "yes"

Could the variance be granted without diminishing surrounding property values?

Members said: all agreed "yes"

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

Members said: Mitchell said yes because the garage already exists and this is not an undeveloped site or blank slate; Rudgers said there are other properties on Christian Hill with detached garages but this one is semi-attached to the dwelling house, yes all four

d. *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: Mitchell said due to the limited space, he voted yes; Mulhearn said no, Thibault voted no because of lack of connecting door; Rudgers said limited space is an issue but moving a door 36 inches is not significant and voted no**

e. *Are the proposed uses a reasonable one?* **Members said: all said yes**

- f. *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.* **Members said: This criterion was not addressed.**

Motion was made by Mulhearn to deny the variance request of Norman & Terri Skantze for a variance pursuant to Section III-AA to permit the construction of a detached accessory dwelling unit on property situated at 62 Christian Hill Road in the Residence and Rural/Agricultural Districts and shown at Tax Map 58, Lot 26. Second by Rudgers. Mitchell voted Nay, Rudgers, Thibault and Mulhearn voted Aye. **Motion passed. Variance was denied.**

Public Hearing for Special Exception opened at 9:17 pm

Carbonneau said the applicant needs to state that he is going to modify the plan if the Special Exception application is to be considered. There was discussion about leaving a door to the breezeway from the garage. Skantze agreed to do so. The Vice Chair confirmed that the proposal now includes that a door will be provided on the east side of the breezeway directly connecting to the proposed ADU.

Board members considered the information provided during the variance application public hearing and incorporated that information as part of the consideration of the Special Exception application. Skantze reviewed the checklist questions and addressed them.

Public Hearing closed at 9:24 pm

The Chair reviewed the **Checklist for Granting a Special Exception** with the members of the Board:

Is the exception allowed by the ordinance? **Members said: yes – all four**

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?* **Members said: all said yes and is appropriate location**
- b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?* **Members said: no**
- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?* **Members said: no**
- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?* **Members said: yes**

The Chair reported that “**yes**” prevailed and he entertained a motion to **grant** the request of Norman & Terri Skantze for a **special exception pursuant to Section III-AA** to permit the construction of a detached accessory dwelling unit on property situated at 62 Christian Hill Road in the Residence and Rural/Agricultural Districts and shown at Tax Map 58, Lot 26.

Motion was made by Mitchell to **grant** the request of Norman & Terri Skantze for a **special exception pursuant to Section III-AA** to permit the construction of a detached accessory dwelling unit on property situated at 62 Christian Hill Road in the Residence and

Rural/Agricultural Districts and shown at Tax Map 58, Lot 26. There was a second by Mulhearn and no further discussion. All were in favor. **Motion passed.**

The Chair rejoined the meeting.

Request to approve revised site plan

Request by Brad and Patricia Hunter to approved revised site plan. Variance was granted April 18, 2016. Property is situated at 27 Alyward Avenue, Tax Map 72, Lot 108 situated in the Business District.

Carbonneau spoke about the revised plan – there is no further movement toward the front property line. She said the original structure was demolished and new structure will be a larger volume and will be closer to the side property line but still meeting the required side setbacks. The change is because of a modular home size which the applicant wishes to erect on the site. She noted a modular is stick-built but built in a factory and not on site. Dimension of 27.5 by 44 feet.

Motion was made by Mitchell to approve revised site plan for property granted variance on April 18, 2016 at 27 Alyward Avenue, tax Map 72, Lot 108 situated in the Business District. There was a second to the motion by Rudgers and no further discussion. All were in favor. **Motion passed.**

ADJOURNMENT

Motion to adjourn was made by Mulhearn, seconded by Thibault and all were in favor. **Motion passed.** Adjournment occurred at 9:32 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary