

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – December 16, 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 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, Vice Chair Keith Thibault, Bob Mitchell, Charles Beauregard, Sr., Alternate Sara Tatro and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Jerry Walker, Alternate Bryan Rudgers, Alternate Charles Beauregard, Jr., and Alternate Jim Vitous

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Robert Secord, Jason Macalister, Cheshire Fairgrounds General Manager Jori Johnson, Megan Foley from the Keene Sentinel and many residents of the Town of Swanzey.

**Minutes: Motion** by Beauregard, Sr. to approve the Minutes for the meeting of November 18, 2013, seconded by Mitchell and all were in favor. **Motion passed.**

**1. Public Hearing (Variance & Special Exception Applications) –**

Robert Secord seeks a variance and a special exception pursuant to Section V.B.2.b. to permit the conversion of an existing structure to a 4 unit apartment. The property is situated at 935 West Swanzey Road. A variance is required as the property does not meet the minimum acreage required for granting a special exception for a multi-family dwelling. The property is situated in the Business District and shown at Tax Map 87, Lot 3. The hearing is a continuation from November 18, 2013.

**Public Hearing opened at 7:03 p.m.** Seated for this hearing were Hutwelker, Beauregard, Sr., Mitchell, Thibault, and Tatro was seated for Walker.

Secord began his presentation to the Board by saying that he has come to an agreement regarding water supply for the four apartments with the Pine Grove Association. He reported that they will supply the property with water. He said the agreement has not been typed out as yet, but it will be put into the deed for the property. Bonnie LaValley, who is on the Board of Directors for Pine Grove, confirmed the agreement with Secord informing the Board that a

lawyer was present during the negotiations for the agreement and the agreement was hand written at the time of the meeting.

Secord said the garage building is large and will make two single bedroom apartments. He said he is only removing the large garage doors and putting in doors and windows suitable for an apartment. He also said he is planning on putting in a brand new septic system for all four apartments. When asked how many bedrooms would be served for all the apartments, Secord responded that there will be a total of five bedrooms including the two in the house. He noted that there will be no washers or dryers in the apartments in the garage, but there is an existing washer and dryer in the house.

Secord said that he has discussed fire separation requirements with the Swanzey Fire Chief. He said he is aware that an hour fire break is needed between the apartments. Hutwelker asked if there were any questions from the Board members. Thibault asked Secord if it would be okay to have approval subject to a new septic system. Secord responded that would not be a problem. Thibault asked about any change of the size of pipe coming in, Secord said "no". Thibault determined that water is being supplied for the four apartments. LaValley said the Pine Grove Association is supplying 500 gallons per day for all four apartments and it will be metered. She said she is confident that the apartments won't need more than that. She went on to say that \$0.23 per gallon will be charged if over 500 gallons per day. LaValley said that the State of New Hampshire monitors the quality of the water at the pump house on a regular basis. Hutwelker clarified with the Board the need for a Variance stating that Secord has 2 ¼ acres for his apartments and the requirement by ordinance is for 2 ½ acres.

**Public Hearing closed at 7:11 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?*  
**All said: yes**
2. *Would the spirit of the ordinance be observed if the variance were granted?*  
**All said: yes**
3. *Would the granting the variance do substantial justice?*  
**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?*  
Carbonneau referred to statute 674:33, V that says when a ZBA is considering a variance, any ZBA may grant a variance without finding a hardship when recognizing someone with a physical disability. Therefore the Board does not have to deal with question five.  
**Thibault said yes, because of off-site water system. One of the reasons for requirement of 2 ½ acres is to accommodate a well, which in this case is not needed. All agreed with Thibault.**
  - 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?* **All said: yes**
  - b. *Is the proposed use a reasonable one?*  
**All said: yes**

**Motion** by Thibault to approve the request from Robert Secord for a variance Pursuant to Section V.B.2.b. to permit the conversion of an existing structure on 2 ¼ acre property to a 4 unit apartment at 935 West Swanzey Road based on the expectation of a new septic system being installed, and subject to the agreement with Pine Grove to supply water to the apartments be recorded in the deed, second by Beauregard, all were in favor. **Motion passed.**

Chair Hutwelker reviewed the ZBA Checklist for a Request for Special Exception

1. *Is the exception allowed by the ordinance?*

**All said: yes**

2. *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? – All said: yes*

- b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood? All said: no*

- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians? All said: no*

- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?*

**All said: yes**

**Motion** to approve the special exception request from Robert Secord pursuant to Section V.B.2.b. to permit the conversion of an existing structure to a 4 unit apartment at 935 West Swanzey Road by Thibault, second by Beauregard, Sr., and all were in favor. **Motion passed.**

## 2. **Public Hearing (Special Exception Application)**

Jason Macalister requests a special exception from Section V.B.2.a. to permit vehicle race events to be held in the grandstands at the Cheshire Fairgrounds. The property is situated at 247 Monadnock Highway. The property is situated in the Business District and is shown at Tax Map 19, Lot 94. The property is owned by Cheshire Fair Association, Inc.

### **Public hearing opened at 7:17 p.m.**

Seated for this hearing were Hutwelker, Beauregard Sr., Mitchell, Thibault, and Tatro (seated for Walker).

Macalister passed out packets with many pages covering various aspects of the application. Hutwelker noted that the new material provided was substantial in content and the Board reserved the right to continue the meeting in order to review the material provided.

Jori Johnson, General Manager of the Cheshire Fairgrounds, joined Macalister to discuss the application of Macalister and represent the Cheshire Fairgrounds. Macalister spoke to his request for racing at the fairgrounds. He pointed to the grandstand area involved in the racing and spoke to some facts regarding decibel levels that were noted on page 12 of the packet provided. He noted that the information on that page refers to regulation that vehicles cannot exceed 96 decibels noise level.

Hutwelker advised Macalister to treat the application as a brand new request and to start from the beginning assuming no one on the Board has prior information about the application. Johnson addressed the Board. She said twelve (12) events per year are planned in summer and fall. She said loud speakers would be used only in the grandstands and be able to be turned off if facing neighbors. She said that the Town of Swanzey reserves the right to test decibels. Hutwelker stopped her at this point and asked her how she could speak for the Town of Swanzey. She agreed that she could not, but said that she wanted to ensure that the Town would be included in the documentation regarding noise levels. Hutwelker stressed that no one from the Town of Swanzey has come forward to reserve the right to measure decibel levels.

Johnson then went on to say that Rogers Rangers will be providing medical support. No alcohol will be sold. Attendance will be less than 500 people. Johnson went on to pages 6-9 are referred to the rental agreement for Macalister with the Cheshire Fairgrounds, including parking. Two security guards will be at each of the 12 events. She said the number of vendors is estimated at one or two. No camping. Alcohol policy will be signed and no sales of alcohol will be permitted. Additional toilets will be required. Johnson said that Macalister will provide a sound system. Hutwelker asked why two guards would be necessary and the response was that a rule of thumb that for every additional 1,000 people an additional guard is required. She said that although projected attendance is less than 500 per event the Fairgrounds Association prefers to be conservative with security.

Page 10 is standard alcohol agreement. Mitchell asked how the fairgrounds enforce the rule of no alcohol on the site. Johnson said the security guards would ask the users to dump out the alcohol if they found someone drinking on the site.

A discussion ensued regarding sound levels. Sound levels of off-road vehicles are held to max of 96 decibel according to Johnson. On-road vehicles are allowed to be at 106 decibels. Mitchell said that the State of New Hampshire can write laws, but what kind of measurement is available to control the decibel level, and Johnson said two methods: anyone can download a smart app on a phone, accurate to 3 decibel points or use another monitoring device of some kind. Mitchell pointed out that experience with calibration has been an issue in court and said that he didn't think that a smart app would hold up in a court of law as an accurate monitoring device.

Johnson went on to discuss the vehicles, stating the engines will be 4-stroke. Map 14 showed the grandstands are fairly well situated in middle of the property. Each track is 30 feet wide – she said and noted a mistake in the mapping which showed 50' total width of track area. Johnson agreed that you cannot have two 30 foot wide tracks within 50 feet. The width should be 80 feet according to Johnson.

There was a long discussion on how sound travels over distances. Johnson stated that according to her research every time the distance doubles over a "soft" surface like grass, the decibel level decreases by 4.5 decibels. Hutwelker asked what distance was used as a starting point as a base distance. Johnson said she used 25 feet from the grandstands at which the noise would be at 96 decibels. She further explained that given her research if you move to 50 feet away, that would bring the noise level down to 91.5 decibels. Hutwelker again asked about the base starting point for decibel reduction. He pointed to the study referenced in the packet as based on 100

feet, not 25 feet. Discussion continued regarding decibel levels and measuring reduction at X many feet.

Resident Lou Kaletsky spoke about multiple racers creating more sound. He said that when there are two sources of noise, the decibels generated are increased by a factor of three. He said that the numbers being discussed are for one vehicle at a time and Johnson agreed.

Resident Kenneth Boucher spoke about hearing Monadnock speedway noise at his home at 47 Mt. Huggins Drive and he said he believes that the noise will be louder than anyone expects.

Macalister provided competition rules for the drivers both for racing and conducting themselves at the races. Motor vehicle rules – including 4-cylinder rules, and Go-Kart rules. WKA is World Go-Kart association and Macalister said he would be using their rules. He referred to the engine and weight rules for the racers. He pointed to page 22 which covered insurance for the events.

Johnson referred to Route 12 noise doing somewhat a job of muffling noise from the Fairgrounds. But resident Ken Bosies of 64 James Road said that the highway noise does not mitigate any of the noise coming from the fairgrounds. He said if anything it seems to increase it because it rolls up the hill. You can hear people speaking at the Fairgrounds. Mariely Rosales, who lives on Mount Huggins Drive, said a person can hear the loud speakers from her house. Resident George Stephen also spoke about noise that can be heard at his home from the Fairgrounds. Another resident, Donald Uless asked about the measuring of the distance. He said that his house is 400 feet from the race track and he would like to know what to expect regarding the noise level.

Johnson said she understood the neighbor's objections to activity at the Fairgrounds. She said she would like to work together with the neighbors, and the Fairgrounds Association is bringing in more events and generating more revenue. She said that the thought is that this could be a family event to let young people race their cars and bikes.

Macalister spoke about the size of the bikes – up to 250 ccs which he said is a very small engine which doesn't generate a lot of noise. He also said that everyone will have to have stock exhausts (with mufflers). All the smaller vehicles will have 4-stroke engines, no 2-stroke engines. He spoke about the size of the track and tight corners there and said he didn't see anyone going more than 45 MPH. People who show up are family types, not motorcycle gangs. They have roll cages and stock engines and exhausts. He said if you compare what he is trying to do with Monadnock Speedway, there is no comparison. He said Monadnock is racing much larger vehicles and larger engines. He gave an example of a lawn mower which he said is about 500 ccs. These are small engines, smaller than a lawn mower. He spoke briefly about his role in operating Legion Speedway in the past.

Resident Barbara Skuly asked about comparing the tracks in Winchester for dirt bikes with the proposed racing. Macalister said that all the tracks in Winchester have no rules. What is happening there is not indicative of what he is proposing.

Resident David Belliveau presented some aerial photos of raceways at Winchester, Winchendon, Lempster, and Monadnock Speedway, and the Fairgrounds. The photos showed proximity to

residential neighborhoods. He said that Winchester has an extensive noise ordinance. He said that 96 decibels is the max level and the police enforce it in Winchester. The Monadnock speedway races at 96 decibels he said and when questioned regarding the source of his information, he said the source of his research was the speedway website. He also said that the Town of Winchester gives residents a reduction on the value of their properties near the race track. He asked about projections for the future. Macalister said that since this is for family racing he does not expect many spectators except for the families and friends of the racers. He expects maybe 70 bikes, he said, but he did not have any further projections for attendees.

Carbonneau asked about the 86 octane gasoline and if there will be gasoline on the site, how it will be stored. Macalister said the Go-Karts run on methanol that comes in 55 gallon drums and is self-contained to control spills.

Resident Bosies asked about running at a different time of day if it is family oriented event. He suggested running earlier in the day instead of late into the evening. Macalister said that the dirt track creates a dust problem that improves after sunset. He said they do plan to spray down the track with water between races. While 10:30 p.m. seems late, Macalister said that if they start at 6 p.m. and run straight through, it could possibly end sooner.

Resident Paul Westland asked about the sequence of racing, larger vehicles go later which means more noise later. A question was raised about whether all the Cheshire Fair directors are aware of the proposed events and Johnson agreed that not all of them are aware of it.

Resident David Belliveau asked about safety of spectators and noted that the plan doesn't seem to address that. Belliveau also asked about the Town of Swanzey's liability. Johnson responded that the renter is required to additionally insure the Town of Swanzey. Macalister said the participants are required to sign a waiver on racing. Anyone who isn't racing is covered on the insurance.

Resident Kathy Belliveau of Mt. Huggins Drive said her major concern is about what the recourse might be for the residents if the situation doesn't comply with the plan. Carbonneau said that when the Board of Selectmen meets on Tuesday evening (December 17<sup>th</sup>), the Police Chief is going to be addressing a noise ordinance. She suggested that with an ordinance, police could enforce the ordinance so that residents could contact police when noise is a problem. Skuly also asked about grandfathering existing businesses, would they be exempt from noise?

A question arose regarding traffic control. Johnson said that for events with less than 500 people, there is no need for a police officer for traffic control. Katherine Tommila said she is concerned about traffic and noted there is only one way going in and out of Mt. Huggins Drive; it is a safety concern. Tommila noted that the applicant has no business projections for the amount of traffic that might be generated. She said that even with staggered events there are traffic issues.

David Belliveau asked about the map scale – Hutwelker noted that Johnson already acknowledged that the dimensions are inaccurate in the materials provided in the packet.

Hutwelker also said it is the responsibility of the applicant to provide the materials he needs to get a positive response from the Board.

Question about the pit area – Macalister said the open area towards the barns will be the pit area. Barriers will be on the ends and one will have a small opening for vehicles entering the track. Johnson pointed out that the races won't be held when other shows are going on.

Resident Lou Kaletsky (moved to Swanzey in August) said he bought the property at 43 Mt. Huggins Drive because it was a fairly quiet street, and had proximity to fair grounds for agricultural purposes. He went on to say that he wouldn't have purchased here if they knew racing was going on. He said he does think this would have an adverse effect on property values.

David Belliveau asked about fuel storage for methanol. Motorcycles use gas. Most of the time people bring their own (according to Macalister). A question arose regarding the possibility of contamination of the soil with petroleum should there be a spill from a car. Macalister said that if methanol is on hand, it is self-contained. The resident spoke about having a roll over with a car that would cause the spill. Belliveau also mentioned that the announcer voice will be louder than the racing.

Stephanie Boucher, Mt. Huggins Drive resident, asked about whether this racing could extend to snowmobiles. Hutwelker said the application is specific and snowmobiles are not included. May through October is racing period in the application. Resident asked about the list of abutters not complete. Carbonneau said abutters are normally directly adjacent and in some cases the rail trail is the abutter.

Tatro asked several questions of Macalister and Johnson regarding age limitations and safety and how that will be monitored. Macalister said parents sign off for their kids, but he didn't have a response for the licensing issue. She asked about a reference to a substitute date – Johnson said they might need to offer an alternative date in May. Rain dates are usually made up on a Saturday at the end of the season.

Discussion about the number of vehicles per heat: could be up to 20 vehicles said Macalister. Question about loudspeakers – Johnson said that only the grandstand speakers will be on. When asked about the barriers on the ends of the race track, Macalister said it would probably be blocks and may be hay bales or tires.

Beauregard Sr. asked if Johnson and Macalister had considered sound barriers. There are other events at the Fairgrounds make noise – is it a possibility that the association would consider erecting sound barriers. Johnson said she didn't think so, but the woods help mitigate the sound. Several people in attendance made known their disagreement.

Thibault asked about equipment the Fairground might have for monitoring noise levels. Johnson said they didn't have any, but Macalister said he could have one on site. Thibault asked what if any would be the use of the fairgrounds when these races are on. He referred to a stipulation in the pages of the packet that the rental agreement was for the grandstand area only. Johnson said she could not think of any other usage while the event was running, but she

said that there is a small chance that the arena could be rented at the same time. Johnson said that the stipulation of being only the grandstands narrows down where the attendees can be – they cannot wander around the property.

Hutwelker asked if there will be an ambulance on site. Macalister said if there is EMT service on site and ambulance on call that is sufficient for insurance purposes, so there will not be an ambulance on site.

Resident Mr. Rosales asked what other opportunity there will be for further comment. Chair Hutwelker said that this was the opportunity for comments. Mr. Rosales asked about the safety of the event. He spoke about the Town's liability. Hutwelker said he believed that the Board has enough information to make a decision. Mr. Rosales asked about whether the Board needs a lawyer to help made the decision. Hutwelker said that the Board has engaged an attorney in the past, but he didn't feel they needed one tonight.

**Public Hearing closed at 9:11 p.m.**

Hutwelker asked for comments from the members of the Board. Tatro had a comment – about the packet of material to read through it and wondered if the Board needed more time to review the material. Hutwelker said he thought the applicant did a good job going through each of the pages in the packet provided and he thinks that the Board members had the appropriate time to address/comment/ and question the applicant. The rest of the Board agreed.

Chair Hutwelker reviewed the ZBA Checklist for a Request for Special Exception:

1. *Is the exception allowed by the ordinance?*

**Thibault said “no”, and said it doesn't fall under recreational facility as a business. Mitchell said “yes”, Beauregard, Sr. said “yes”; Tatro – “no”; Hutwelker – yes but he said he agreed with Thibault that recommendation be made to Carbonneau that the Planning Board take a look at the ordinance.**

**3yes / 2 no**

2. *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? –*

**Beauregard, Sr. – yes and yes ; Thibault – no and no; Tatro – yes and no; Mitchell – no and no; Hutwelker no and no**

**2 yes/ 3 no**

- b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?*

**Beauregard– no; Thibault – yes, if it is true that people receive credit for reduced property value where racing events occur then there is the potential that property values could be affected due to noise. Tatro – yes – possibility of traffic and extra vehicles on the road could be**

a safety issue; Mitchell – yes - while we didn't have expert testimony, he found the testimony credible. Noise and hazmat and no evidence presented that we can get a handle on – what was stated by the public were better organized as to the information provided. Hutwelker – yes

4 yes/ 1 no

- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?*

Mitchell – no; Tatro – yes – traffic coming and going, or in pit area, there is a potential for nuisance or serious hazard, but it is tough since we don't have enough information- she has a safety concern ; Thibault – yes; Beaugard, Sr. – no; Hutwelker– yes

3 yes/ 2 no

- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?*

Mitchell – no - his concern is about hazmat; Beaugard, Sr. – no; Thibault – no; Tatro – no – she said she has a hard time with certification and licensing of youth. Hutwelker – no –there are no plans for an ambulance; plans for safety around the track is not documented, and only presented in a general manner. Major issue is decibels and no indication of on-going monitoring of the vehicles noise level. The Town cannot step forward to monitor the noise level.

None yes; all voted no

Mitchell **moved** to deny the application request from Jason Macalister for a special exception from Section V.B.2.a. to permit vehicle race events to be held in the grandstands at the Cheshire Fairgrounds; the motion was seconded by Beaugard, Sr., and all were in favor. ***Motion passed.***

**Special Exception Denied.** Hutwelker notified the applicant that he has 30 days to request a rehearing in the event that he wishes to appeal the decision.

**Other Matters:**

There was a brief discussion regarding the use of name tags or table placards with names for ease of reference by attending public. Hutwelker suggested that the Planning Board revisit the ordinance regarding recreational facilities as business.

**Motion** to adjourn made by Thibault, seconded by Beaugard, Sr. and all were in favor. ***Motion passed.***  
Adjournment at 9:43 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary

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Minutes