

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – October 20, 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 7:02 p.m. by Chair W. William Hutwelker, III. Present were Chair Hutwelker, Vice Chair Keith Thibault, Alternate Bryan Rudgers, Alternate Charles Beauregard, Sr. and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and the Agenda for the meeting.

Absent: Charles Beauregard, Jr., Bob Mitchell, Sarah Tatro, Alternate Shane Bryant, Alternate Marty Geheran

Others Present: Director of Planning and Community Development Sara Carbonneau, Jill Amadon, Lou Berube, Bob Coluccio.

Minutes:

- The Minutes of June 16, 2014 were considered. There was a **motion** by Thibault to approve the Minutes of June 16, 2014 and a second by Rudgers. No further discussion and all were in favor. ***Motion passed.***
- The Minutes of August 18, 2014 were considered. The Minutes were deferred to next meeting.
- The Minutes of September 15, 2014 were considered. The Minutes were deferred to next meeting.

PUBLIC HEARINGS

Public Hearing (Variance Applications)

William Whitcomb & Jill Amadon request variances from Section 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. 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. Continued from August 18, 2014 meeting. **This request was withdrawn by the applicants.**

Public Hearing (Variance Applications)

Discount Oil of Keene requests a variance from Section V.B.3. to permit the installation of a fuel storage tank that does not meet required setbacks. The property is located at 43 Forbush Lane and is situated in the Business District. The property is shown at Tax Map 3, Lot 3.

Chair Hutwelker seated himself, Thibault, Alternate Rudgers for Charles Beauregard, Jr. and Alternate Charles Beauregard, Sr. for Bob Mitchell for the public hearing.

Public Hearing opened at 7:16 p.m.

Carbonneau listed the public notices published and notices sent to Department Heads. She said there was no feedback from Department Heads. Thibault noted the applicant acknowledged that only four members would be present at the meeting tonight.

Lou Berube was present to represent Discount Oil. He showed the Board an aerial photograph of the site. He said the location is an existing oil storage facility and it has been for many years. He informed the Board that the Federal Government has initiated a regulation entitled "SPCC: Spill, Prevention, Control, and Contain" for pollution prevention. Oil companies with storage facility must comply with the regulation. The regulation requires the existing tank to move 12 feet to the west; it needs to be 75 feet from a stream. Also the regulation requires a containment pad underneath a truck when loading which can retain 3,000 gallons (the capacity of the largest compartment of the truck) in the event of a spill. Berube said this is not a unique requirement to this oil company; all oil companies will need to comply with the federal regulation. He went on to say a canopy needs to be built to keep the pad dry from the weather. This request is to move the current storage tank further from the road and add a tank to the south side of the existing tank. The plan also has to have State of New Hampshire approval. Setback requirement from Forbush Lane is 75 feet. If the tank goes anywhere else it would be closer to the stream. The plan is to meet the stream setback requirement which is a reduction in the non-conformity of the present tank. Bob Coluccio also spoke about the plan. He noted that the only folks who use Forbush Lane are Discount Oil employees and the folks working at a nearby scrapyard. He said that he didn't think adding a tank would reduce the value of the scrapyard.

Thibault noted the current setback of the tank is 24 feet from Forbush Lane. The tank being moved would be 26 feet, and the new tank will be about 50 feet away from Forbush Lane. There was a brief discussion about the perennial stream location and how close the tanks would be to it. Berube noted the new tank will be difficult to see from State Route 12. The existing tank is larger than the one to be added. Berube said he tries to be a good neighbor by maintaining the tree line and plowing the road. He also installed a 17,000 gallon water tank for fire suppression purposes. Thibault asked why 3,000 gallons for containment and Berube responded that is the capacity of the retail trucks. Precisely 3,032 gallons represents the largest compartment in the truck.

Rudgers mentioned that he was involved in the propane variance request by Discount Oil that was handled in the past and that the location looks well maintained.

Thibault asked Carbonneau about the proposed canopy. There is a canopy there now, which is being replaced with the new canopy over the new pad location. Berube said he has a building permit for the canopy. Carbonneau said the canopy was discussed by the Planning Board in August, 2014 and they felt that the footprint were the same size since the piers were not larger on the ground although the roof is larger so that the surface is completely covered. The Planning Board was fine with it in August. Berube said it is an improvement in terms of protecting the environment.

