

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – August 18, 2014

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.

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, Bob Mitchell, Sarah Tatro, Alternate Charles Beauregard, Sr., Alternate Shane Bryant, and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and the Chair read the Agenda for the meeting.

Absent: Vice Chair Keith Thibault, Charles Beauregard, Jr., Alternate Bryan Rudgers, and Alternate Marty Geheran.

Others Present: Director of Planning and Community Development Sara Carbonneau, Steven Stepenuck and Robert Goodrich from the Swanzey Conservation Commission, Charles & Diana Belletete, Licensed Septic Designer Tom Forest, Jill Amadon, Bill Whitcomb, Greg Curry, and Cy Nowakowski.

Minutes:

- The Minutes of June 16, 2014 were deferred to consideration on September 15, 2014 due to a lack of a quorum of members who were present at the June 16, 2014 meeting.

PUBLIC HEARINGS

1. Public Hearing (Variance Applications)

Charles & Diana Belletete request variances from Section IV.A.3. and XI.B.1. to permit the construction of a building that does not meet required setbacks and/or to replace/expand a non-conforming structure. The property is located at 85 Joslin Road and is situated in the Rural Agricultural District. The property is shown at Tax Map 18, Lot 9.

For this hearing the Chair seated Hutwelker, Mitchell, Tatro, Bryant for Thibault, Beauregard, Sr. for Beauregard, Jr.

Public Hearing opened at 7:04 p.m.

Carbonneau listed the public notices published and notices sent to Department Heads. She said there was no feedback from Department Heads. She also noted that in 1990 a building permit application was taken out and in that application it showed the building was 15 feet from the property line.

Charles Belletete spoke on behalf of the request. He wants to put a 28' x 60' manufactured home on the site using the connections that exist. The existing home is 26' x 52'. Belletete stated that the new home will be two feet closer to the road than the existing home (13 feet versus the existing 15 feet). Belletete noted that the existing front deck will be removed. The existing front deck is approximately 6 feet from the property line. The lot itself is non-conforming at 0.35 acres. It is a dead-end street. Belletete said that the neighbors are not objecting. He noted that they cannot put the new building further back because of existing infrastructure and it would be cost prohibitive to put in a new cellar hole due to the slope and the ledge. If they can expand the slab to accommodate the new manufactured home, they can hook into the existing infrastructure. The new structure is a 3 bedroom, and 2 bath home which is the same number of bedrooms and baths as the existing home. Hutwelker asked for questions of the Board and there were none. The Board also looked at photos of the property.

Public Hearing closed at 7:10 p.m.

Chair Hutwelker 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?*
Members said: Bryant – yes; Tatro, yes; Mitchell, yes – but the porch disappears and the new structure comes out half that distance so it is not closer to street. The neighbors across the street are closer to the street, Beauregard, Sr. – yes.
2. *Would the spirit of the ordinance be observed if the variance were granted?*
Members said: Beauregard, Sr. – yes; Mitchell – yes, for same reasons above; Tatro – yes; Bryant - yes
3. *Would the granting the variance do substantial justice?*
Members said: because they are replacing a structure that is aged; all said yes
4. *Could the variance be granted without diminishing surrounding property values?*
All said: yes
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
All said:
 - 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: it is a substandard lot – the size of the lot, the ledge, and the slab in place
 - b. *Is the proposed use a reasonable one?*
All said: all said yes
6. *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:*

The Chair reported that **“yes“prevailed and he entertained a motion to approve.**

Motion was made by Mitchell to approve the request of Charles & Diana Belletete for variances from Section IV.A.3. and XI.B.1. to permit the construction of a building that does not meet required setbacks and/or to replace/expand a non-conforming structure for property located at 85 Joslin Road and situated in the Rural Agricultural District. The motion was seconded by Beauregard, Sr. No further discussion. All were in favor. **Motion passed.**

Charles and Diana Belletete left the meeting.

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

William Whitcomb & Jill Amadon request variances from Section VII.E.1., VIII.C. and XI.B.1. to permit the construction of an addition (deck) on to an existing building that does not meet setbacks and to expand a non-conforming structure, and to install a septic system that does not meet required setbacks. The property is located at 280 South Road and is situated in the Residence District. The property is shown at Tax Map 24, Lot 45. The property is owned by Cynthia D'Amato, et al.

The Recording Secretary excused herself from taking the minutes as she wished to contribute to this hearing and took a seat in the audience. Director of Planning and Community Development Sara Carbonneau temporarily took over the role of Recording Secretary for the hearing.

For this hearing, the Chair seated Hutwelker, Mitchell, Tatro, Bryant for Thibault, Beauregard, Sr. for Beauregard, Jr.

Public Hearing opened at 7:20 p.m.

Carbonneau listed the public notices published and notices sent to Department Heads. She said there was no feedback from Department Heads. However, she did not that members of the Conservation Commission had contacted her with some questions. Two Conservation Commission members were present at tonight's hearing. Carbonneau stated that the assessing card notes that the property utilizes a well and private septic system – however, there is no specific information in the Master Property File regarding the septic system. In addition, the Master Property File provides very limited information about this property. The assessing card characterizes the property as a "snow mobile camp." Notes that kitchen is in the unfinished basement ("kith in ubm") and "bth is just framed, no walls."

The variance request from Section VII.E.1. was addressed first. Tom Forest, licensed septic designer, presented the application on behalf of the Applicants. Forest reviewed the site conditions, noting that the property was approximately 1 acre. Forest stated that the State of NH requires a 2 bedroom septic system design, while Swanzey requires a 3 bedroom design, with setbacks of 125 feet from wetlands and surface water for the leach field. Forest stated that the site conditions will only permit a 94 foot setback from very poorly drained soils and 118 feet from the river, while maintaining a 75 foot protective well radius.

Amadon stated that she had spoken with Kapiloff Insurance, who reported to her that the property is not within the flood zone. In addition, she reported that she has spoken with several people and no one has reported seeing the property flooded.

Forest stated that the bottom of the septic system is at an elevation of 98 feet. Top of bank of the South Branch is 92 feet and the water level is "well below that." Forest stated that the soil is suitable for a septic system (gravel) and there is no need to bring in fill for the system.

Forest stated that there was an existing system in place, which appeared “to be working.” Forest found a 750 gallon septic tank, d-box and old stone and pipe leaching field. The new system will be utilizing a Presby Enviro-septic system with a 1,250 gallon tank. Bernard questioned how the existing system could be characterized as a “working” system as the structure has been vacant for years. Forest stated that there was some water in the tank from infiltration, but if the system was failed the tank would be full.

Bernard expressed concern about potential pollution of the wells on Eastfield Crossing’s property from the septic system and other materials stored on the subject property. Bernard noted that the area along the river on Eastfield Crossing’s property floods almost every Spring. Nowakowski stated that he didn’t recall the property flooding recently. Beaugard, Sr., noted that the water level “hasn’t been up there recently,” noting that the river flow seems to be lower than it had in the past.

Bernard stated that she thought that the soils looked wet. Forest reviewed the soil profile, noting that at 72 inches in depth, there was no evidence of the seasonal high water table. The property was evaluated in June 2014.

Forest stated that the request for a variance for the septic system was reasonable, as it is a replacement of an existing septic system serving an existing building. Forest noted that this situation is different from a prior application submitted by A. Filipi on Old Homestead Highway, as the Filipi property was vacant. The proposed system is located in the same general area as the existing system.

Forest stated that the proposed septic system is a Presby Enviro-septic system. It requires a much smaller footprint than a standard pipe and stone system. The resulting discharge from the enviro-septic system is “not drinkable,” but is fairly clean/clear.

The well and water line was discussed. It was noted that there are two pumps for the well, one serving this property and the other serving the property across the river. The location of the water line serving the property across the river (Schrepta) was not known. In addition, it was not known if Schrepta still used the water or if he utilizes a well on his property. Amadon stated that the well has not been tested.

Discussion regarding deck: The applicants wish to add a 14’ x 28’ deck and an 8’ walkway to the property. Forest stated that the Town’s setback is 125 feet for structures from the protected shoreland. The existing structure is 58 feet from the protected shoreland, at its closet point. They can maintain the State’s setback of 50 feet, but the proposed deck will be 52 feet from the shoreland. Forest stated that no part of the existing structure meets the Town’s 125 foot setback. A Shoreland Permit will also be required.

Discussion ensued as to whether there was a basement and a first floor or a first floor and a second floor. Essentially, the proposed deck and walkway would serve the upper level which would house a living area, and the lower level would have the bathroom, kitchen, and bedroom.

Tatro inquired about impacts from the roadway and whether NH-DOT has concerns about the use since Flat Roof Mill Road and South Road are State roads. Amadon stated that no changes were proposed to the driveway.

Public Hearing closed at 8:30 p.m.

Board members considered the variance request from Section VII.E.1. first. Beaugard stated that the only use of the structure that he recalls was as an office and a snowmobile camp and that was a “long time ago.” Mitchell stated that the Board has historically upheld the setback requirements for septic systems and did not see a compelling reason to grant a variance in this case. Mitchell stated that the system has not been used for years and there was no evidence that the structure had been used for residential purposes.

Members questioned whether the existing system was a “working system.” Motion by Mitchell to re-open the public hearing. Second by Tatro. Vote: All in favor. Forest stated that it was his opinion that if you hooked up the water and ran it through the system, it would enter the tank, d-box and field. Public hearing closed.

Chair Hutwelker 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?*

Members said: Mitchell reiterated that the board has historically upheld the setback requirements for septic systems and that there is no evidence that the structure has been used as a residence. Mitchell stated that he felt that the variance could not be granted without being contrary to the public interest. Bryant also stated his concern that there was no evidence as to the location of the water line serving the Schrepta property. Board members concurred with Mitchell.

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

Members said: Mitchell stated that the spirit of the ordinance would not be observed if the variance was granted. Tatro noted that the distance of the variance requested was not a “small amount.” Members concurred for the reasons stated and for the reasons given in item 1.

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

Members said: Members stated that granting the variance would not do substantial justice for the reasons cited in item 1 and 2.

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

All said: The variance could be granted without diminishing surrounding property values. However, they noted there was no specific evidence regarding property values.

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

All said: Members agreed that there were special conditions of the property, including the current setback of the structure from the road and the river, the location of wetlands on the property, and that the well serves two properties.

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: Members said that there is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the provision to the property for the reasons cited in items 1, 2 and 3.

b. *Is the proposed use a reasonable one?*

All said: All agreed that the use is a reasonable one.

6. *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:*

All said: Members agreed that the Applicants did not meet this criteria for the reasons given above in 1, 2, 3, 5 and 6.

Motion was made by Mitchell to deny the variance request from Section VII.E.1. to deny the request of William Whitcomb & Jill Amadon for a variance from Section VII.E.1 to install a septic system that does not meet required setbacks on property located at 280 South Road and situated in the Residence District based on the responses to the criteria listed above. The motion was seconded by Beaugard . All were in favor. **Motion passed.**

Upon request by the Applicants, Hutwelker moved to continue the public hearing on the variance requests from Sections VIII.C. and XI.B.1. to the October 20, 2014 public hearing without further notice.

Bernard returned to the table to serve as recording secretary.

Respectfully submitted,

Sara Carbonneau
Director of Planning and Community Development

OTHER MATTERS

1. Carbonneau mentioned the West Swanzey Water Company – Planning Board/Master Plan subcommittee is recommending hiring a professional water engineer – when application comes in to the Zoning Board – applicant would be responsible for payment.
2. Discussion occurred about the water requirements of Dollar General and how they were accommodated. Carbonneau said that they are connected to the West Swanzey Water Company. It was determined that valve regulators on the pumps were needed so that fire trucks cannot pull more than 650 gallons per minute which would the water system could not handle. The valve regulators were put in at a cost which was contributed to by Dollar General.
3. Hutwelker said the ZBA was hoping the Planning Board would consider either new or modified ordinances to require water and sewer for multi-family dwellings specifically stating that multi-family projects need to be connected to municipal water. This did not happen. Discussion continued regarding the Swanzey Water Study committee and the requirements for water that impact on development. Hutwelker noted there isn't a lot of documentation about the infrastructure – and the owners do not know just where the pipes lay.
4. Municipal Law Lecture Series, Hutwelker said that he has signed up for the series. Carbonneau will send the details to the ZBA in case they are interested in attending.

Motion to adjourn was made by Beaugard, Sr., seconded by Tatro and all were in favor. **Motion passed.** Adjournment occurred at 8:35 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Beverly Bernard". The signature is written in a cursive, flowing style.

Beverly Bernard, Recording Secretary