

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – November 17, 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 Chair W. William Hutwelker, III. Present were Chair Hutwelker, Vice Chair Keith Thibault, Bob Mitchell, Sarah Tatro, Alternate Bryan Rudgers, Alternate Marty Geheran, and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and the Agenda for the meeting.

Absent: Alternate Shane Bryant, Alternate Charles Beauregard, Sr.

Others Present: Director of Planning and Community Development Sara Carbonneau, Mathew Rodeck, and various members of the community.

Minutes:

- The Minutes of August 18, 2014 were considered. There was a **motion** by Mitchell to approve the Minutes of August 18, 2014 and a second by Tatro. No further discussion and all were in favor. **Motion passed.**
- The Minutes of September 15, 2014 were considered. There was a **motion** by Thibault to approve the Minutes of September 15, 2014 and a second by Tatro. No further discussion and all were in favor. **Motion passed.**
- The Minutes of October 20, 2014 were considered. There was a **motion** by Rudgers to approve the Minutes of October 20, 2014 and a second by Thibault. No further discussion and all were in favor. **Motion passed.**

Membership:

1. Appointment of member to replace full member Charles R. Beauregard, Jr. who is no longer eligible to serve. Beauregard, Jr.'s term runs through 2017 – however, this appointment is only through Town Meeting 2015. Rudgers accepted a full membership to the ZBA, moving up from Alternate membership. Hutwelker swore Rudgers into service.
2. Appointment of one of two alternate memberships available, terms to expire at Town Meeting 2016. Mathew Rodeck was sworn in as Alternate member of the ZBA until Town Meeting 2016.

PUBLIC HEARINGS

Public Hearing (Variance Applications)

1. Variance Applications – Herbert K. Smith, Sr. requests variances from Section XI.B.1., IV.B.3., VII.E.1. and III.F. to permit the construction of buildings that do not meet required setbacks and/or to replace and expand non-conforming structures destroyed by fire; and to construct a

septic system that does not meet setbacks from wetlands and is not designed for a 3-bedroom system. The property is located at 422 Homestead Ave. and is situated in the Residence District. The property is shown at Tax Map 70, Lot 4.

Chair Hutwelker seated himself, Thibault, Mitchell, Tatro, and Rudgers for the public hearing.

Public Hearing opened at 7:08 p.m.

Carbonneau listed the public notices published and notices sent to Department Heads. She said there was no feedback from Department Heads. She said the Assessing card said the home on the property has 2 bedrooms. Smith would like to put a 3 bedroom manufactured home on the property. Zoning ordinance requires a minimum 3-bedroom septic system.

Herbert Smith was present and said his home burned in a fire and he would like to return to his land to live. He said he would like to do away with the upstairs for health reasons. He said he is asking for a 3- bedroom variance because his elderly mother may need to move in with him. He said he had a 3-bedroom septic system designed but it was his understanding that a 2-bedroom system was superior. Mr. Smith's daughter, Maureen Conboy, spoke about the application, and referred to the letter provided with the application explaining that a 2-bedroom septic system design was superior. However, the Board noted that the letter that was provided with the application said otherwise. The letter states that the lot does not meet the requirements for a 3-bedroom system due to its size.

There was a discussion about how the new home would be set on the lot. The garage would also be new. Carbonneau said that due to State of New Hampshire requirements Smith cannot get a 3-bedroom septic system design for this lot according to information provided by the septic designer. It was noted that Smith can rebuild in the same footprint without need of variances, but he must obtain variances to exceed the footprint. The replacement manufactured home that Smith wishes to place on the lot would exceed the footprint. Carbonneau said that a building permit cannot be issued for a 3-bedroom house on a 2-bedroom septic system design. The designer cannot get a 3-bedroom septic system onto the property and still meet setback requirements.

Hutwelker explained to Mr. Smith that he cannot put a 3-bedroom on the property with a 2-bedroom septic system. Even if he builds a 2-bedroom home, he would need to obtain a variance for allowing a 2-bedroom septic system.

Thibault asked about a future porch, and Conboy said he would like to use a porch as he had in the house prior to its burning. Hutwelker explained that Mr. Smith should have his septic system designer at a ZBA meeting to clear up the apparent misunderstandings about what can be designed for the lot. Herbert Smith Junior spoke about the family occupying the house for 100 years. Smith, Jr. was upset; he said his grandparents lived in the house.

Hutwelker said that the ZBA can provide a variance for a 2-bedroom septic design, but this still prohibits the placement of a 3 bedroom home on the lot. Conboy noted that the existing home

had 3-bedrooms in it. Hutwelker responded that the record shows that the house was a 2-bedroom home. Hutwelker said a decision in favor of a 3-bedroom home is out of the ZBA hands, the law comes from State and local building codes. Hutwelker pointed out that if Smith can have a 3-bedroom septic system designed for the lot, then the ZBA needs to know that. Smith, Jr. apologized to the ZBA and said that the family had a 3-bedroom septic system design. Carbonneau said that if they have another design, then it should be presented. A brief discussion was held as to whether the hearing should be continued so the family could retrieve the 3-bedroom septic system design and present it to the Board.

Motion was made by Tatro to continue the public hearing in order for the family to retrieve the 3-bedroom septic system design they believe they have at home and present it to the ZBA for review. There was a second from Thibault. All were in favor. ***Motion passed.***

Public Hearing was continued at 7:37 p.m. Smith and family left to retrieve the design for a 3-bedroom septic system.

Motion was made by Thibault to reopen the public hearing for the application of Herbert K. Smith, Sr. who requests variances from Section XI.B.1., IV.B.3., VII.E.1. and III.F. to permit the construction of buildings that do not meet required setbacks and/or to replace and expand non-conforming structures destroyed by fire; and to construct a septic system that does not meet setbacks from wetlands and is not designed for a 3-bedroom system. There was a second by Rudgers, and all were in favor. ***Motion passed.***

Public Hearing Reopened at 7:59 p.m.

The Smith family returned saying that they could not find the 3-bedroom septic system design they thought they had. Thibault explained to Smith that the best that can be done tonight without the design to consider would be to approve a variance for a 2-bedroom septic system. Conboy said that the family was not aware of the septic requirements for a 3-bedroom home. She said the Code Enforcement Officer did not convey that information to her when they came in to discuss it at Town Hall. She noted the family has not ordered a home yet, and a 2-bedroom home could be ordered. She said that Smith only wants to go home. Rudgers asked about the physical size the home would be and Conboy said it would be the same whether 2-bedroom or 3-bedroom, the manufacturer simply removes the inside physical wall. It would still be a double wide according to Conboy.

Discussion occurred regarding the garage which Smith proposes to build himself and Carbonneau said that neither home nor garage is being requested to be built in the same footprint as previously. Smith said the Fire Chief wanted more space between the house and the garage and that is why he wanted to move the garage. Carbonneau said the garage is listed as 300 square feet on the assessing card so the new garage would double the space.

A discussion was held regarding the required setbacks of 20 feet rear and side setbacks and 30 feet in the front. The house will meet the 30 foot setback to Homestead Avenue if Smith

withdraws the application for the front porch. Hutwelker noted that if the porch is removed from the application then Smith only needs variances for the sides and back.

Hutwelker stressed that the family could have had a building permit the next day to rebuild on the same footprint of the home that burned. Conboy said that because of Smith's age, he isn't able to climb stairs any longer and financially it is difficult for him to stick-build a home; a manufactured home was feasible for Smith on a fixed income. Smith said he could live without a front porch.

Mitchell said that regarding side and back setbacks, the percent achieved is only 50% of the requirement. That is a major difference, as there is for the square footage of the house and the garage. Discussion was held regarding a ramp that might be needed in the future. Discussion was held about various ways Smith might achieve setbacks closer to the requirement and about eliminating parts of their proposal or scaling back the dimensions of the garage. Mike Conboy, son-in-law of Smith, asked about the garage being an issue and preventing moving ahead. Hutwelker said that it is an issue but the real concern is the size of the home. Mitchell and Geheran attempted to explain the issues to the family about the size of the structures that were being proposed. They stressed that a 2-bedroom house built on the existing footprint (24 ft. X 36 ft.) or smaller would not need variances from the ZBA.

Public Hearing closed at 8:53 p.m. with regard to the variance request from Section VII.E.1. and III.F. for a two-bedroom septic system that does not meet the 125 foot setback requirements.

Chair Hutwelker considered the request for variance from Section VII.E.1. and III.F. 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 – this lot will only handle a 2-bedroom system
2. *Would the spirit of the ordinance be observed if the variance were granted?*
Members said: yes – it's an improvement, further away from the well and wetlands
3. *Would the granting the variance do substantial justice?*
Members said: yes
4. *Could the variance be granted without diminishing surrounding property values?*
Members said: yes – it could improve them.
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*
Members said: Smallest lot
 - 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**
 - 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 VII.E.1. and III.F.

Motion was made by Thibault to grant the request for variance to Section VII.E.1. and III.F. by Herbert K. Smith Sr. to construct a septic system that does not meet setbacks from wetlands and is not designed for a 3-bedroom home. There was a second to the motion by Mitchell and no further discussion. All were in favor, and none opposed.
Motion passed.

Mitchell **moved** to continue the public hearing without further notice on the Application of Herbert K. Smith, Sr. who is requesting variances from Section XI.B.1 and IV.B.3 to permit construction of buildings that do not meet required setbacks and/or to replace and expand non-conforming structures destroyed by fire to December 1, 2014. There was a second by Rudgers and all were in favor. **Motion passed.**

Public Hearing (Variance Applications)

2. Variance Applications - G. Timothy Johnson requests variances from Section XI.B.1., IV.A.3. and VIII.C. to permit construction expanding the second floor of a non-conforming structure. The existing structure and the proposed expansion do not meet current setbacks. The property is located at 137 West Shore Road and is situated in the Rural Agricultural and Shoreland Protection District. The property is shown at Tax Map 46, Lot 9.

Chair Hutwelker seated himself, Thibault, Mitchell, Tatro, and Rudgers for the public hearing.

Public Hearing opened at 7:37 p.m.

Carbonneau listed the public notices published and notices sent to Department Heads. She said there was no feedback from Department Heads. She noted the Town received mail from Craig Day from New Hampshire Department of Environmental Services (DES) that this request does not need a Shoreland Permit. She said the increase in cubic volume does not require DES approval, since the footprint is the same.

Mr. Johnson spoke about the need for creating a bathroom on the second floor for safety reasons. Neighbor Martha Zimmerman was present to state a request for mature cedars or coniferous on the property line to enhance privacy and Johnson said that he is open to that. Johnson said that the addition would look like a finished two-story house since the house now has a truncated second story. Jonathan Hoden was present and said the house was built as it was because of financial reasons. Hoden said the bedrooms are extremely tiny. The addition will expand the second story to the existing structural walls. There was a discussion about the septic system for the home. Hoden said the septic system is designed as a 2-bedroom system, but it is pumped over to another property which has a 3-bedroom home so that the combined fields

serve 5 bedrooms. Geheran said the new bedrooms are not very large. Johnson said the issue is safety getting to the bathroom. Footprint stays the same.

It was noted that the request is to expand volume, not footprint. There is no impact on setbacks. Zimmerman said she thought it would be prudent to check the leach field that is on the upside of the brook as there is something in the brook that looks like soap. Hoden said that the septic system has been inspected and it passed.

No further discussion.

Public Hearing closed at 7:54 p.m.

Chair Hutwelker considered the request for variance from Section XI.B.1., IV.A.3. and VIII.C. He reviewed the Checklist for Granting a Variance with the members of the Board: primary section is for expansion of the cubic density.

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

Members said: yes – visually the building will be improved

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

Members said: yes – for same reasons

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

Members said: yes

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

Members said: yes – the trees will enhance property values.

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

Members said: unique shape of the lot

c. *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**

d. *Is the proposed use a reasonable one?* **Members said: yes**

12. *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 XI.B.1., IV.A.3. and VIII.C.

Motion was made by Mitchell to grant the request for variance to Section XI.B.1., IV.A.3. and VIII.C.. to permit construction expanding the second floor of a non-conforming structure. There was a second to the motion by Tatro and no further discussion. All were in favor, and none opposed. **Motion passed.**

OTHER MATTERS

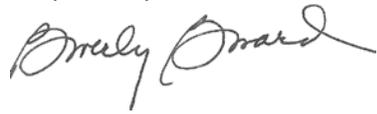
Discussion on meeting dates

January and February meetings were discussed. Decision was made to meet on January 12, 2015 and Feb. 9, 2015.

Thibault made a **motion** to change the regular meeting dates for the ZBA meetings in January and February 2015 to January 12, 2015 and February 9, 2015. There was a second by Tatro, and all were in favor. **Motion passed.**

Motion to adjourn was made by Rodeck, seconded by Mitchell and all were in favor. **Motion passed.** Adjournment occurred at 9:08 p.m.

Respectfully Submitted,

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

Beverly Bernard, Recording Secretary