No further discussion. Berube asked whether or not there was a quorum. Carbonneau said there is a quorum of the Board; at least three constitutes a quorum and there are four members present.

Public Hearing closed at 7:40 p.m.

Chair Hutwelker considered the request for variance from Section V.B.3. He 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: yes, they are decreasing the non-conformity and improving safety issues.
2. *Would the spirit of the ordinance be observed if the variance were granted?*
Members said: yes for the same reasons as in #1.
3. *Would the granting the variance do substantial justice?*
Members said: yes for same reasons as in #1.
4. *Could the variance be granted without diminishing surrounding property values?*
Members said: yes
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
Members said: yes - the size and location distinguish it from other properties in the area
 - 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**
 - b. *Is the proposed use a reasonable one?* **Members 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 grant the request for Variance from Section V.B.3.

Motion was made by Rudgers to grant the variance to Section V.B.3. to permit the installation of a fuel storage tank that does not meet required setbacks on property located at 43 Forbush Lane and situated in the Business District. There was a second to the motion by Beauregard, Sr. and no further discussion. All were in favor, and none opposed. **Motion passed.**

OTHER MATTERS

Request for Rehearing

William Whitcomb & Jill Amadon request a rehearing on their Petition for a Variance from Section VII.E.2. of the Swanzev Zoning Ordinance. On August 18, 2014 the Swanzev Zoning Board of Adjustment denied their request for a variance from Section VII.E.1.

The Chair stated that this is a public meeting, but not a public hearing. There is no opportunity for public commentary at a public meeting.

Discussion:

The Chair asked the members of the Board if they have reviewed the Minutes of the meeting at which the original request by the applicants was denied and the request for a rehearing documentation from attorney Howard B. Lane, Jr. Esquire. The Board took considerable time to review the documentation. Thibault noted that according to his review, there isn't new information within the documentation provided by Attorney Lane. Beauregard, Sr. said he thought he would have to abstain since he was part of the motion that was made at the time of the denial of the variance. Hutwelker explained that Beauregard can vote on the re-hearing. Beauregard, Sr. agreed to consider the request and vote on it.

Motion was made by Hutwelker to deny the request of William Whitcomb & Jill Amadon for a rehearing on their Petition for a Variance from Section VII.E.2. of the Swanzey Zoning Ordinance because there is no new evidence that the Board did not consider previously. The issue of the existing system is invalid since the property has not been used for many years. There was a second to the motion by Beauregard, Sr. No further discussion. All were in favor. **Motion passed.**

Vermont Yankee Closure Impact Meeting

Carbonneau informed the Board that there will be a meeting in Hinsdale on October 23, 2014 (Thursday) at 6:30 p.m. regarding the closure of Vermont Yankee. Rudgers asked if Emergency Management will lose funds because of the closure and Carbonneau agreed that will happen. She noted that the States of Massachusetts and New Hampshire have not received funding similar to what Vermont has received for the economic impact to those States with the closure of the nuclear plant. Carbonneau mentioned that many employees of Vermont Yankee live in States other than Vermont and there will be an impact on real estate with these folks leaving the area for other jobs.

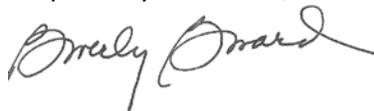
Resignation of Charles Beauregard, Junior

Charlie Beauregard Sr. informed the Board that Charles Beauregard, Jr. is no longer a resident of Swanzey and considers himself to be "off" the Board. Carbonneau mentioned there is an Alternate Member vacancy and since Beauregard Jr. was a Regular Member there are now two openings on the Board. Whoever takes Beauregard, Jr.'s position will serve to the next election. Carbonneau suggested anyone interested get in touch with her.

Carbonneau announced that she will not be in office next week.

Motion to adjourn was made by Beauregard, Sr., seconded by Thibault and all were in favor. **Motion passed.** Adjournment occurred at 7:49 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary