

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – October 17, 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 7:01 p.m. by Chair William Hutwelker. Present were Keith Thibault, Bryan Rudgers, Sarah Tatro, Bob Mitchell, Alternate Adam Mulhearn, Alternate Marty Geheran, and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

Absent: Alternates Shane Bryant, Charles Beauregard, Sr. and Eric Kallio.

Others Present: Director of Planning and Community Development Sara Carbonneau, Jerel Gomarlo, Eric and Amanda Brosseau and resident Liz Traynor.

PUBLIC HEARINGS

A. Special Exception Application

The Board considered the request of Jerel Gomarlo for a special exception from Section IV.A.2. m. to permit the construction of an accessory building (garage) in excess of 1,000 square feet on property located at 171 Winch Hill Road, situated in the Rural/Agriculture District, shown at Tax Map 63, Lot 8-2 and owned by Jerel Gomarlo and Kate Wyman. Gomarlo was present to discuss his request to the Board. Seated for this hearing were Hutwelker, Mitchell, Tatro, Rudgers and Thibault.

Public Hearing opened at 7:03 p.m.

Carbonneau noted the public notices and publication to abutters as well as to Department Heads with no concerns provided to her. She stated that the parcel is 5.13 acres and that the request is for a garage over 1,000 square feet in size. Carbonneau said the concern is that structures of this size sometimes turn into a commercial enterprises and the ordinance is designed to protect abutting property owners.

Gomarlo said he owns a small farm and he would like to have storage for farm tractors to hay the fields. He said the garage is really a barn for farming equipment. He noted that family owns about 160 abutting acres. And he said the house sets well back from the road. Carbonneau spoke about the septic design. Gomarlo said that he cannot see his neighbor's homes. Thibault determined that the "proposed" 3 bed-room home on the plan provided to the Board has already been built and is the home that Gomarlo occupies.

When asked what material the barn would be made of Gomarlo said it is a certified metal barn. Geheran asked for a photo of the barn but there wasn't a photo. Grain for cows will go into the

building as well as hay equipment and tractors and Gomarlo's truck. The building will have no electricity and no chemicals, and neither oil nor gas will be stored there.

Public hearing closed at 7:13 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**

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: yes, it is rural/agricultural and therefore suitable for farming**
- 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 entertained a motion to **grant** the request based on the responses to the checklist for granting a special exception.

Mitchell **moved** to grant the request of Jerel Gomarlo for a special exception from Section IV.A.2.m. to permit the construction of an accessory building (garage) in excess of 1,000 s.f. on property located at 171 Winch Hill Road, situated in the Rural/Agriculture District, shown at Tax Map 63, Lot 8-2 and owned by Jerel Gomarlo and Kate Wyman. Tatro seconded the motion and there was no further discussion. All were in favor. **Motion passed.**

B. Variance Application

The Board considered the request of Eric Brosseau for a variance from Section V.B.3. to permit the construction of a garage that does not meet required setbacks. The property is situated at 397 Massey Hill Road, shown at Tax Map 3, Lot 35-3. The property is situated in the Business District. The property is owned by Eric and Amanda Brosseau. Seated for this hearing were Hutwelker, Mitchell, Tatro, Rudgers and Thibault.

Public Hearing opened at 7:16 p.m.

Carbonneau provided information about notices and then said that the house on the property is 31 feet from the building to the road which is non-conforming since the current requirement from a building to a frontage road is 75 feet. Garage would be in line with the existing house and therefore requires a variance to build.

Brosseau was present and explained the garage will be entered from the back and an office will be above the garage. He said there will be four or four and a half feet of separation between house and the garage. Carbonneau said there is enough side setback. She noted there might be a minimum of ten feet between the house and the garage which would be taken care of when

he comes for building permit. A shared driveway was noted and Brosseau said the shared driveway is all on his property. Brosseau pointed out the businesses and homes in the area of his home.

The members reviewed the materials provided. Geheran determined that the only issue is the setback in the front. The shared driveway is not an issue. The neighbor has another driveway that they use. Thibault asked about moving the location of the garage and Brosseau said moving it back to accommodate the ordinance would make it too close to the wetlands. Right now it is 100 feet from the wetlands. Geheran asked what the garage will look like. Brosseau said there would be a set of stairs and two doors, and four windows on the gable sides of the building. The gable is to match up with the house. The building will have electricity but no plumbing. Geheran commented that it would be nice to have some windows on the front. Hutwelker agreed that windows on the first floor would look better than plain clapboard. Amanda Brosseau said the garage will provide storage since they have no basement now. When asked why there would be no entrance to the house from the garage Brosseau said the wall adjacent to the garage is their bedroom wall.

Carbonneau said that the ZBA could establish conditions for the variance. Tatro asked about a door in the front, and was told by Brosseau there will not be one. The garage is two stories high, and will be eight feet higher than the house. The Board discussed windows on the street side. Brosseau said he would gladly put in two windows on second floor and two windows on the first floor if the Board wanted him to do so. Windows are a safety concern said Carbonneau.

Public Hearing closed at 7:36 p.m.

The Board discussed windows for the garage. Tatro said that she has security and safety issues with first floor windows. Mitchell said he is agnostic on the windows, but he did agree that a blank wall would look strange. Geheran said it was okay with him to see two windows on the second floor, and that would look okay. Thibault also agreed.

The Chair 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: Rudgers said yes, Mitchell said yes because of the spirit of the ordinance – the setbacks are usually related to safety issues associated with traffic and this is not in a highly travelled area, and the building would look odd if it went to the full setback. He said it would be positive to the public interest. Tatro said yes and said she agreed with Mitchell, Thibault said there would be no corresponding gain to the public if the Board said no, Hutwelker said 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: Tatro said yes for the same reasons as previously stated, Rudgers, yes, Mitchell, yes, Thibault said yes because proposed use is a garage which persons should be able to do with their property. Tatro said she is good with the building looking more residential.

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: close proximity to the wetlands makes it unique, and undocumented shared driveway is unique.

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: yes, Thibault said yes, Rudgers said yes, Tatro said yes, Thibault said this one applies given the property is close to wetlands and cannot reasonably be used in strict conformance with the ordinance without impinging on the wetlands.**

b. *Are the proposed uses a reasonable one?* **Members 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:**

There was a discussion about windows and whether to require windows. Adam said the structure might stand out in the neighborhood if it did not have windows. Mitchell said he is comfortable requiring two windows on the second floor.

The Chair reported that “**yes**” prevailed and he entertained a motion to grant the request for Variance from Section IV.B.1.

Motion was made by Thibault to grant the request of Eric Brosseau for a variance from Section V.B.3. to permit the construction of a garage that does not meet required setbacks on property situated at 397 Massey Hill Road, shown at Tax Map 3, Lot 35-3, situated in the Business District and owned by Eric and Amanda Brosseau and requiring a minimum of two windows on the second floor facing the street. Mitchell seconded the motion. All were in favor. ***Motion passed.***

OTHER MATTERS

Discussion of Minutes of September 19, 2016

Thibault said he read the motion documented in the Minutes for the Pappas application and felt that the issues he had were covered by the motion itself. Hutwelker wanted to make sure that the Board made a decision based on the correct information, which was based on the Pappas presentation and not the information provided in the application document. Thibault explained to Tatro how the ZBA listened to the testimony and made a decision based on the testimony rather than what was written on the application.

Rudgers said that it was appropriate to allow for responding to testimony. Hutwelker said that perhaps the application should have been different. Mitchell said the distinction between construction and agricultural equipment today is very small. Any of it can be used for the equestrian business.

Carbonneau noted that if the equestrian business went away the variance granted would allow for commercial business to park vehicles there and have an office.

It was noted that the equestrian business was essential to approving the construction business in that zone. Thibault said that the spirit of the ordinance, given the location, and given traffic on Route 32 where the property lies, traffic generated by the business would not be passing through a residential area. Rudgers stressed the equestrian business was central to the decision-making process given the testimony at the time. It was presented that the construction equipment was in conjunction to and appropriate to an equestrian business.

Traynor said that this farm has been there for 30 years – you have to take into consideration the history of the land. Hutwelker emphasized the zoning is for residential use. Traynor said that the building had three apartments. Hutwelker responded that the apartments were not legal. Hutwelker said ZBA gives folks an opportunity to seek relief from ordinances and pointed out the Planning Board could request re-zoning of the area from the voters.

Thibault noted that the equestrian business is a business. Mitchell pointed out that when testimony diverges from the written application perhaps the Board should request a revised application or site visit. Mulhearn spoke about giving the applicant the right to retract the application and return with another application or to have the Board vote on the application as is. Carbonneau said that within 30 days the Board has the right to say that the Board wants to have another look at this application. She noted that if the equestrian business went away, the applicant can still park there. The Board agreed by consensus of those who had been present at the September meeting that they understood at the time of granting the variance that should the equestrian business end, the applicant and subsequent owners of the property could continue to park construction vehicles on the property.

MINUTES

- The Board considered the minutes of July 18, 2016. **Motion** was made by Thibault to approve the Minutes of July 18, 2016. There was a second by Geheran. All were in favor. **Motion passed.**
- The Board considered the minutes of September 19, 2016. There was a **motion** to approve the Minutes of September 19, 2016 by Mitchell and there was a second by Rudgers. All were in favor except Mitchell abstained, Tatro abstained, and Geheran abstained. **Motion passed.**

Spirit of the Ordinance

A discussion was held regarding the spirit of the ordinance. Geheran referred to the State laws as a guide and that local ordinances make adjustments that apply locally. Geheran explained rationales for variances. Mitchell spoke about the kinds of circumstances that allow for flexibility by a Board and gave an example of a 5% encroachment versus 55% encroachment. Carbonneau said that the ZBA needs to supplement the record with their thinking. She also suggested that in the final motion when granting or denying an application the ZBA members should add “due to this circumstance or that” into the motion so there is clarity about why the ZBA acted as such. Geheran spoke about the spirit of the ordinance addressing a landowner having fair use of his/her property versus an ordinance. Rudgers spoke about ordinances being guidelines but the ZBA has flexibility for this particular house on this piece of land in this specific location. Mulhearn said that recommending an applicant re-visit his/her application should be done when testimony gets too far from the written application. Hutwelker spoke about reading the

application ahead of time, reviewing the ordinance, and be as best informed as possible prior to the hearing. Geheran spoke about how the ZBA is tasked with protecting the people of a community while balancing rights of land-owners to use their land. Hutwelker spoke about the history of the ZBA and the efforts made by the current membership. It was noted that developers say that the Swanzey is the best place to bring a project because the Planning Board and ZBA will provide a thoughtful review.

ADJOURNMENT

Motion to adjourn was made by Mitchell, seconded by Thibault and all were in favor. ***Motion passed.***
Adjournment occurred at 8:50 p.m.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Beverly Bernard".

Beverly Bernard, Recording Secretary