

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – October 23, 2013

*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 October 23, 2013 meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 4:00 p.m. by Chairman William Hutwelker at the 3 Houghton Point South. Present were Chairman Hutwelker, Vice Chair Keith Thibault, Jerry Walker, Bob Mitchell, Alternate Charles Beaugard, Jr., and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Charles Beaugard, Sr., and Alternate members Sarah Tatro, and Jim Vitous

**Others Present:** Director of Planning and Community Development Sara Carbonneau, and Applicants Rachel Elkins and Robert Metivier

**1. Public Hearing (Variance Application)** - Rachel Elkins & Robert Metivier request a variance from Section IV.B.3. to permit the construction of a shed that does not meet required setbacks. The property is located at 3 Houghton Point South and is situated in the Residence & Shoreland Protection (overlay) District. The property is shown at Tax Map 18, Lot 174. **Public hearing continued from October 21, 2013. Public hearing re-opened at 4:00 p.m.**

**Site Walk:**

The Board reviewed the backyard of the property and the intended location of the proposed shed. It was noted that the State of New Hampshire requires a setback of 50 feet from a body of water for an accessory structure and the steps to the deck at the site is 70 feet from the water. The Board examined the non-linear property line and the area beyond the driveway which slopes down to the pond and which has drainage issues. The Board returned to Town Hall at 4:13 p.m. to continue the public hearing there.

**Town Hall:**

Chair Hutwelker asked Carbonneau if Code Enforcement Office Chet Greenwood had been notified and Carbonneau responded that he was aware of the situation but that a building permit is not required for an accessory building less than 200 square feet.

There were no further questions at this time.  
Public Hearing closed at 4:26 p.m.

Walker then indicated that he did, after all, have some issues he wished to discuss.

Walker made a **motion** to reopen the Public Hearing, Beaugard, Jr. seconded the motion, and all were in favor. **Motion passed.**

Public Hearing re-opened at 4:28 p.m. Walker began the discussion by referring to a previous variance which was granted by the Board stipulating that the structure being granted be removed once the property was sold since the need for the structure would have ended. Discussion continued about whether a shed would remain on site when a house was sold.

Thibault said in the spirit of the variance, the best place for shed is the one being asked for currently, and if the shed was removed, another owner might ask for another variance and want to put it in a worse place. Thibault went on to say if an abutter were interested in having it removed if the house was sold, that would be considered, but that isn't the case here. The example Walker raised was for a ramp that was created for a disabled person, and the need would go away if the property were sold to a non-disabled person. Hutwelker said the spirit of the ordinance suggests that a variance for a permanent structure be granted if the Board votes in favor of the variance. Mitchell asked about Section VIII C of the Swanzev Zoning Ordinance which refers to a definition of a primary structure in RSA 483-B. Carbonneau said a shed is an accessory structure and not a primary structure. RSA 483-B speaks to a primary structure, which would be a house.

No further questions or comments.

Beauregard Jr. **moved** to close the Public Hearing, Walker seconded, and all were in favor. **Motion passed.** Public Hearing closed at 4:35 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?*

**Thibault and Beauregard Jr. said "yes", Mitchell and Walker said "no"**

**Discussion: Thibault said the public does not gain anything if the variance is denied. Beauregard said the neighbor already said he would approve of the shed location and no one else can view the shed.**

**Mitchell said everything in that neighborhood is non-conforming, and that he has never voted for a setback exception that is extreme. He went on to say the ordinance calls for a 20 foot setback and this application is requesting less than one foot from the property line. He said he believed that granting a major variance from the setback sets a precedent, essentially saying that no setback is required. Walker agreed with Mitchell that the setback is not even close to being what it should be.**

**Beauregard said he didn't think it is setting a precedent because the ZBA takes each case individually. Walker said the rules were set up for a reason.**

**Hutwelker said the applicants cannot add additional space to their garage; it makes sense that is a benefit to the public if the applicants can put a lawn mower under cover which is now stored in the yard. He contended that the shed makes an improvement to the quality of the property. Hutwelker said "yes" to the question.**

**Three "yes" to two "no" – "yes" prevailed**

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

**Mitchell and Walker said "no" and Thibault and Beauregard said "yes". Hutwelker said "yes".**

**Three "yes" to two "no" – "yes" prevailed**

3. *Would the granting the variance do substantial justice?*  
**Mitchell and Walker said “no”, Thibault and Beaugard Jr. said “yes” and Hutwelker said “yes”**  
**Three “yes” to two “no” – “yes” prevailed**
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?* **Hutwelker said the configuration of the property is unusual such that a jutting point reduces the setback substantially - and the slope and drainage are distinctive. All said “yes”**
  - 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?*  
**Walker and Mitchell said “no” Thibault, Beaugard, Jr., and Hutwelker said “yes”**  
**Three “yes” to two “no” – “yes” prevailed**
  - b. *Is the proposed use a reasonable one?*  
**All said “yes”**

Beaugard Jr. **moved** to approve the variance from Section IV.B.3 to permit the construction of a shed, with foundation of stone as submitted in the application, that does not meet required setbacks. Thibault seconded the motion. Hutwelker, Thibault, and Beaugard Jr. were in favor. Walker and Mitchell were not in favor. The ***motion passed*** three to two.

**Variance granted.**

Move to adjourn by Mitchell, second by Walker, adjourned at 4:48 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary