

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – January 9, 2017

*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 7:00 p.m. by Chair William Hutwelker. Present were Sarah Tatro, Bryan Rudgers, Alternate Eric Kallio, Alternate Shane Bryant and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Vice Chair Keith Thibault, Bob Mitchell, and Alternates Charles Beauregard, Sr., Adam Mulhearn, and Marty Geheran.

**Others Present:** Director of Planning and Community Development Sara Carbonneau and Mr. and Mrs. Brian Stone, Attorney Thomas R. Hanna, and resident Nick Smith.

#### **MINUTES**

The Board considered the minutes of December 19, 2016. **Motion** was made by Kallio to approve the Minutes of December 19, 2016. There was a second by Bryant. All were in favor. ***Motion passed.***

#### **PUBLIC HEARINGS**

- A. Variance Application Continuation** - Brian Stone requests a variance from Section III.U.6. to permit a home occupation in excess of 300 square feet. A total of 1,013.25 square feet is requested. Should this variance not be granted, Brian Stone requests a variance from Section IV.B.1. to permit a septic pumping business to be conducted on the premises. The property is situated at 39 Goodell Avenue, Tax Map 30, Lot 5-4 situated in the Residence District. The property is owned by Brian and Deborah Stone.

Hutwelker seated himself, Tatro, Rudgers, Bryant for Thibault and Kallio for Mitchell for this hearing.

#### **Public Hearing continued from December 19, 2016 at 7:02 p.m.**

Attorney Thomas R. Hanna was present to represent the Stones. Hanna spoke about his narrative describing the situation that he had provided to the Board in written form. He referenced the narrative as follows: he noted that the Stones have lived in this house for 30 years and started the business in 2013. He referenced the property being adjacent to wooded land. He said that those trees are not allowed to be cut down. He referred to photos showing the wooded sectors at both corners of the frontage as buffers protecting the views of passing persons going in either direction. He said the property has a unique boot-like shape with 140 feet frontage and 100 feet at the rear. He also described the property opposite the Stone

property saying there is a home that contains a hair salon. He described the proposed activity on the site as being storage of the trucks for the business and they are to be stored inside. He said the trucks leave the site at 6:00 a.m. and do not return until evening. The proposed new garage was displayed in a rendering and would be the same color as the house and comply with setbacks. The second driveway to access the garage will be 12 feet wide, looking residential. He pointed out that the bushes in the front will remain and the shed to the right of the house will be removed. He spoke about the home occupation provision of the Town's ordinance. He said the appropriate variance is to expand the home occupation and it provides better protection for the Town and the neighbors. He noted that the abutter property owners are supporting the application of the Stones. He noted that a home occupation does not remain with the land. If they sell their home, the home occupation expires with their move. He also noted that the property has been very well-maintained. He referred to list of names in support of the application and noted that the police department has not seen any traffic issues. He also noted that the Public Works Director Lee Dunham has approved a second driveway for the property. Hanna also spoke about a second confirmation from Dunham regarding his approval for a second driveway. He said there will be no noise, odor, or vibration on this site. There will be one vehicle trip per vehicle per day or perhaps a couple, given any emergency situation that might arise. Hanna noted that when calling the office, he often reached Brian Stone in the truck, not the home office. He said he felt that it is a pretty benign operation from a home occupation perspective. The three family members will be employed and not any more than that.

Attorney Hanna then reviewed the checklist questions for granting a variance:

1. The activity of the business is offsite and the onsite activity is limited to storage of a truck – he said this activity will not be contrary to the public interest given the residential look of the property will continue. He said it makes more sense to have a second driveway rather than having a driveway across the lawn. He also referred to the abutters in support of the application.
2. The primary activity of the business is offsite and will not adversely affect the residential character of the neighborhood. No customers coming to the house. Truck will be stored inside. And the owners have a long track record for maintaining the property.
3. The family business is not of sufficient size to enable affording an offsite location. They are bringing their son into the business. Denial of the variance will do harm to the occupants and because the residential character will be maintained, the gain to the public if denied will be negligible.
4. The owners of surrounding property are not opposed to the business and there will be no diminution of surrounding property values. Also the site is well landscaped and the corners are buffered by trees.
5. The lot is deep and is wider in front than in the rear – boot-like shape makes it unique. He also noted that it is unusual to have woods at the corners of the property than cannot be cut down by covenant.
6. The business activity onsite is benign and mostly invisible to the public. He referred to the spirit of the ordinance – accommodate business only to the extent that it doesn't negatively impact on the residential character of the neighborhood. Shrubbery will be placed on the right side of the new garage.
7. It enables a family business to expand modestly and remain on their property; the reasonable use is the light commercial touch on the property. And no customers will be coming to the site

to conduct business. He also provided photos of other businesses in the area that are home occupations.

Carbonneau said the notice of the application was for a larger size garage. Now the proposed garage will be 18' X 31' and about 14' high, not higher than top of the house. She said that now the total occupation square footage will be 774.25 square feet for both the garage and the home office.

Rudgers reviewed the list of supporting property owner signatures with Brian Stone and determined that all the immediate abutters are on the list. He also asked about the angle of the new garage and Stone said that the angle is necessary to accommodate the setbacks.

Rudgers asked about what is the restriction to the trees not being cut down and Hanna said the restriction is in the deed to the Stone's property. Hanna then reviewed the 1986 deed which lists restricted covenants including prohibition from cutting trees planted by the grantor along the Town right-of-way which is Goodell Avenue. All trees shall be maintained at a maximum height of 20 feet. Carbonneau asked for a sunset date for the covenants and after reviewing the document Hanna acknowledged that the sunset date was 2005; therefore the trees could be removed now. Hanna suggested that the restriction could be made a condition of approval. Stone said he has no intent to cut down any trees.

Carbonneau asked about planting along the side of the garage. There was a discussion about buffering by trees and woods to the rear. Bryant asked about the structure of the garage and Stone said it will be metal, not wooden. Stone said it will look like clapboards matching the house. Hutwelker asked if the location of the proposed structure could be reoriented toward the rear to align with the house. Stone said it could be moved a little bit. Hanna said he didn't think the garage front could be aligned with the front of the house. Stone said the home has electrical access and a window at that side of the house.

Hutwelker said he is struggling with satisfying the first criteria when the ordinance states a maximum of 300 square feet for home occupation area. He also asked about a business growing to the point that it needs another site and would another site be available to the Stones? He said he could not recall seeing a property with three separate garages and said he found it hard to justify doubling the square footage and creating an image that is not a residential look. Hanna said he disagreed that the look being proposed is not residential. He said it looks to him like another out-building. He said the garage is fitting on the property. Hanna said the business use on this property is all off-site and onsite is only storage. Hanna referred to the neighbors being in favor of the project once again.

Hanna spoke to the spirit of the ordinance and said the character of the neighborhood is not changed. Rudgers said he thought that the garages look like commercial garages. Brian Stone said he would move the garage back even to cover the window if it needs to be done.

Discussion was briefly held about the son who will be an employee and who rents; he has no property to house the truck he will drive.

Nick Smith spoke. He is an abutter to the rear. He is a small business owner and has lived there for 19 years and he would be opposed to anyone wanting to devalue his property, but he is supporting this

project. He said the garage will blend in with the home. He said there is no sense of a business being operated there.

Carbonneau added a concern about the pitch of the roof and snow. Hutwelker asked if there is a possibility of doing a shed roof to match the other garage. Hanna said they would have to look into that.

Kallio asked about the apple tree and if Stone was sure he could get the truck in and out without destroying the tree. Stone said there is plenty of room.

There was a brief discussion about traffic approach to the site. Tatro asked if the garage could be put out back. Stone said there isn't enough space for a driveway to the rear and it would be very expensive to build a garage back there. There is an in-ground pool behind the house.

Hutwelker said it would be helpful to have information as to whether the garage could be pushed back to align with the house and he asked the Board members if it might be beneficial to do a site walk. Hanna asked for a continuation until the next meeting to come up with the information as to whether or not the garage could be aligned with the house. Hutwelker said there could be a site visit just prior to the February meeting if the Board agreed to continue the hearing. Hanna said they will look at the feasibility of moving the garage back to be even to the front of the house. Hutwelker suggested a Saturday morning onsite visit at 9:00 a.m., February 11, 2017 with meeting to follow on Monday, February 13, 2017.

**Motion** was made by Hutwelker to continue the public hearing without further notice for the request of Brian Stone for a variance from Section III.U.6. to permit a home occupation in excess of 300 square feet to Saturday morning February 11, 2017 at 9:00 a.m. at 39 Goodell Avenue for site walk , to be followed with meeting on Monday, February 13, 2017 at 7:00 p.m. at Town Hall, second by Rudgers. All were in favor. ***Motion passed.***

**Public Hearing closed at 8:30 p.m.**

## **OTHER MATTERS**

### **The Dell'Erba Superior Court Ruling**

Carbonneau noted a short timeframe for making an appeal on the Court's decision to vacate the ZBA decision to deny Dell'Erba's request. Hutwelker said that he would prefer to include Keith Thibault and Bob Mitchell in a decision on whether or not to appeal. Carbonneau said a decision should be made this evening regarding an appeal, noting that if an appeal is to be filed the attorney needs to have time to prepare and file the appeal timely (time frame for appealing is this week). Rudgers asserted that the Chair's opinions do not impact on his (Rudgers) vote. There was a discussion that the likelihood to win an appeal was low given the judge's decision. Bryant said he was surprised that the judge made the decision to grant the variance and didn't refer the request back to the ZBA. Carbonneau agreed that it is unusual for the Court to make a decision and not remand the decision back to the ZBA. She said an appeal is expensive. And she noted that the structure at the center of the decision is temporary. Hutwelker pointed out that this is a lesson in taking more time with the spirit of the ordinance and to look at each of the criteria more specifically.

Rudgers, Tatro, and Bryant said they would not appeal. Kallio and Hutwelker said they leaned toward appeal. After a bit more discussion the general consensus was not to move forward with an appeal.

**Upcoming Bond and Budget Hearings**

Carbonneau reminded the members of the upcoming bond hearing and budget hearing to be held this Wednesday, January 11, 2017 at Whitcomb Hall.

**ADJOURNMENT**

**Motion** to adjourn was made by Kallio, seconded by Rudgers and all were in favor. ***Motion passed.***

Adjournment occurred at 8:47 p.m.

Respectfully Submitted,

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

Beverly Bernard, Recording Secretary

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES  
FEBRUARY 11, 2017 – SITE VISIT**

*Minutes are not final until reviewed and approved by the Board. Review and approval of minutes generally takes place at the next regularly scheduled meeting of the Board.*

**ATTENDANCE**

Bill Hutwelker, Bryan Rudgers, Shane Bryan, and Adam Mulhearn. Also present: Brian Stone, Attorney Thomas Hanna, Deborah Stone.

**SITE VISIT**

Site visit commenced at property situated at 39 Goodell Avenue, owned by Brian and Deborah Stone (Tax Map 30, Lot 5-4). Members viewed the site. Attorney Hanna noted that the size of the proposed garage has been changed – the dimensions are now proposed to be 16 feet x 31 feet. The location of the proposed garage was marked in the snow. B. Stone noted that the front of the proposed garage would be in line with the existing, most easterly garage on the premises. The location of the new driveway was discussed. Carbonneau noted that the driveway would need to be at least 10 feet from the side property line. The shed that is located on the westerly side of the property will be moved. It is likely that the new driveway will go through the location of the shed that will be moved. It was hoped that the bushes/shrubs along the roadway would be able to remain.

Public hearing was continued to February 13, 2017 at 7:00 p.m.

**ADJOURNMENT**

Site visit adjourned at 9:20 a.m.

Submitted by

Sara H. Carbonneau,  
Recording Secretary Pro Tem

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – February 27, 2017

*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 special meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 7:00 p.m. by Chair William Hutwelker. Present were William Hutwelker, Bryan Rudgers and Alternates Shane Bryant, Eric Kallio and Adam Mulhearn. Sara Carbonneau served as Recording Secretary for the evening. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Sarah Tatro, Keith Thibault, Bob Mitchell, and Alternates Marty Geheran and Charles Beauregard, Sr.

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Brian Stone, Deborah Stone and Attorney Thomas Hanna.

Seated for the entirety of the meeting were: Hutwelker, Rudgers, Bryant, Kallio and Mulhearn.

#### **MINUTES**

Meeting Minutes for February 11, 2017 site visit were considered. **Motion** was made by Rudgers to approve the site visit minutes of February 11, 2017. There was a second to the motion by Mulhearn. No further discussion was held and all were in favor with the exception of Kallio who abstained. The ***motion passed.***

Meeting Minutes for January 9, 2017 were considered. **Motion** was made by Rudgers to approve the meeting minutes of January 9, 2017. There was a second to the motion by Mulhearn. No further discussion was held and all were in favor. The ***motion passed.***

#### **PUBLIC HEARINGS**

**A. Public Hearing Request for Variances (Continued from January 9, 2017 meeting and February 11, 2017 site visit) -**

Brian Stone requests a variance from Section III.U.6 to permit a home occupation in excess of 300 s.f. Should this variance not be granted, Brian Stone requests a variance from Section IV.B.1. to permit a septic pumping business to be conducted on the premises. The property is situated at 39 Goodell Avenue, Tax Map 30, Lot 5-4 situated in the Residence District. The property is owned by Brian and Deborah Stone. Public hearing opened at 7:05 p.m.

Attorney Hanna reviewed the changes to the proposed plan as presented at the February 11, 2017 site visit. Hanna noted that the garage was originally proposed to be 18 feet by 31 feet. The new proposal is for a 16 foot by 31 foot garage. The design and roof of the proposed garage will now mirror that of the most easterly garage on the premises. In addition, the intent of the applicant is to construct the new garage in line with the existing plane of the most easterly garage. The new driveway was discussed. It was noted that it would go through a portion of the area where the existing shed is located. Board members did not have a preference for whether the driveway was straight or had an angle or curve in it, as long as it met the required setbacks. B. Stone stated that it is their goal to avoid destroying the shrubs at the front of the property; however, the most westerly shrub may be impacted. In addition, it is the applicant's plan to keep the crab apple tree in front of the house. Attorney Hanna noted that the garage construction that the applicant proposes could be done without requesting relief through the ZBA if a business use was not part of the equation. Hanna addressed the criterion of the spirit of the ordinance and public interest. He stated that the changes to the initial proposal, including matching the style of the garage to mirror the existing easterly garage and setting the garage in line with the easterly garage, maintain the residential feel of the property within the neighborhood. In addition, Hanna noted that the fact that there is generally one trip per day on and off the property with the existing commercial vehicle results in very little impact on the neighborhood, stating that 95% of the business activity is conducted off site. Public hearing closed at 7:20 pm.

Board members reviewed the criteria for granting the variance from Section III.U.6.

- *Could the variance be granted without being contrary to the public interest?* Board members felt that granting the variance would not be contrary to the public interest, noting that there was written and oral testimony from neighbors expressing support for the proposal. The Planning & Community Development Department did not receive any negative feedback regarding the variance request. In addition, it was noted that the structure, as proposed, could be constructed without necessity for ZBA approval but for the fact that there is a business associated with the use.
- *Would the spirit of the ordinance be observed if the variance was granted?* All agreed at the spirit of the ordinance would be met should the variance be granted, based on the findings above.
- *Would the granting of the variance do substantial justice?* All members felt that substantial justice would be done by granting the variance, noting that the business activity that is associated with the proposal would not interfere with the neighborhood, would substantially benefit the applicant, and would not negatively impact the abutting property owners or the neighborhood.
- *Could the variance be granted without diminishing surrounding property values?* The Board found that there was no evidence that property values would be reduced should the variance be granted.
- *Do special conditions of the property exist that distinguish it from other properties in the area?* The Board found that this is a unique property due to its dimensions. Members also noted that the proposed garage can maintain all setbacks.  
*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?* The members agreed that there was no fair and substantial relationship between the ordinance.  
*Is the proposed use a reasonable one?* Board members found that the proposed use was reasonable.

Motion by Mulhearn to approve a variance from Section III.U.6. to operate a home occupation in excess of 300 s.f., subject to the conditions that the new garage mirror the existing most easterly garage in style and that it is located in the same plane as the most easterly garage; and that the driveway can be configured as desired by the applicant, subject to the condition that it meets all setbacks. Seconded by Bryant. Vote: All in favor.

Hanna stated that the applicant was withdrawing his variance request from Section IV.B.1.

**OTHER MATTERS AS MAY BE REQUIRED.**

1. Carbonneau reminded Board members of a training opportunity in Keene on Tuesday, March 7<sup>th</sup> at 6 p.m.
2. Voting to take place on Tuesday, March 14<sup>th</sup>. Carbonneau will forward the voters guide to members.

Motion by Mulhearn to adjourn. Seconded by Kallio. All were in favor. Meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Sara H. Carbonneau,  
Recording Secretary, Pro Tem

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes –March 20, 2017

*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 William Hutwelker. Present were William Hutwelker, Bryan Rudgers, Keith Thibault, Sarah Tatro, Bob Mitchell and Alternate Adam Mulhearn. Sara Carbonneau served as Recording Secretary for the evening. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Alternates Marty Geheran and Eric Kallio

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Pastor Ron Nickerson, Mike Tollett, and abutting property owners Zena and Roland Tessier.

#### **MINUTES**

Meeting Minutes for February 27, 2017 were considered. Motion by Mulhearn to approve the minutes as submitted. Seconded by Rudgers. Vote in favor: Hutwelker, Mulhearn and Rudgers. All others abstained as they were not present at the meeting. *The motion passes.*

#### **PUBLIC HEARINGS**

- A. Public Hearing – Variance Application.** Northern New England Conference of Seventh Day Adventists requests a variance from Section III.S.12 to permit the installation of an off-premises free-standing sign. The proposed sign is to be located on property owned by L&G Berube Realty Trust. The applicant owns property shown at Tax Map 3, Lot 2; the sign will be located on L&G's property shown at Tax Map 3, Lot 3. The lots are situated in the Business District. Pastor Ron Nickerson appeared before the Board. No abutters were present. Hutwelker stepped down due to a conflict of interest. Mulhearn stated that he is "friendly" with Nickerson, but after discussion with fellow Board members determined that he does not have a conflict of interest. Vice-Chair Thibault seated Mulhearn for Hutwelker. Seated for this public hearing were Thibault, Tatro, Rudgers, Mitchell, and Mulhearn. Public hearing opened at 7:06 p.m.

Nickerson stated that the church is requesting an off-premises sign to adequately direct people to their facility. He noted that the building is also listed as an emergency shelter by the American Red Cross. However, he noted that the Red Cross has not utilized the facility as an emergency shelter as it does not have showers. Nickerson stated that due to the topography of the church's property (Map 3, Lot 2), the fact that the abutting property to the west (Map 3, Lot 1) is wooded, and the curve of Route 12 in the area, all contribute to a sign on the church's property as not being very visible. Nickerson stated that if the sign were to be located on the church's property, it would likely not be visible travelling southbound on Route 12. It would be visible traveling northbound on Route 12 for a small window of time. Nickerson stated that the proposed off-premises sign would be located on property owned by L&G Berube Realty Trust,

situated at the northerly end of the parcel. This location is almost directly across the street (Forbush Lane) from the church's property. Nickerson stated that the sign would not have dedicated lighting; rather, it will be illuminated by an existing street light. Carbonneau stated that should the variance be granted, the Code Enforcement Officer has requested that the street number of the church (42 Forbush Lane) not be included on the sign, as it will not be located on Forbush Lane. Rather, the Code Enforcement Officer suggested that an arrow be utilized to convey the direction to turn. Nickerson stated that there is a blue informational sign (state sign) providing directions to the church as one is headed northbound on Route 12. Rudgers stated that he travels that area frequently and has not noticed the blue sign. It was not known if there is a blue sign located in the southbound direction. Mitchell stated that the proposal was for a modest sign, compared with other signage in the area. Public hearing closed at 7:28 p.m.

Board members discussed the special conditions of the church's property, noting the topography, the lack of visibility travelling southbound, and that the curve of the road may be special conditions. They also noted that if the property serves as an emergency shelter, that would also make it unique. Thibault stated that he felt that a site visit may be useful. Board members agreed and voted to re-open the public hearing. Public hearing continued without further notice to a site visit scheduled for April 17, 2017 at 6:00 p.m. Following the conclusion of the site visit, the public hearing will be continued to the regular meeting of the ZBA on April 17, 2017 at 7:00 p.m. at Town Hall. Carbonneau suggested that the applicant stake out the southwesterly corner of the church's property prior to the site visit.

Huwelker resumed his seat at the table.

- B. Public Hearing – Special Exception Application.** Mike & Susan Tollett request a special exception from Section III-AA (as passed on March 14, 2017) to permit the construction of a detached accessory dwelling unit on property situated at 63 Talbot Hill Road. The property is situated in the Residence District and is shown at Tax Map 33, Lot 68-8. Mike Tollett appeared before the Board. Abutting property owners Zena and Roland Tessier were also present. Seated were: Hutwelker, Tatro, Mitchell, Rudgers, and Thibault. Public hearing opened at 7:44 p.m.

Tollett stated that he and his wife would like to convert a 20' x 30' woodshop on their property into a detached accessory dwelling unit (DADU). Tollett stated that his mother-in-law would live in the DADU and that he and his wife would reside in the primary structure. Carbonneau stated that the Town received today a copy of the Approval for Construction from the State for a septic system that would serve the DADU and the primary structure. Tollett noted that the design for the new septic system does not need to be installed immediately...it only needs to be installed if the existing system fails. Tollett stated that the woodshop was built around 1994, but there were no detailed building plans in the Town's files. His proposed contractor has determined that the building was constructed on a slab. Tollett also stated that they are proposing to extend the driveway to serve the DADU. The Tessiers stated that they were not aware of the outbuilding on the property, due to the distance from the road and the fact that it is fairly wooded. They had no objections to the proposal after hearing testimony. In addition, Tollett stated that abutting property owner Michael Davis contacted him over the weekend stating that

he had no objection to the proposed conversion of the outbuilding to a DADU. Public hearing closed at 7:58 p.m.

Board members considered the criteria for granting application and found as follows:

1. *Is the exception allowed by the ordinance?* Board members noted that DADUs are permitted by Special Exception with the passage of the zoning amendment on March 14, 2017. In addition, Board members noted that the criteria contained in the zoning amendment was included in the application and that the criteria were met.
2. *Are the below listed 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 the District and is it an appropriate location for such use?* Board members noted that the allowance of DADUs by Special Exception was only recently allowed. Members discussed the appropriateness of the location and found that it was in a residential area and that the proposed DADU was fairly unobtrusive from abutting properties and the roadway.
  - b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?* Board members felt that it would not reduce the value of any property within the district, nor would it otherwise be injurious, obnoxious, or offensive to the neighborhood, citing the Tessiers statement that they were even unaware of the outbuilding on the property.
  - c. *Will there be a nuisance or serious hazard to vehicles or pedestrians.* Again, Board members felt that the DADU would not be a nuisance or serious hazard to vehicles or pedestrians, noting that the outbuilding would be set back on the property and barely noticeable from the road and abutting properties.
  - d. *Will adequate and appropriate facilities be provided for the property operation of the proposed use?* Board members replied in the affirmative.

Motion by Mitchell to grant the special exception from Section III-AA to permit the construction of a detached accessory dwelling unit on property situated at 63 Talbot Hill Road, subject to the Notice of Decision being recorded at the Cheshire County Registry of Deeds. Motion seconded by Rudgers. Vote: All in favor.

#### **OTHER BUSINESS**

- A. **Election of Officers.** Hutwelker nominated Keith Thibault to serve as Chair and Bob Mitchell to serve as Vice Chair. Motion seconded by Tatro. Vote: All in favor.

**Adjournment** – Upon motion by Mitchell and duly seconded by Mulhearn, Board members voted to adjourn at 8:15 p.m.

Respectfully Submitted,

Sara H. Carbonneau,  
Recording Secretary, Pro Tem

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – April 17, 2017

*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 6:00 p.m. by Chair Keith Thibault at a site visit at property owned by Northern New England Conference of Seventh Day Adventists shown at Tax Map 3, Lot 2 and owned by L&G Berube Trust shown at Tax Map 3, Lot 3. Present were Chair Keith Thibault, Vice Chair Bob Mitchell, Bryan Rudgers, Alternate Marty Geheran and Beverly Bernard, Recording Secretary. Also present was Director of Planning and Community Development Sara Carbonneau.

The members viewed the location where the sign is proposed to be raised. Carbonneau noted that L&G Berube Trust has given permission for the sign to be on their property which abuts State Route 12. The members discussed the frontage of the church property. Carbonneau noted that the Red Cross lists the church as an emergency shelter, but the building has not been used as an emergency shelter since it does not have showers per testimony of Ron Nickerson at the March 20<sup>th</sup> meeting. One of the reasons for the request by the church for the variance is to have a more visible sign in case of an emergency situation. Carbonneau also noted that the church wants the sign so that persons headed south on State Route 12 can see the sign, again per testimony of Ron Nickerson. The meeting continued at Town Hall at 7:00 p.m.

**Absent:** W. William Hutwelker, Sarah Tatro, Alternates Adam Mulhearn, Shane Bryant, and Eric Kallio

**Public Hearing opened at 7:00 p.m.** No member of the public were present.

The Chair seated Geheran for Hutwelker. It was noted that only four members of the Board were present, including Geheran. Carbonneau informed Ron Nickerson by phone that there was not a full Board (five members) present and he could ask for a continuance. Nickerson decided to ask for a continuance.

**Public Hearing closed at 7:05 p.m.**

**Motion** was made by Mitchell to continue the review of the application of Northern New England Conference of Seventh Day Adventists for a variance from Section III.S.12. to May 15, 2017, at the request of the applicant. There was a second to the motion by Rudgers. All were in favor. ***Motion passed.***

**OTHER MATTERS**

Carbonneau said that there are two openings as Alternates for the Board and they would be posted.

**ADJOURNMENT**

**Motion** to adjourn was made by Mitchell, seconded by Rudgers and all were in favor. ***Motion passed.*** Adjournment occurred at 7:08 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – May 15, 2017

*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 May 15, 2017 meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 7:00 p.m. by Chair Keith Thibault. Members present: Keith Thibault, Vice Chair Bob Mitchell, and alternates Adam Mulhearn and Shane Bryant. Bryant was seated for Rudgers and Mulhearn was seated for Hutwelker. Director of Planning and Community Development Sara Carbonneau was also present and took minutes for the meeting. Also present was alternate member nominee Jane Skantze.

**Absent:** W. William Hutwelker, Sarah Tatro, Bryan Rudgers, alternate Eric Kallio, and alternate Marty Geheran.

Minutes – Minutes from March 20, 2017 were considered. Motion by Mitchell to approve the minutes from March 20, 2017 as submitted. Seconded by Mulhearn. Vote: All in favor.

Minutes from April 17, 2017 were not considered, as there was not a quorum of the membership present tonight that was in attendance at the April 17, 2017 meeting. Deferred until June meeting.

1. Public Hearing – Variance Application. Northern New England Conference of Seventh Day Adventists requests a variance from Section III.S.12 to permit the installation of an off-premises freestanding sign. The proposed sign is to be located on property owned by L&G Berube Realty Trust. The applicant owns property shown at Tax Map 3, Lot 2; the sign will be located on L&G's property shown at Tax Map 3, Lot 3. The lot is situated in the Business District. Continued from April 17, 2017.

Carbonneau stated that she had received notification earlier in the day that the Board would not be able to seat 5 members this evening. She consulted with the applicant who informed her that they would like 5 members to be seated and requested a continuation to the June 19, 2017 meeting. Motion by Mitchell to continue the public hearing to June 19, 2017 at 7:00 p.m. without further notice. Seconded by Mulhearn. Vote: All in favor.

2. Request from L&G Propane to approve a minor modification to a site plan for a previously approved variance. The property is situated off Forbush Lane and is shown at Tax Map 3, Lot 3. The lot is situated in the Business District. Board members considered the request from L&G Propane as outlined in a May 4, 2017 letter. Carbonneau reviewed the request before the Board. It was noted that the L&G Propane voluntarily increased the size of the cisterns to provide additional water storage to serve the needs of the community. With the increase in the size of the cisterns, the previously approved 12' x 12' building would not be large enough to cover both manholes. L&G's letter states that "in order to keep the manholes inside a conditioned space to prevent pipes from freezing, the structure will need to be 20 x 15." In addition, L&G's letter states that the structure would not encroach any further toward the roadway, but "would be extending the structure along the length of the roadway." After discussion, Mitchell moved to accept the

amendment to the site plan as being consistent with the spirit of the variance. Seconded by Bryant. Vote: All in favor.

3. Election of Alternate Members – Two positions with terms expiring at Town Meeting 2020. Nominees are: Marty Geheran and Jane Skantze. Board members were familiar with Marty Geheran, as he has served as an alternate member on the ZBA for many years. Motion by Mitchell to appoint Marty Geheran as an alternate member of the ZBA, with a term to expire at Town Meeting 2020. Seconded by Bryant. Vote: All in favor.

Carbonneau noted that Board members have Skantze’s Volunteer Interest Form, as well as her resume. Ms. Skantze was present to answer any questions that Board members may have. After introductions and discussion, motion by Mulhearn to appoint Skantze as an alternate member of the ZBA, with a term to expire at Town Meeting 2020. Seconded by Mitchell. Vote: All in favor.

#### **ADJOURNMENT**

**Motion** to adjourn was made by Mitchell, seconded by Mulhearn and all were in favor. ***Motion passed.*** Adjournment occurred at 7:45 p.m.

Respectfully Submitted,

Sara H. Carbonneau  
Recording Secretary, Pro Tem

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – June 19, 2017

*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 7:00 p.m. by Chair Keith Thibault. Present were Thibault, William Hutwelker, Bryan Rudgers, Bob Mitchell, Alternate Jane Skantze and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting.

**Absent:** Sarah Tatro, Alternate Adam Mulhearn, Alternate Marty Geheran, Alternate Shane Bryant, and Alternate Eric Kallio.

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Kenneth and Katie Roy, Steve Morel, Dave Bergeron from Brickstone Land Consultants, Allyce Romaneck, Barbara Skuly and several members of the public.

The Chair seated Skantze for Sarah Tatro.

#### **MINUTES**

- The Board considered the minutes of April 17, 2017. **Motion** was made by Mitchell to approve the Minutes of April 17, 2017. There was a second by Rudgers. All were in favor except Skantze who abstained. **Motion passed.**
- Minutes from the May 15, 2017 meeting were deferred until the next meeting pending a quorum of members who were present on that date.

#### **PUBLIC HEARINGS**

- **Variance Application**

Northern New England Conference of Seventh Day Adventists requests a variance from Section III.S.12 to permit the installation of an off-premises freestanding sign. The proposed sign is to be located on property owned by L&G Berube Realty Trust. The applicant owns property shown at Tax Map 3, Lot 2; the sign will be located on L&G's property shown at Tax Map 3, Lot 3. The lot is situated in the Business District. This hearing was continued from May 15, 2017.

The Chair informed the members of the Board that the applicant has asked for a continuation to July 17, 2017, as a 5-member Board could not be seated for this application tonight (Hutwelker had previously recused himself from sitting on this application).

**Motion** was made by Rudgers to continue the hearing without further notice for application of variance from Section III.S.12 to permit the installation of an off-premises



freestanding sign by the Northern New England Conference of Seventh Day Adventists to July 17, 2017 at 7:00 p.m. at Whitcomb Hall, 17 Main Street. There was a second to the motion by Mitchell and all were in favor except Hutwelker who abstained. ***Motion passed.***

- **Variance Application**

Kenneth & Katie Roy request a variance from Section IV.B.3. to permit the construction of an addition that does not meet required setbacks. The property is located at 50 Sugar Hill Road and is situated in the Residence District. The property is shown at Tax Map 20, Lot 125.

Public hearing opened at 7:07 p.m.

**Discussion:** Katie Roy spoke about the proposed addition. She said the addition will be on the right side of the existing house, as facing the house from the street. She said it is shy 6 inches of requirement for the side setback. She noted the septic is to the left of the house and the backside has the well, a deck, and a bulkhead, which makes the right side of the house the only available location for the addition. The abutting neighbor, Steve Morel of 54 Sugar Hill Road, was present and he has approved of the Roys' wish to build the addition. He said he doesn't have any issues with the addition on that side of the building. It was noted that the house is set way back from the street. Hutwelker asked about what would happen if the addition would be reduced by 6 inches. Roy responded that making the roofline of the addition coordinate with the existing roofline requires the size of the addition, according to their builder. Hutwelker asked if the eave is creating the setback issue. Kenneth Roy noted the ridgelines will be opposing ridgelines. The addition will be attached, but set forward. The 6 inches is not being created by the overhang. Carbonneau said the foundation is measured for setbacks. Carbonneau noted that the original proposal was decreased to meet the setback as close as possible and maintaining the square footage they wanted. She said they cut back two feet off the plan to try to come close to the requirement. Katie Roy said the family needs the extra space.

Public hearing closed at 7:18 p.m.

Mitchell commented that the Board deals with these kinds of issues with some frequency and said he can be flexible depending on the significance of the encroachment. He said in this situation the setback encroachment is only 1/40<sup>th</sup> of the requirement. He said the purpose of the Board is to look at the specifics and given the approval of the abutter he would be in favor of granting the variance.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

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

**Members said: Mitchell – yes; Hutwelker – no because there isn't any hardship. Rudgers – yes; Skantze – yes; Thibault – yes – no gain to the public for saying no.**

*Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: Hutwelker, no - Rudgers, yes - Mitchell, yes because the encroachment is only 6 inches,**

**Skantze, yes - Thibault, yes**

*Would the granting the variances do substantial justice?*

**Members said: Rudgers, yes, there is no evidence to the contrary - Hutwelker, no, there is no harm to the applicant if denied - Mitchell, yes – non-standard dimensions involved. Skantze, yes – Thibault, yes**

*Could the variances be granted without diminishing surrounding property values?*

**Members said: Mitchell, yes - Rudgers, yes – Hutwelker, yes - Skantze, yes - Thibault, yes**

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

**Members said: Rudgers said yes, because of the way it sits back from the road - Hutwelker, no, there is no evidence of special conditions of the property. Mitchell said yes due to location of well and septic. Skantze said yes - Thibault, yes, for the same reasons as Mitchell.**

- 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: Hutwelker said no special conditions of property exist and well and septic don't impact on addition which he said he thought could be adjusted to fit the setback; Mitchell, yes – Rudgers, yes – Skantze, yes – Thibault, yes**
- b. *Are the proposed uses a reasonable one?* **Members said: all 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: Not needed.**

The Chair reported that “**yes**” prevailed and he entertained a motion to grant the request for Variance from Section IV.B.3.

**Motion** was made by Mitchell to grant the request of Kenneth & Katie Roy for a variance from Section IV.B.3. to permit the construction of an addition that does not meet required setbacks on property located at 50 Sugar Hill Road, situated in the Residence District and shown at Tax Map 20, Lot 125. Skantze seconded the motion. All were in favor except Hutwelker who voted no. **Motion passed 4 to 1.**

- **Special Exception Application**

Brickstone Land Use Consultants, agent on behalf of HRK 14, LLC, requests a special exception from Section IV.B.2.a. to permit the construction multi-family housing (two duplex buildings – four total housing units) on property situated off Old Richmond Road. The property is situated in the Residence District and is shown at Tax Map 25, Lot 14. The proposed project will be located on a 5.4 acre parcel to be created by subdivision. Present were Dave Bergeron from Brickstone Land Use Consultants and Dan Ketola of HRK 14, LLC and numerous interested citizens. Hutwelker recused himself for this hearing. Bernard recused herself for this hearing and Carbonneau took over as Recording Secretary for this portion of the meeting. Thibault informed the applicant and the applicant’s agent that only four members could be seated for

tonight's public hearing and that the applicant would need three affirmative votes to prevail on the application. The applicant and applicant's agent stated that they would like to proceed this evening.

Public Hearing opened at 7:27 p.m.

Discussion:

Bergeron reviewed the plans and the criteria for granting the special exception. Bergeron noted that the zoning ordinance only requires 2-1/2 acres for the project, but the proposed project is to be located on 5.41 acres. Bergeron stated that there are other duplexes and also a tri-plex located in the district, not too far from the subject premises. He noted that the proposed project will be located at least 500 feet from Old Richmond Road. Map 25, Lot 14 is proposed to be subdivided, with a 5.41 acre lot for the subject project, as well as possibly 3 other lots (including the existing house on the property). There are some existing boundary issues/concerns on the westerly side of the existing 12.5 +/- acre lot, but these boundary issues/concerns would not impact the 5.41 acre parcel. The duplex units would be sold individually and would be governed by a homeowners association and restrictive covenants. Bergeron stated that the units would be listed for approximately \$220,000.00 to \$240,000.00 each. Each unit would have 3 bedrooms, for a total of 12 bedrooms on the lot. He noted that there would be limited impact on Old Richmond Road. He also presented a letter from licensed septic designer Carl Hagstrom who indicated that the lot would be able to sustain a septic system to adequately serve the project and that would meet all State and local regulations. Hagstrom also noted that there would be no negative impact on Eastfield Crossing's wells.

Robert Nass, 184 Old Richmond Road, stated that most of the other homes in the area are single family homes and this would not be similar to those homes on the street. He also expressed concern about property maintenance, the number of cars in and out of the project each day, and the cutting of trees which would increase the sound levels from the ballfields. Bergeron noted that the criteria refers to "district" and not "street." Bergeron reiterated that the project would have a minimal impact on the street and vehicular traffic.

Scott Willette, 134 Goodell Avenue, questioned whether additional units would be built on the 5.41 acre lot. Bergeron stated that there are no plans to do so. If that should happen, abutters would be notified and approval from the ZBA and PB would be required. Willette commented that this project would negatively impact the view from his property. Bergeron noted that this project would be over 1500 feet away from Willette's property..

Bergeron stated that the applicant would need State Septic System approval, wetlands approval (for the driveway crossing), and Planning Board site plan review and approval as this is a multi-family project.

Beverly Bernard, 39 Barden Circle, stated that there is another well on Eastfield Crossing's property which is closer to the proposed project than the other wells that Bergeron identified. She stated that she is on Swanzeys Drinking Water Protection Committee and is concerned about transmissivity and pollution of wells. Bergeron stated that he would do additional

research on the Eastfield Crossing well locations and bring this information back to the Board. Bergeron did note that per State regulations the proposed septic system would meet all State requirements for well setbacks. If the additional well is located on Eastfield Crossing's property as shown by Bernard, it would be around 500 feet away from the proposed septic system. Bernard also spoke about the deplorable conditions of some of the duplexes in the area – noting that trash has been piling up at one particular location. In addition, she stated that another duplex has been unoccupied for over three years. Bernard stated that owner-occupied properties are generally well cared for. Concerns that these could become rental units and not be appropriately maintained were expressed by her and others in the audience. Mitchell stated that there is no State law which prohibits rental of property.

Denise Hood, 183 Carlton Road, stated that she is concerned about the impacts on wildlife habitat. Bergeron stated that they will need to consult with the NH Heritage Bureau and NH Fish and Game when going through the State wetlands permitting process. Hood also inquired as to the difference between a special exception and a variance – Thibault explained the difference. Hood also asked about the impact on the schools – Hutwelker, who prefaced his comments by stating that he was the moderator of the school district, a Swanze selectman, and a realtor, stated that one issue facing the schools at this time is the declining enrollment and how it impacts per pupil costs. Hood also expressed concern about the availability of the water supply to serve 4 housing units.

Charles Rocheleau, 202 Old Richmond Road, asked why the project was for duplexes versus single family homes. Bergeron noted that a similar project is currently being constructed in Chesterfield and is selling well. C. Rocheleau also stated that there are 3 farms in that area and that farmland is being converted to housing lots.

Nadine Hann, 235 Old Richmond Road, indicated concern about the westerly boundary of the 12.5 parcel. Bergeron stated that he had been trying to reach her and he would like to speak with her after the meeting.

Heather Rocheleau, 202 Old Richmond Road, asked about the wetlands crossing for the driveway. Bergeron indicated that a large culvert or an open-bottomed culvert would be utilized. Drainage flow would be designed for a 50-year storm. Bergeron stated that the maintenance of the driveway/culvert and other infrastructure and amenities would be the responsibility of the homeowners' association. Bergeron stated that should the proposed duplex project not receive approval it is likely that the 4 lot subdivision would become a 5 or 6 lot subdivision, all with separate driveways and septic systems. H. Rocheleau noted that the existing driveway has a "postage stamp sized" driveway and that people are often parking in the roadway.

Doug Osgood, 147 Old Richmond Road, spoke about "zoning creep." He noted that while special exceptions are allowed, by allowing one such use leads to another being "similar to existing uses in the district" and meeting that specific criteria. Board members noted that if they did not want to see duplex or multi-family units in particular areas, they should approach the Planning Board seeking to amend the zoning ordinance.

Board members stated that they would like the applicant to determine the location of the wells on Eastfield Crossing's property and to provide building elevation drawings.

Randy Phillips, 199 Old Richmond Road, stated that he had seen an article in the June 13, 2017 edition of the *Keene Sentinel* about the Chesterfield project and shared it with the audience and the Board members. He stated that while he initially had some concerns about the proposed project, especially if the units were to be rental properties. He stated that he "liked what he saw in Chesterfield."

HRK 14, LLC representative Dan Ketola stated that the property would be subject to protective covenants and restrictions. Bergeron stated that sample covenants and restrictions could be provided – these would only be samples and would not necessarily become the final document. C. Rocheleau inquired why anyone would want to purchase property where they are told what they "can and cannot do." Thibault stated that the Town's zoning regulations essentially set forth what property owners "can and cannot do" in the Town. Bergeron also stated that many property owners like and seek out properties with protective covenants, as they provide assurances that their property and property values will be maintained. In addition, the homeowners' association documents will ensure that such things such as plowing, painting, lawn care, etc. will be done by someone else and not the responsibility of the property owner.

**Motion** by Mitchell to continue the public hearing without further notice to Monday, July 17, 2017 at 7:00 p.m. at Whitcomb Hall, with the understanding that the applicant will provide further details about the Eastfield Crossing well locations, building elevations, and sample covenants/restrictions. Seconded by Skantzze. Vote: All in favor.  
**Motion passed.**

- **Special Exception Application**

Allyce Romanek requests a special exception pursuant to Section IV.B.2.c. to operate a "family child care" center at 23 Spring Street. The property is situated in the Residence District and shown at Tax Map 57, Lots 74 & 75.

Hutwelker returned to the table for deliberations. Bernard returned to role of Recording Secretary.

Public Hearing opened at 8:41 p.m.

**Discussion:** Allyce Romanek was present to discuss her hope of opening a family child care center. She said she has had the Fire Inspector, Code Enforcement Officer, and Health Officer inspect the property and a State of New Hampshire Licensing representative has also walked through. She responded to the questions used by the Board. She noted a public elementary school and a preschool located within one half mile of the property. She said the property is over an acre in size and quality childcare is needed in the area. She said a daycare facility wouldn't reduce the value of any property in the District. She noted she will be fencing in her backyard. Operating hours will be 6:30 am to 5:30 pm. She said she is planning additional space

in her driveway so no one will have to back out and has discussed this with DPW Director Lee Dunham. She spoke about an additional lot to be used for parking space and which she hopes to merge with the house lot. She said she will be licensed by NH Department of Health and Human Services and inspected by Health and Fire Inspectors. There will be quiet homework space for school aged children. She noted she is a certified teacher, and has been a child care director for a combined 3.5 years. There would be five children, in addition to her own, in the initial child care. She said she thought her maximum number of children would be ten children, and she would hire an additional person if she reached maximum number. She said she is certified for cardiopulmonary resuscitation (CPR). There was a discussion about parking spaces. Carbonneau noted there are currently two parcels consisting of .5 acres and .6 acres which are likely to be merged as a requirement of Planning Board. Carbonneau also noted the applicant's site is on public sewer.

Barbara Skuly of 19 Spring St. spoke saying she is essentially an abutter to the applicant's property. She said she is supportive of the idea for a childcare facility. She did ask if there were any restrictions that could be imposed like a maximum number of children. Thibault said the decision would be based on use. Skuly said scope makes a difference. Impact is higher when there is a large number. Thibault said restrictions would come from the Planning Board. Carbonneau noted that if the use changes, then reaffirmation for the special exception would come back to the ZBA. She noted the Board could put a restriction on the number of children. Hutwelker noted the application is for 17 children. Romaneck said she used the maximum numbers provided by the state licensing agency for up to 12 in childcare plus 5 school age children for after school care and during vacations. Romaneck noted that the actual number of children permitted by the State is based on square footage available. Skuly asked if there might be school age children during the summer, during the day and Romaneck said "yes". No extra staff is needed, per State regulations. Hutwelker asked if there was a flow test for her well. Romaneck said State Licensing does require water test. The application is for 17 children but she isn't planning for more than ten, which she believes will be the maximum she can have based on the square footage available. Ten childcare plus 5 school age children are what she was planning for. At this point the applicant changed the requested number of children on the application to a maximum of 15. Hutwelker asked if the parking is adequate with 7-10 spaces. Mitchell said that from his experience dropping off and picking up children at child care centers, the number of spaces provided is adequate. There was a mention that there be a stipulation that licensing restrictions be in force for this approval. There was a brief discussion about the amount of water in gallons per day required by the State for Licensing of a daycare facility. There was a discussion about need for 400 square feet of useable program space. Romaneck said her living room, dining room, and a small bedroom, and island in the kitchen for doing homework are all being counted for square footage space.

There were no further comments from the public.

Public Hearing closed at 9:09 p.m.

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: all said yes and Hutwelker noted that Romaneck did an outstanding job filling out the sections of the application**

*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: 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?* **Members said: all said no**
- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?* **Members said: all 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 for a special exception to Section IV.B.2.c based on the responses to the checklist for granting a special exception.

Mitchell **moved** to grant the request of Allyce Romaneck for a special exception pursuant to Section IV.B.2.c. to operate a licensed “family child care” center for a maximum of up to 15 children at 23 Spring Street on property situated in the Residence District shown at Tax Map 57, Lots 74 & 75 so long as the facility remains licensed by the State of New Hampshire. Skantze seconded the motion and there was no further discussion. All were in favor. **Motion passed.**

There was a discussion about the Child Care License which remains with the individual and not the property.

## **OTHER MATTERS**

### **New State Law Regarding Electrical Outlets**

Rudgers said there is a new State law that requires homeowners to get a permit to replace an outlet with an outlet and the new outlet has to be an arc-fault circuit protection (ARC) outlet.

### **Resident Suggestion Regarding Permit Process**

Rudgers said two people gave him a suggestion for an interactive website which would enable a property owner to determine whether or not he needed a permit from the Town in order to do a home project. Carbonneau said that there are a lot of details that have to be determined, which could not be done on a website. She also said the Town is small enough that personal service is possible.

## **ADJOURNMENT**

**Motion** to adjourn was made by Mitchell, seconded by Skantze and all were in favor. **Motion passed.** Adjournment occurred at 9:24 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Beverly Bernard". The signature is written in a cursive, flowing style.

Beverly Bernard, Recording Secretary



Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – July 17, 2017

*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 Keith Thibault. Present were Chair Thibault, Vice Chair Bob Mitchell, Bill Hutwelker, Sarah Tatro, Alternate Adam Mulhearn, Alternate Jane Skantze, Alternate Marty Geheran and Beverly Bernard, Recording Secretary. Also present was Director of Planning and Community Development Sara Carbonneau.

**Absent:** Bryan Rudgers, Alternate Shane Bryant and Alternate Eric Kallio

**Others Present:** Dave Bergeron from Brickstone Land Use Consultants, Keith Gordon from the Seventh Day Adventist Church, Tim Joyal, President of the Eastfield Crossing Association (ECA), Resident Randy Phillips, Attorney Steve Bonnette, Gerald and Mrs. Ramsey

#### **MINUTES**

- The Board considered the minutes of May 15, 2017. **Motion** was made by Mulhearn to approve the Minutes of May 15, 2017. There was a second by Mitchell. All were in favor except Hutwelker, Tatro, Skantze and Geheran who abstained. **Motion passed.**
- The Board considered the minutes of June 19, 2017. **Motion** was made by Mitchell to approve the Minutes of June 19, 2017. There was a second by Skantze. All were in favor except Tatro, Mulhearn, and Geheran who abstained. **Motion passed.**

Bill Hutwelker recused himself at 7:07 pm

#### **PUBLIC HEARINGS**

##### **1. Variance Application**

Public Hearing opened at 7:07 p.m.

The Chair seated Geheran for Rudgers and Mulhearn for Hutwelker and seated himself, Geheran, Mulhearn, Mitchell, and Tatro for this hearing.

Northern New England Conference of Seventh Day Adventists requests a variance from Section III.S.12 to permit the installation of an off-premises freestanding sign. The proposed sign is to be located on property owned by L&G Berube Realty Trust. The applicant owns property shown at Tax Map 3, Lot 2; the sign will be located on L&G's property shown at Tax Map 3, Lot 3. The lot is situated in the Business District. This public hearing is a continuation from April 17, 2017.

Keith Gordon was present and is a member of the church. He said the church is not visible from State Route 12 and it would like to have better signage so that it can be found more easily. Thibault noted that the church also indicated that it would like to make it easier for emergency personnel to find the church if need be.

Mitchell commented about the site visit: he said that the site is a narrow sliver of land and at the foot of a hill. He noted there is very limited space to locate a sign on the church property because the hillside is rather steep. Geheran said that if the sign were on the church property, you wouldn't have visibility from the north for folks coming from Keene. He noted the church intends to serve as an emergency shelter and most folks would be coming from Keene who would be in need of shelter. Mulhearn asked for clarification as to use as an emergency shelter. Mr. Gordon said that they still need to put in another bathroom, but the kitchen is large, they have a double septic system and are capable of housing a number of people in an emergency. The shower is the last requirement from the State of New Hampshire in order to be designated an emergency shelter. Gordon said there is a plan to put in a shower.

Carbonneau provided the application summary and she spoke to notices that were provided to the public, to abutters and to Department Heads. She said she received no responses or concerns from anyone. However, she noted that the church has not approached the Town for permit to put in a shower at this point.

There was a discussion about the possibility of an emergency shelter and what happens if the church never does fulfill the requirement for an emergency shelter. Carbonneau noted that the sign the church is asking for is not for advertising the church for use as an emergency shelter, but for simply identifying access to the church itself. Geheran spoke about the narrow blue State of New Hampshire signs that are already in place and that they point to where the church is and are visible. He also noted that in the digital age, signage becomes less of an issue for most people. They can find the location they are looking for with GPS.

The chair asked if the members had any questions and anything to add. And he asked those in attendance if they had anything further to say. There was no further comment.

Public Hearing closed at 7:18 p.m.

Thibault noted there is no official designation for a shelter and State signs are already in place in both directions for the church. Geheran said the State of New Hampshire signs are in reasonably good placement for visibility in both directions. Mulhearn said he can sympathize with the need to publicize but as pertains to making a decision on the request for variance, the church has been there for many years and has not made the effort to become an official emergency shelter, which would impact on his decision on the request.

The Chair reviewed the **Checklist for Granting a Variance** with the members of the Board:

1. *Could the variances be granted without being contrary to the public interest?*  
**Members said: Mitchell said yes; Mulhearn said no; Tatro said yes; Geheran said yes and that the entire frontage is on Forbush; Thibault said no. There were three "yes" and two "no".**
2. *Would the spirit of the ordinance be observed if the variances were granted?*  
**Members said: Mitchell said yes, the spirit of the ordinance is to avoid signage a distance from the actual entity advertised by the sign, in this case it is reasonable to wish to have their location advertised as requested given there are very few locations for a visible sign close to the actual**

**building. Mulhearn said no; Geheran said no because the ordinance is meant to reject cluttering of signage that is not near to the entity; Tatro said no; Thibault said no. There were four “no” and one “yes”.**

3. *Would the granting the variances do substantial justice?*

**Members said: Geheran said no because there is no frontage on State Route 12, and they knew that when they built the church; Mulhearn said no, given the ordinance; Tatro said no; Mitchell said yes; Thibault said yes. There were three “no” and two “yes”.**

4. *Could the variances be granted without diminishing surrounding property values?*

**Members said: All said yes**

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

**Members said:**

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: Mitchell said it does have conditions that are distinguishing. Trees block visibility of their property and it is a steep hillside. Mitchell and Thibault voted yes; Geheran said no because there are alternatives; Tatro, and Mulhearn agreed with Geheran and voted no.**

b. *Are the proposed uses 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.*

7. a. **Board members noted that both lots had reasonable uses on them already.**

The Chair reported that the Board was clearly **divided** and he entertained a motion to grant or deny the request for Variance from Section III.S.12 based on the responses to the Checklist.

**Motion was** made by Geheran to deny the request of Northern New England Conference of Seventh Day Adventists for a variance from Section III.S.12 to permit the installation of an off-premises freestanding sign on property owned by L&G Berube Realty Trust and shown at Tax Map 3, Lot 2 and to be located on L&G’s property shown at Tax Map 3, Lot 3 in light of the fact that the church is not used as an emergency shelter at this point in time. There was a second by Mulhearn and no further discussion. All were in favor except Mitchell who was opposed.

***Motion passed.***

***Geheran said he would like to state for the record that should an emergency shelter be instituted at the church, he would consider this to be a substantive change in circumstances and, as such, the church could come back and request a new variance.***

## **2. Special Exception Application**

Public Hearing opened at 7:39 p.m.

Brickstone Land Use Consultants, agent on behalf of HRK 14, LLC, requests a special exception from Section IV.B.2.a. to permit the construction multi-family housing (two duplex buildings – four total housing units) on property situated off Old Richmond Road. The property is situated in the Residence District and is shown at Tax Map 25, Lot 14. The proposed project will be located on a 5.4 acre parcel to be created by subdivision. Continued from June 19, 2017

The Chair seated himself, Skantze for Hutwelker, Mitchell, Mulhearn for Rudgers, and Tatro for this hearing.

Discussion: Dave Bergeron from Brickstone Land Use Consultants was present to address some of the issues that were raised at the last public hearing. One of the items was the location of the wells at Eastfield Crossing which is a neighbor to the proposed site. He said he located the wells using GPS. He said the one well closest to the project site is about 1,000 feet away, which is outside of the protective radius required by the State of New Hampshire Department of Environmental Services (NH DES). The septic systems will be confined within the property. The other question that arose at the previous hearing was about homeowner's association documents and he said that the documents have not been produced yet for this development, but he did provide documents pertinent to the Chesterfield, New Hampshire duplex project which he said would be similar in nature. Bergeron reviewed some of the provisions in that association's rules for operation.

Bergeron also described the Common areas and open space for the proposed project. Limited Common area is the area which an owner maintains around his/her unit. Common area A is sidewalks, driveways, and road. Common area B is open space, kept as undeveloped area, which could have walking trails. He referred to the possibility of liens on assessments due, which gives the association the right to put a lien on someone's property when the owner not up to date on assessment payments.

Bergeron also provided elevations for the Chesterfield, New Hampshire duplexes, saying the Old Richmond Road duplexes will be similar in style with two car garage, two or three bedrooms, one story living (with the option of a third bedroom on the second floor). He said there will be one septic system for each building and that the septic systems are being designed to be in the space within the turnaround between the buildings.

Tim Joyal, Board President of Eastfield Crossing Association, asked how the location of the wells was determined by Bergeron. Bergeron said he used GPS to give him an accurate reading and he drove around and took GPS coordinates at the intersections of the roads to serve as check points, then imported the information into Google Earth to line up perfectly. He said the road intersections are known data points and if they matched his reading, then the well reading would also be accurate. Joyal asked if this project would cause any interference to ECA wells and Bergeron replied that the ECA wells would not be affected. He said the water flow is away from the wells.

Randy Phillips, 99 Old Richmond Road, said he took a ride over to Chesterfield to see the duplexes there and found them to be "classy looking" units. Carbonneau said that this property is not yet subdivided and that this request only covers the 5.41 acre parcel.

Public Hearing closed at 7:57 p.m.

Carbonneau asked if there were any other issues to provide to the Board and Bergeron described some issue with property lines that in the process of being resolved. The Chair asked the Board and attendees if there were further comments and there were none.

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: All 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: 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?* **Members said: All said no**
- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?* **Members said: All said no**
- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?* **Members said: All said yes**

The Chair reported that the applicant prevailed on the criteria and entertained a motion to grant the request for a special exception to Section IV.B.2.a based on the responses to the checklist for granting a special exception.

Mitchell **moved** to grant the request of Brickstone Land Use Consultants, agent on behalf of HRK 14, LLC, for a special exception from Section IV.B.2.a. to permit the construction multi-family housing (two duplex buildings – four total housing units) on property situated off Old Richmond Road in the Residence District and shown at Tax Map 25, Lot 14 on 5.41 acre parcel. Skantze seconded the motion and there was no further discussion. All were in favor except Tatro who voted no. **Motion passed. The vote: four in favor, one opposed.**

***Hutwelker rejoined the meeting at 8:02 pm – the Chair called for a 3 minute break***

### **3. Special Exception Application**

Public Hearing opened at 8:05 p.m.

Eric Brauer requests a special exception from Section IV.B.2.b to permit a two-family dwelling. The property is located at 116 Old Homestead Highway. The property is situated in the Residence District and is shown at Tax Map 18, Lot 156.

The Chair seated himself, Mitchell, Hutwelker, Tatro, and Geheran for Rudgers for this hearing.

Carbonneau noted the abutters have been notified. She said the property is connected to North Swanze Water & Fire Precinct and is served by Swanze sewer. Abutting property owner, Crystal Noonan, sent in a letter stating her concerns about the possibility that the building would be torn

down and replaced. Carbonneau noted this property has been utilized as a two-family dwelling for many years. She said she received an appraiser question about the property, which she researched and found no record that a multi-family residence was established legally through Town process. She did note however, that the assessing card has shown a two-family at the property for a number of years. She said the owner is looking to make the property legal so that he may consider selling the property.

Attorney Steve Bonnette confirmed that the property has been assessed as a two-family, and paid taxes since 2009 as a two family. He noted the property is hooked up to public sewer and water. He noted other two-family properties are nearby. He said the location is a busy location with a restaurant almost across the street. Bonnette reviewed the conditions addressing each question on the checklist. Bonnette said 112 Old Homestead Highway is a two-family. There are a number of uses permitted in this district, nurseries, and greenhouses, for example. There are other businesses and two-family properties in the area and the property under discussion would not be offensive to the neighborhood. Old Homestead Highway has varied uses currently. He addressed parking and said there is adequate parking for the property for two families with six spaces. He said the owner is looking to sell the property, and he will not rent the second residence, which is empty at the moment, until the legal issue is resolved.

Public Hearing closed at 8:15 p.m.

The Chair asked the Board and the attendees for any further comments. Hutwelker said if this wasn't pre-existing use, he would have a problem with it. There were no further comments.

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: All 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: 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?* **Members said: all said no**
- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?* **Members said: Tatro said yes; Mitchell said no; Hutwelker yes; Thibault and Geheran said no. Three "no" and two "yes".**
- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?* **Members said: all said yes except Tatro who voted "no". Four "yes" and one "no".**

The Chair reported that the applicant prevailed on the criteria and he entertained a motion to grant the request for Special Exception from Section IV.B.2.b based on the responses to the Checklist.

Hutwelker **moved** to grant the request of Eric Brauer for a special exception from Section IV.B.2.b. to permit a two-family dwelling on property located at 116 Old Homestead Highway in the

Residence District and shown at Tax Map 18, Lot 156 for a special exception to Section IV.B.2.b based on the responses to the checklist for granting a special exception. Mitchell seconded the motion and there was no further discussion. All were in favor. ***Motion passed.***

#### **4. Variance Application**

Public Hearing opened at 8:20 p.m.

Gerald Ramsey requests a variance from Section IV.B.3 to permit the installation of a swimming pool that does not meet required setbacks. The property is located at 112 Bellview Drive and is situated in the Residence District. The property is shown at Tax Map 24, Lot 40-26.

The Chair seated himself, Hutwelker, Mitchell, Tatro, and Mulhearn for Rudgers for the Public Hearing.

Carbonneau noted that the property is located in Eastfield Crossing, a cluster housing development, which is served by community water and septic. Pool has already been installed and came to the attention of Code Enforcement. Carbonneau referred to RSA 674:33,V, accommodations for disabilities. Carbonneau said she spoke to the town attorney regarding the statute. She noted that Swanze does not have a specific application for relief pursuant to RSA 674:33,V, nor was the Town's attorney aware of any other community that had a special application for the same. Hutwelker spoke about Americans with Disabilities Act (ADA) concerns like needing a ramp and stated that if such variances were to be granted, the variance would go away if the property were to be sold or if the applicant was no longer in need of the accommodation- which would result in the ramp (in this example) having to be removed

Mr. Ramsey said the deck adjacent to the pool is free-standing 11' X 11' on blocks. Carbonneau noted that any structure is supposed to meet setbacks and the deck does not meet setbacks. Ramsey said it was impossible to meet the setback given the size of the property. He said the back of the house to property line is less than 45 feet. He said the area that it abuts to is to Common land and does not abut any property owner's land. Ramsey explained a hand-drawn map of his property to the Board.

Carbonneau said evidence as to Mrs. Ramsey's disabilities requiring water therapy needs to be provided and Mr. Ramsey said he has that documentation and provided it to the Board.

Geheran determined that the installer was professional and didn't ask about the installation being so close to a fence. The installer was from Allenstown, New Hampshire and should have known about setbacks for towns in New Hampshire. Mrs. Ramsey said she wasn't aware that they needed a building permit. She said she spoke to Code Enforcement Officer Mike Jasmin and was informed that they needed a building permit and variance.

Variance to accommodate the disabled; Carbonneau pointed to the summary – you do not need to find necessary hardship and referenced to RSA 674:33,V Carbonneau noted that all other variance criteria would need to be met, with the exception of unnecessary hardship.

Hutwelker asked Joyal about the homeowner's association approving installation of pool. Joyal said the ECA did not approve the installation of the pool. He said the Board was made aware that Ramsey was

going to add a pool and a letter was sent to Ramsey regarding the need to get approval from the Architectural Control Committee of the Association. Joyal said the by-laws require following the rules. Pool was installed without any Architectural Control Committee approval. Ramsey had not received approval from the ECA Board. Joyal said the by-laws need to be followed in fairness to all members of the community. Others may have been denied a pool in the past.

Hutwelker asked about details on installing or removing a pool and Ramsey said he didn't know and that is why he hired a professional. Hutwelker noted the pool possibly could be moved 13 feet closer to the koi pond. Ramsey said 7500 gallons of water would need to be removed, remove the liner, side panels, level a new area with bobcat, put down sand, etc and refitted with water. Ramsey also stated that the existing area where the pool is located would also have to be re-landscaped. He said the pool is not drained in the winter. It is lowered about 8 inches to the pump.

Mulhearn asked about the distance from koi pond to pool and Ramsey said it is 22 feet. Ramsey acknowledged that Joyal said he should reach out to the Town to see if a permit was needed. The day the pool was filled, Joyal saw the pool, and Ramsey said he had not heard a word about the pool until he asked for a letter that he was in compliance. Ramsey said that on April 12, he submitted a letter to ECA asking for approval for the pool. He didn't receive anything from ECA Architectural Committee and they have 45 days to respond in writing otherwise the proposed project is approved.

Carbonneau said that the concern from the Town's point of view is that the setback are not met, and they didn't get a building permit, not for any other reason – has nothing do to with homeowner's associations rules. Hutwelker said the reason he pointed out the ECA rules is because the Ramsey application states that ECA had approved the pool. Mitchell asked Joyal if the Architectural Committee had responded within 45 days and did he agree that if not responded to within 45 days that means the work is approved. Joyal said he would have to check the by-laws.

Tatro asked what Mrs. Ramsey does in cold weather for her disability and Mrs. Ramsey responded that she uses a hot tub which is located on the property. Joyal acknowledged that on April 21 the application from Ramsey was stuck on his door (Joyal's door). Joyal said that since the ECA did not approve or disapprove after 45 days, then Ramsey could believe that the pool had been approved.

Carbonneau referred to disability and use of pools reside in or regularly use the premises. It is up to the applicant to ask for it and present their case. Mulhearn asked about the variance being tied to the need for water therapy and confirmed that evidence has been presented. Mitchell said he has uncomfortable making a decision based on evidence presented but others pointed out that the back-up documentation provided more evidence.

Hutwelker asked Ramsey about the only available location of the pool and asked if it could be moved closer to the koi pond. Ramsey said it would be a cost and the koi pond was there when they bought the house. Hutwelker said it would be very helpful to be able to state that it couldn't be closer. Mr. Ramsey said that there is no money to move the pool to the new location. Cost would be prohibitive. Tatro noted Ramsey should have checked with the Town about needing permits and about setbacks. Ramsey acknowledged that Joyal told Ramsey to check with the Town before putting up a pool.



Mitchell spoke about a setback from a Common Area and this being the first time it has come up.

Joyal said the Ramseys have done a nice job with the pool and they have done some nice landscaping around it. They have been quiet with the pool and it is not intrusive to their neighbors. There was a discussion about the fence between the pool and the Common Land.

The Chair asked for any further comments from the Board or the attendees and there were none.

Public Hearing closed at 9:00 p.m.

The Board first determined that they are dealing with a disability. Hutwelker said that if the Board is not going to move forward with the ADA issue, he would have a problem agreeing to any of the questions.

Keith asked the Board if they would review this as an ADA issue pursuant to RSA 674:33,V. If yes, then the hardship question goes away.

**Motion** was made by Mitchell that this is an ADA disability hardship case, based on the evidence presented by physicians. Hutwelker seconded the motion. Request for accommodation is before the Board, and therefore it does not need to consider question 5. Mulhearn stressed the caveat that this decision is only applicable to this particular applicant and not be carried to another owner should the property be sold. Hutwelker added for the life of the disability and for the life of the pool and that the variance would go away if the pool should develop a leak and need to be replaced. Hutwelker amended the motion to include that the motion states that this is an ADA disability hardship case and any variance granted would last for the duration of the disability or the life of the pool; if the tenancy changes, then the variance no longer is valid; if the pool needs to be replaced than the variance is no longer valid and the pool would need to be moved closer to the house should the tenant remain disabled and at the property and in need of a new pool. All were in favor except Thibault who voted no. ***Motion passed with four in favor and one opposed.***

Thibault made a comment about the installer and said he agreed with Tatro that the contractor didn't inform the Ramsey's about the setbacks. Thibault also said the owner ignored the direction to go to the Town and that was distressing. There was a discussion about costs associated with restoration of a pool. Thibault said that financial hardship is usually not included in Board discussions when talking about hardship for use.

The Chair reviewed the **Checklist for Granting a Variance** with the members of the Board:

8. *Could the variances be granted without being contrary to the public interest?-*

**Members said: Mitchell said yes; Hutwelker said this is a slippery slope distinguishing between abutters of single property owners versus Common Land owned by an Association but because of disability issue said yes; Mulhearn said yes the public within the ECA has interest and none of them are opposed; Tatro yes; Thibault reluctantly agreed.**

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9. *Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: Hutwelker said yes because of disability; Mulhearn said yes; Tatro said yes; Mitchell said yes; Thibault said no – he said he thought there are other alternatives on the site. Four “yes”, one**

“no”.

10. *Would the granting the variances do substantial justice?*

**Members said: Mulhearn said yes after stating that he weighed there being other location for the pool against justice for a disability; Tatro said yes given the health conditions of the applicant’s wife; Mitchell said yes; Hutwelker said no; Thibault said no. Three “yes”, two “no”.**

11. *Could the variances be granted without diminishing surrounding property values?*

**Members said: members said yes.**

The Chair reported that “**yes**” prevailed and he entertained a motion to grant the request for Variance from Section IV.B.3 based on the responses to the Checklist.

**Motion was** made by Mitchell to grant the request of Gerald Ramsey for a variance from Section IV.B.3 to permit the installation of a swimming pool that does not meet required setbacks on property located at 112 Bellview Drive, situated in the Residence District and shown at Tax Map 24, Lot 40-26, the variance granted under consideration of RSA 674:33,V) and subject to continuation of tenancy of Ramsey (should the property be sold, the variance is no longer valid and the pool would need to be moved to meet setbacks or removed from the premises) and this particular disability of Mrs. Ramsey and for this specific pool and should a new pool be required for Mrs. Ramsey, any new pool would be required to be moved to comply with setbacks. There was a second by Mulhearn and no further discussion. All were in favor except Thibault who voted no.

***Motion passed. 4 = for; 1 = against.***

Hutwelker added that this variance does not meet the Eastfield Crossing Association rules and finds it problematic.

#### **ADJOURNMENT**

**Motion** to adjourn was made by Hutwelker, seconded by Mitchell and all were in favor. ***Motion passed.*** Adjournment occurred at 9:25 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – August 21, 2017

*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 7:00 p.m. by Chair Keith Thibault. Present were Thibault, Bob Mitchell, Alternate Jane Skantze, Alternate Eric Kallio, Alternate Shane Bryant and Beverly Bernard, Recording Secretary. The Recording Secretary called the roll and read the Agenda for the meeting. Bill Hutwelker joined the meeting at 7:26 p.m.

**Absent:** Bryan Rudgers, Sarah Tatro, Alternate Adam Mulhearn, Alternate Marty Geheran

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Code Enforcement Officer Mike Jasmin, Heidi LaPlante, Dean Dinsmore, Martha Waters, Ethan Pinney, Wendy Pelletier, David Williams, Adam Cullis, Bradley Howe, Travis Castor, Rachel O'Leary, Donna Aron, Patty Fairbanks, Tim Carrier

**PUBLIC HEARINGS**

- **Variance Application**

Heidi LaPlante requests variances from Sections V.B.3. and XI.B.1. to permit the construction of a porch onto a non-conforming structure. Both the house and the proposed porch do not meet required setbacks. The property is located at 868 West Swanzey Road and is situated in the Business District. The property is shown at Tax Map 71, Lot 6.

The Chair seated Bryant for Hutwelker, Kallio for Tatro and Skantze for Rudgers in addition to himself and Mitchell.

Public hearing opened at 7:03 p.m.

**Discussion:** Carbonneau spoke about the public notices and notices to Department Heads which went out without feedback.

LaPlante showed the plot plan to the Board and she noted the overhang is needed for shading her west facing window. She said she is proposing an 18' X 16' foot covering over the deck to keep out the sun. The porch is proposed to be 8' X 26'. She said the house was built in 1968. Mitchell asked about the plot plan that was provided with the application showing the front of the house being a distance of 28 feet to the front of the lot. Carbonneau said that the plot plan he was referring to had been provided for a prior application to build a deck in the rear of the building. LaPlante said when she measured the distance from the front of the house to the road it was 68 feet. She noted a neighbor has a variance with permission for a carport that is closer to the road than her request.

Thibault asked about the neighboring variance and Carbonneau said it was granted for the carport. LaPlante said that the deck being requested would be no further out than current stairs in front.

Thibault asked for comments from the public and there were none.

Mitchell said the ZBA deals with this type of application often and he had three observations:

1. The proposed deck is no closer to the boundary than the stairs (which are not considered for setback purposes)
2. The proposed deck is no closer than the deck of the abutting property owner
3. The ZBA has to consider 20 feet from the road versus zoning requirement of 75 feet – this application is for a deck which is off by 2/3 the distance required.

LaPlante said the distance is 64 feet – minus 25 feet because of State right-of-way. Mitchell explained that the ZBA tries to be consistent. He said the setback is measured from the property line, not the setback from the road. The edge of the road is not the part of the property.

There was a discussion about the fact that in the past the ordinance required applicants for projects such as this one to propose building in line with adjacent buildings. Carbonneau explained that there is more restrictive ordinance now because of the zoning change that eliminated the idea of being in line with adjacent buildings. She said she would argue that this makes for a special condition for this property. There was a discussion about the right-of-way not necessarily being measured from the center line of the road.

Mitchell said he is not willing to accept 28 feet as part of a prior application. LaPlante said Code Enforcement Officer Mike Jasmin gave her the tape and she measured it and she found it to be 64 feet. She went on to say her neighbor's carport is ten feet away from the road. Mitchell said he needs to know the exact dimension is and is unwilling to make any decision until he has the accurate measurement. Jasmin was present. He said he would be happy to measure the distance. Mitchell said he would find a measurement from the yellow center line acceptable.

Ethan Pinney spoke in support of the requested variance. Mitchell said he would accept the 64 feet as stated measured by the applicant. Kallio suggested a site walk should be considered. Bryant said he didn't think that would change anything.

Thibault asked if the applicant and any members of the public had anything further to say and she did not and they did not. Carbonneau noted the purpose of the porch and the energy efficiency created by the proposed porch. Thibault asked if an awning would need a variance and Carbonneau said it would not, so Thibault established that an awning could achieve the same energy efficiency.

Hutwelker informed the others that if any member of the board requests a site walk, it should be granted by tradition. Skantze said she would also like to make a site walk.

Skantze **moved** to continue the public hearing without further notice to a site walk at 868 West Swanzey Road on September 18, 2017 at 6 p.m. There was a second by Kallio. All said “yes” except Bryant who opposed. **Motion passed: four in favor, one opposed.**

- **Request for Equitable Waiver of Dimensional Requirements or Variance Application**

Dean Dinsmore requests an equitable waiver to retain and finish building a structure that does not meet required setbacks from Section IV.B.3. If the equitable waiver request is not granted, the applicant requests a variance from Section IV.B.3. The property is located at 783 Old Homestead Highway, situated in the Residence District and is shown at Tax Map 33, Lot 46.

Public Hearing opened at 7:38 p.m.

The Chair seated himself, Mitchell, Hutwelker, and Bryant for Rudgers and Kallio for Tatro.

**Discussion:** Carbonneau spoke to legal notices and to notification of Department Heads. Code Enforcement Officer was present testify. The property is in the residence district requiring a 20 foot side and rear setback.

Dinsmore spoke about the original building permit application. He explained he measured from a neighbor’s right-of-way when he applied and he thought he had more than 20 feet. Then later he saw stakes put in by the neighbor indicating a driveway and realized he was 8 feet from property line. At this point the shed had already been started. And he said the neighbor said he has no problem with the position of the shed. Carbonneau noted that Pine Avenue, as shown on the submitted site plan, is not a town road. She said Mr. Dinsmore is a property owner in a subdivision that took place in 1936; the subdivision plan indicated a “Pine Avenue,” which eventually became the neighbor’s driveway. Basically it is a private drive.

Jasmin said he looked at the shed and it is substantially complete. Bryant determined the building permit was established for the shed to be nearer to the pool and deck. Dinsmore said he moved the shed out because he thought he had plenty of room. Dinsmore said the space between the shed and pool area became additional patio space. The shed has the circulating pump and storage for gardening equipment. Hutwelker asked about the metal shed that preceded the new one. Dinsmore said the pump was in that shed, but the shed was very tiny. Dinsmore said the pump had to be lifted up to the level of the deck for piping to the pool. The footings were put in May.

Thibault asked if there were comments from the public and abutting neighbor Martha Waters said the shed is not a problem for her.

Public Hearing closed at 7:53 p.m.

Thibault said the board rarely deals with Equitable Waivers. He said he would be more comfortable had the applicant began construction in the original location. Thibault read the conditions for granting the application.

The Chair reviewed the Checklist for Granting an Equitable Waiver of Dimensional Requirements with the members of the Board:

*Does the request involve a dimensional requirement, not a use restriction?*

**Members said:** All said yes

*Has the violation existed for 10 years or more with no enforcement action, including written notice, commenced by the town....or.....was the nonconformity discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser, and was the violation not an outcome of ignorance of the law or bad faith but as the result of a legitimate mistake?*

**Members said:** Mitchell said the owner had made an adjustment in good faith of the boundary. The drawing was originally drawn from the middle of Pine Avenue. There would be no reason to check by Code Enforcement. Hutwelker said he thought this was an honest mistake. Mitchell said there was no evidence of bad faith. Bryant agreed. Kallio concurred.

*Does the nonconformity not constitute a nuisance or diminish the value or interfere with future uses of other property in the area?*

**Members said:** Mitchell said given the abutters testimony he saw nothing of nuisance value or that would interfere with future uses of other property in the area. The rest of the members agreed with Mitchell.

*Would the cost of correction far outweigh any public benefit to be gained?*

**Members said:** All said "yes"

The Chair reported that "**yes**" prevailed and he entertained a motion to grant the request for an Equitable Waiver of Dimensional Requirements from Section IV.B.3.

**Motion** was made by Mitchell to grant the request of Dean Dinsmore for an equitable waiver of dimensional requirements to retain and finish building a structure that does not meet required setbacks from Section IV.B.3. on property located at 783 Old Homestead Highway, situated in the Residence District and shown at Tax Map 33, Lot 46. There was a second to the motion by Bryant. All were in favor except Thibault who opposed because the applicant didn't build in the original location per his building permit. **Motion passed: four in favor, one opposed.**

Carbonneau suggested a request for continuation for variance. She said if no one files an appeal, and an appellant has 30 days from date of decision to make that appeal, then the equitable waiver decision stands.

Hutwelker **moved** to continue the public hearing to October, 2017 regarding the variance application in the event that an appeal of the decision to grant the equitable waiver is filed. There was a second by Mitchell. All were in favor. **Motion passed.**

- **Special Exception Application**

Wendy Pelletier, agent on behalf of David Williams, requests a special exception pursuant to Section V.B.2.b. to construct a multi-family housing project (15 unit condominium complex).

The property is situated at 23 West Street, located in the Business District and shown at Tax Map 57, Lot 7.

Public Hearing opened at 8:04 p.m.

Discussion: Thibault seated Skantzé for Rudgers and Kallio for Tatro as well as himself, Mitchell and Hutwelker.

Carbonneau spoke about the publishing of notices. She said there has been no response from Department Heads. She said she has an email from an abutter, Adam Cullis, and Cullis was present to provide a copy of the email to the Board.

Pelletier was present to explain and describe the plans for the condominium units. She said they will be small 22' X 22' one bedroom units. She said this appears to be a better use of this property than a business. Municipal sewer will be used. Drainage will be retained on site. A private community water supply will be used. Each unit has a carport between two units and there will be visitor parking. There is an existing well there and a new well will be built. She noted 484 square feet per unit, not including the attached carport.

Hutwelker asked why not tap into West Swanzey water system. David Williams spoke about the water system. He said he has had the community water supply system essentially already engineered. He said that he can pay off the water supply in three years and therefore it is cheaper than paying a yearly fee to a water company. Hutwelker asked about Homeowner association – and Williams said there would be an association. Hutwelker asked if Williams was planning a single phase or multi-phase project. Williams said he would sell two units before building more units. Hutwelker explained that all infrastructure needs to be in place with a single phase project before units are built. Williams said the front two units already exist. Williams said he will not build them at once, and will build them as he sells them. Hutwelker encouraged Williams to speak to Pelletier about bonding. There was a discussion about what a single phase project consists of. Williams said he was going in as a single phase project. With the carport considered, it meets the square footage requirement by the Town.

Mitchell said that six visitor parking spaces seem inadequate. Pelletier said that with the carport and a parking space behind it, there are two parking spaces per unit.

Carbonneau asked that Pelletier go through all of the plan sheets. Pelletier showed the drainage plans, the landscape plans. She said that with wetlands it is difficult to plan for additional parking. The common area will be gravel and not paved to continue the rural character of the neighborhood. She noted the land is quite flat. There will be swales behind the units for drainage. She showed details on the driveway/access construction. She showed the unit plan and the elevations. There will be crawl space beneath the units. Carports can be used as screened porches.

Mitchell asked about drainage. Pelletier noted a large area that is wet that is coming from abutting property owners. Mitchell asked about stopping that water. Williams said a rain

garden will be constructed on the side where water drains into the property. Kallio said he was concerned about gravel being kicked onto the street. Pelletier replied that the entrance will be paved 20 feet into the property before gravel begins. The other gravel drive is for an end unit and no one else can use that driveway.

Kallio asked if Public Works Director Lee Dunham has looked at this plan. Carbonneau said Dunham is out of state on vacation and not currently available. Utilities are underground. When asked about a budget for the project, Williams said a budget has been developed and reserves are accounted for in the budget.

Thibault asked where snow storage is planned for. Williams said snow will be plowed to the end of each road. Carbonneau said she wanted to make it clear that this is not a roadway, but a driveway. Carbonneau also went on to say that she has received email from Mandy Alley about a potential boundary line dispute. She said Town Counsel advised that the ZBA could go forward with public hearing but the litigation will have to be resolved before the Town can give final approval. Williams said he had the property lines surveyed when he purchased the property and felt the boundaries were accurate. Carbonneau noted that the access can be required by the Town to be built to town specifications considering the possibility that the road could someday be taken over as a Town road, similar to the internal drive at Forest View Estates

**Public comment:**

Bradley Howe said he owns the property next to the proposed project. He said that drainage has been an issue. He said drainage across Route 10 goes to the West but drainage has been plugged up for years. He spoke to the history of the drainage problems. He spoke about the filling in at Larry's garage driveway and the former Mr. P's convenience store. Monadnock Fence used to have a swale which was filled in as well. He said no culverts were done to accommodate all of this filling in. He said there is a drain that goes nowhere. He said water was coming into his front yard and he was given permission to build a wall to stop water. He commended Williams for putting gravel in the plan. He said he would like to see something done to address the water problem. He wants to keep the improvements going forward. He said he is worried about the value of his property decreasing because of the project.

Travis Castor spoke about his property being about 20 feet from the property line of the proposed project. He is concerned that water will come down to his property. He said he loses his privacy and the water will pond on his property. He said the bog hasn't drained in a while and mosquitoes are a problem. This is considered a residential use and abutting setback is 20 feet.

Rachel O'Leary also spoke about water problems. She said that there is a river than runs under her house. She said the water is an issue. We are losing land to the swamp. She also spoke about extra traffic on West Street. She said if they plow to the end of the driveway the snow will go into the wetland and further asked if there are restrictions for wetlands. Carbonneau responded that for the leaching portion of a septic system 125 feet is required by Town ordinances. And a property owner cannot plow snow into wetlands.



Castor spoke about zoning requirements and pointed to the ordinance stating a building has to be 50 feet from any abutting residential dwelling, but Carbonneau pointed out that the ordinance he referenced is for the Commercial/Industrial district and the proposed project is in the Business District.

Bradley Howe spoke about fencing and reiterated the drainage problem which needs to be addressed with maintenance by the Town.

Pelletier said they picked up two culverts and nothing will be touched in the wetlands. Plowing can go up to the area, but not into it. She said all the water that they are displacing will be handled on the property. Pelletier said there will be no streetlights on posts, only residential lighting on the buildings themselves. She said they anticipate mostly elderly or young professionals coming and going and therefore not many trips. Donna Aron said not to downplay the number of traffic trips since there will be more than there is now. Pelletier said that it will be a couple of trips per day per unit. Aron noted all the traffic will be coming out on West Street.

Castor said that the drainage will be impacted by construction. Pelletier said that the water will be drained into the swales. Castor said it will be coming back onto his property.

Adam Cullis said he doesn't have a problem with property owners doing what they will with their land, but this is 15 units and is a big stretch for the neighborhood. He said he never had a water problem until 2004 when water began coming up from the water table. He said that to propose that many units provides a lot of impervious surface. He pointed out that the swale will do well enough except when the ground is saturated and we get heavy rains. Water table comes up. He again emphasized that he felt two or three units were preferable to seven buildings like is shown on the plot plan. Traffic is an issue. He said the proposed driveway is pushed over and construction will be taking out trees and bushes that act as a buffer. The driveway will be facing his bedroom, with lights coming in. He noted there is a lot of foot traffic in the area due to the proximity to the elementary school. And he pointed out that those who live there have been trying to make West Street a nice street. He said the impact of this size project on the little residential area is major. He said he would prefer to see a small shop go in, not a large Walmart or bowling alley. Size factor is what impacts on the neighbors. He said a smaller project would be better received.

Patty Fairbanks spoke about having moved in recently. She said she is concerned about the lights from traffic.

Tim Carrier said he is concerned about the additional traffic.

Rachel O'Leary asked if there were any guarantees about the swales working once sold. She also asked what the regulation for lot size is. Hutwelker pointed out that in the Business zone the regulation is for one acre per house, but with public sewer that isn't required.

Ethan Pinney said he lives across the street and is on board with the water situation. There is certainly a water issue. He said that if this goes through, then if water makes it into the wrong places, the town should be prepared to deal with the problems. He wanted to emphasize there are water issues and there is no place to send the water to; it ends up in his garage.

Carbonneau said Lee Dunham will be responding to request for waiver of setback for the driveway as well as water issues.

Castor spoke about the scale of the project for the small area. He said Swanzey Street sits up high and he said he has seen water travel on California Street. He said he doesn't want more water and more mosquitoes.

Bradley Howe asked the committee how they will approach the water issues. He asked if a Task Force should be formed, and how to get involved with the State of New Hampshire. He said the water situation will only get worse over time and the idea is to get the water moving west as it should be.

Hutwelker said that it is not the purview of this board to deal with the water issues. But the Board of Selectmen can take up the issue with Lee Dunham. If the residents provide email addresses, the residents can attend the Board of Selectmen meeting when the water situation is discussed.

Mitchell said he isn't close to taking action tonight. His observations: #1- it is clear that there are water issues which are not being addressed. #2 - severe storms are becoming more frequent based on his experience with another watershed. He is concerned about taking action that might make it worse. #3 – net zero run-off from any development is at issue and generally the Board accepts the assessment of licensed engineers on these matters. His concern is that water would impact on property values.

Hutwelker said he concurred with Mitchell. He recommended a site walk and made a request for a set of the drainage plans. Hutwelker also asked to take a look at the traffic study. He noted that the project was essentially double the housing units on West Street. He also said it is important to give the applicant time to reflect on the meeting and have an opportunity to respond to some of the comments of the public. Carbonneau suggested having the civil engineer at the next meeting. Williams and Pelletier agreed.

Castor asked the Board to look at California Street also, not just West St.

Thibault said the Public Hearing will remain open. The public will have additional time to speak. Kallio concurred with the site walk. Mitchell said that this one needs more time.

Thibault said all the public is welcome to the site walk. Howe said that he would encourage Lee Dunham be there as well since he has familiarity with the history.

**Motion** was made by Kallio to continue public hearing to September 11, 2017 at 5:30 for site walk at 23 West Street with adjournment to follow and reconvene on September 18, 2017 at the regularly scheduled ZBA meeting. There was a second by Skantze. Discussion: The applicant was asked to clear the area and provide some sense where the units would be. All were in favor. **Motion passed.**

Thibault thanked the audience for their respectful approach to questions and comments.

**ADJOURNMENT**

**Motion** to adjourn was made by Skantze, seconded by Mitchell and all were in favor. **Motion passed.** Adjournment occurred at 9:45 p.m.

Respectfully Submitted,

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

Beverly Bernard, Recording Secretary

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment, Swanzey Board of Selectmen & Swanzey Planning Board**  
Meeting – September 11, 2017  
23 West Street  
Swanzey, NH

*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.*

**CALL TO ORDER**

A meeting of the Selectmen, the Planning Board, and the Zoning Board of Adjustment (ZBA) occurred beginning at 5:30 p.m. at 23 West Street, Swanzey, NH when the Vice Chair of the ZBA called the meeting to order. The meeting was a site visit and continuation of a public hearing for the ZBA which was continued from August 21, 2017. The meeting was a site visit for the Planning Board and a site visit for the Selectmen.

ZBA members present: Vice Chair Bob Mitchell, William Hutwelker, Bryan Rudgers, Alternate Jane Skantze, Alternate Eric Kallio, and Alternate Adam Mulhearn.

*Absent:* Keith Thibault, Sarah Tatro, Alternate Shane Bryant and Alternate Marty Geheran.

Planning Board members present: Chair Glenn Page, Scott Self, Don Skiba, Jane Johnson, Joe Smith, and Alternate Michael York.

*Absent:* Richard Sainsbury, Selectmen's Representative Gus Lerandeau, Alternate Jim McConnell and Alternate Liz Traynor.

Present were Selectmen Kenneth P. Colby, Jr., W. William Hutwelker III, and Sylvester Karasinski. Also present was .

**OTHERS PRESENT**

Recording Secretary Beverly Bernard, Town Administrator Michael Branley, Director of Planning and Community Development Sara Carbonneau, Director of Department of Public Works (DPW) Lee Dunham, David Williams and Wendy Pelletier, agent on behalf of David Williams, Tim Goldthwaite from Meridian Land Services, and many neighbors and/or abutting property owners including Bradley Howe, Donna Aron, Patty and Richard Fairbanks, Jessica and Adam Cullis, Tim Carrier, Chad Bryant, Barbara Skuly, Brenda and Travis Castor, and Donna White.

**SITE VISIT**

**Site Plan Review and Subdivision Application and Special Exception Application**

Wendy Pelletier, agent on behalf of David Williams, wishes to construct a multi-family housing project (15 unit condominium complex) at property situated at 23 West Street. The property is situated in the Business District and is shown at Tax Map 57, Lot 7.

After Mitchell called the meeting to order and opened the public hearing at 6:00 p.m. he informed those gathered that any questions will be limited to the physical site. He said the following tonight's site visit/public hearing, the public hearing will be continued to September 18, 2017 at 7:00 p.m. at Whitcomb Hall where other issues can be raised at that time. Bernard read the agenda for the meeting to the gathering. The next item to be addressed was a letter of recusal from Keith F. Thibault, ZBA Chairperson. See attachment below.

The site visit began at the entrance to the property at 23 West Street. Williams described the work being done on the front building and informed the gathering that the driveway would be wider than visible at present. He pointed out surveyor stakes indicating the new location of the driveway. He said that the plants currently adjacent to the driveway will be removed in order to make way for the driveway expansion but that a vegetative buffer will be

added. Pelletier noted that the front space at the street will probably be used for postal boxes. The front building will house water pump and utilities, as well as one residential unit – a change from the original plan. Williams said large trees will be removed from the site adjacent to the driveway. He noted that an abutter property owner will be also using the new driveway.

The group walked deeper into the property where the revised plan was presented for review. At this point, Mitchell asked that all questions be directed to him and that each person with a question identify themselves.

Williams pointed out orange stakes which indicated the road to be built into the property to service the units, and blue stakes indicating the building units themselves.

Rudgers asked if Williams had purchased the neighboring property for the driveway and Williams said that “no”, he had not purchased that property, but have come to agreements with the abutting property owners (Alleys) regarding the property line (confirming that the survey and markers established by Pelletier are correct). Williams stated that the driveway for the project will be able meet the driveway setback requirement of 10 feet. However, he will need to remove a portion of the existing structure in order to do so.

Williams pointed to a puddle of water and spoke about how drainage from neighboring higher ground tends to collect in this spot. He said that he would be adding rain gardens and other drainage areas. He referred to rain gardens and to infiltration basins that will assist in keeping water on the property and not impacting neighbors. Carbonneau pointed out that the plan presented today is a revised plan and that the ZBA members should take a look at it. Skuly asked more questions about the planned rain gardens and Williams said he did not anticipate any water impacting on the driveway; it would be dry. Pelletier noted that the driveway will be raised up. Goldthwaite said he took into consideration water coming off higher ground in his drainage plan. Donna Aron asked who determines what are wetland locations and Pelletier responded that a certified wetland scientist was used for that service. Rudgers asked Carbonneau how wetlands are defined in NH. She stated that she is not a wetlands scientist, but noted that wetlands are defined by the Army Corps of Engineers and have 3 parameters – hydrology, vegetation, and soils. Brad Howe asked if the drainage plan will keep water from adding to the wet area to the west of the proposed project and Williams confirmed that it would.

Tim Carrier asked how much land clearing would be occurring. He is an abutter and was concerned that trees and shrubs would be removed such that it would reduce his privacy. Williams said that he did expect to rid the land of large trees, particularly dead ones which could pose a hazard to residents, and would be putting in a vegetative buffer.

Brenda Castor, an abutting property owner to the rear of the property, asked about the proposed parking area and if Williams would be raising a fence on the boundary line. Williams pointed out the proposed parking area and said he was not planning on a fence at the rear of the property. There was a discussion about the markers for the property lines and whether or not the surveyor had done them accurately. Castor said she did not think the markers were accurate and said she and her husband would have their own survey done to confirm the boundary line at the rear of their property. Mitchell said he had duly noted the Castor’s concerns.

The group walked deeper into the property and as far as the rear property line. Williams pointed out the locations of the proposed rear units where the blue stakes were. Several people consulted the plan. Cullis asked about the carport location for a particular unit and it was pointed out to him. Scott Self also asked about the parking area and Williams indicated an area to the west which is currently treed.

Williams was asked about his timeline for construction and he responded that he has no deadline. Donna White asked how much the driveway will be raised and Goldthwaite said about 3 feet, in locations.

Eric Kallio asked if there would be any re-planting of trees for buffers to abutting property and Williams said he will plant some shrubs for privacy, both for the neighbors and for the unit owners. Pelletier pointed out there is a landscape plan for the project.

Travis Cullis asked whether the project would be multi-phased or single phased and Williams responded that his attorney is working on those details. Williams did say that he envisioned the project lasting 2 or 3 years. A concern was voiced regarding the noise of dump trucks coming and going and Williams said that the units are small in size and they will be built quickly. He also said he would build some units, and then there would be a quiet period until those were sold. After which time trucks would be involved when the next set of units were being built. White asked whether the drainage will be completed first and Williams said some will be done, as required to take care of the drainage due to construction.

Rudgers asked if the units would have fire sprinklers. Williams said they would not. He said sprinklers create a potential for damage from mold which is higher than for fire damage. Donna Aron asked about the wells and Williams said there is only one artesian well planned but there would be storage tanks to address capacity. He also noted that he is prepared to hook the system up to Brown Water Company system if need be.

Aron pointed out that the property at one time was covered with old buses, cars, and snowmobiles and she said she had a concern about contamination of the soil from leaks from those vehicles. She asked that an independent soil assessment be made on the property. Mitchell asked Aron if she had photos of the land with vehicles on it to support her claim and she responded that she would look among her archive photos for one. Aron said she was afraid that the site might be a toxic waste dump. It was noted that some residents in the area have dug or drilled wells.

Castor spoke briefly about handling of burned out pumps when there is a low water table. He also walked into the wooded area to point out pink markers indicating the property line between his property and Williams' property. Both Brenda and Travis Castor said they were concerned about water on their property coming from the development. Rudgers and Mulhearn tried to clarify what Castor was saying about the pink markers and confirmed that the markers were indicating the property line.

Carrier asked how the wetlands were delineated and Pelletier said that soil borings were taken and the type of soil is part of the assessment. She said the wetlands scientist also note the high water line. Mitchell asked if there were any further questions about the site and there were none.

#### **CONCLUSION OF SITE WALK; PUBLIC HEARING CONTINUATION & ADJOURNMENT**

**Motion** was made by Hutwelker to conclude the site walk and continue the Public Hearing without further notice to the September 18, 2017 meeting of the **Zoning Board of Adjustment** at 7:00 p.m. at Whitcomb Hall. There was a second to the motion by Rudgers and no further discussion. All were in favor. **Motion passed.** The Site visit ended at 6:21 p.m.

**Motion** was made by Self to adjourn the meeting of the **Planning Board**. There was a second to the motion by Skiba and no further discussion. All were in favor. **Motion passed.** Adjournment occurred at 6:21 p.m.

**Motion** to adjourn the meeting of the **Board of Selectmen** was made by Karasinski. The motion was seconded by Hutwelker without further discussion. All were in favor. **Motion passed.** Adjournment occurred at 6:21 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary

Approved on

MEMORANDUM

To: Swanzey Zoning Board of Adjustment  
Attention: Robert Mitchell – ZBA Vice Chairperson

From: Keith F. Thibault, ZBA Chairperson

Date: September 5, 2017



Subject: Recusal – Williams Application/23 West Street

Please accept this memorandum as my recusal from the 23 West Street Special Exception application for property owner David Williams. It has come to my attention that a potential conflict of interest exists between the applicant and me.

This potential conflict of interest arises from the fact that my employer is one of the abutters to the applicant's property on West Street. SCS Housing Inc., a wholly-owned subsidiary of Southwestern Community Services, owns the property at the corner of Route 10 and West Street, which abuts the 23 West Street property. I am employed by Southwestern Community Services, which operates a single-classroom, pre-school facility on that site.

I personally feel that I could be impartial in this application's proceedings and any subsequent decision(s). However, I feel that a recusal may, in part, help to prevent the town and ZBA from legal challenges and/or litigation arising from any ZBA decision(s) relative to this application.

I apologize for the timing of this decision as well as any confusion or concerns arising from this recusal. Please do not hesitate to contact me with any questions. Thank you.

CC: Sara Carbonneau, Director of Planning & Community Development



Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – September 18, 2017

*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 6:00 p.m. by Chair Keith Thibault at 868 West Swanzey Road. Present were Thibault, Bob Mitchell, Alternate Jane Skantze, Alternate Eric Kallio, Alternate Adam Mulhearn, Alternate Marty Geheran, Director of Planning and Community Development Sara Carbonneau and Beverly Bernard, Recording Secretary. Also present was Heidi LaPlante.

**Absent:** Bryan Rudgers, Sarah Tatro, Bill Hutwelker, Alternate Shane Bryant

**PUBLIC HEARINGS**

**Variance Application**

Heidi LaPlante requests variances from Sections V.B.3. and XI.B.1. to permit the construction of a porch onto a non-conforming structure. Both the house and the proposed porch do not meet required setbacks. The property is located at 868 West Swanzey Road and is situated in the Business District. The property is shown at Tax Map 71, Lot 6. Public hearing continued from August 21, 2017 and from site visit/public hearing on September 18, 2017

The Chair seated Mulhearn for Hutwelker, Kallio for Tatro, Skantze for Rudgers and Mitchell and himself. Five members present for the site walk.

**Site Walk Discussion:**

The members of the Board reviewed the area where the proposed porch is to be built. The porch will have a partial roof over it to protect a large picture window from the sun and thereby lowering energy costs. The non-conformity was discussed. The required setback is 75 feet from the property line. Considering the right-of-way of the State of New Hampshire for State Route 10, which is 50 feet on either side of the center line, the property is non-conforming by many feet. Dimension from the house to the center of West Swanzey Road was measured at a maximum of 82 feet, 3 inches from southern corner of the house to the center of the road.

It was noted that the house's age is such that when it was built, it was conforming to regulations at the time. It is in-line with other buildings on State Route 10.

It was noted that a neighboring home has a carport and deck that are closer to the road than the desired porch of this applicant. Carbonneau noted that the neighbor received a variance in 2016 for the carport.

LaPlante said she would like to build a farmer's porch with rails and the height of the deck would be in line with existing small porch at the front door. LaPlante said she will not be moving the stairs or adding to them and the existing porch will be opened to the new porch.

There was a brief discussion about the possibility of putting the porch on another side of the house but LaPlante said the well and septic are both at the back of the house and that she really wants to lower energy costs and have shade on the west side of the house.

The site walk ended at 6:09 p.m. and reconvened at Whitcomb Hall at 6:33 p.m.

**Discussion:** Mulhearn said that there are a lot of properties that do not meet setbacks and this property appears to be further back than some of these properties. Geheran said the proposed porch is not going to extend out from the house further than the stairs. Overall, there doesn't seem there is an alternative place for the porch given the desire to block the sun from the main picture window. He also said he thought it would improve the aesthetics of the house given the broken down stair to the south which will be covered by the porch. It was noted that looking at the closest house, the abutting structure projects out much further than the proposed porch. Thibault said there would not be more non-conforming use added to the building than already exists.

Thibault asked for comments from the public and there were none.

Public hearing closed at 6:38 p.m.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

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

**Members said: Mitchell, no; Mulhearn, no; Kallio, no; Skantze, no, Thibault, no.**

*Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: Mitchell, yes because it is a non-conforming property and the stairs are already there and the addition of the porch would not be any more non-conforming. Mulhearn said there would be a safety benefit over the deteriorated southern stairs already there.**

*Would the granting the variances do substantial justice?*

**Members said: Mulhearn, yes, shading from the sun; Mitchell, yes; Kallio, yes because of shelter, Thibault, yes**

*Could the variances be granted without diminishing surrounding property values? (The question was phrased as follows: Would the variance diminish surrounding property values?)*

**Members said: Skantze, no, Kallio, no; Mitchell, no; Mulhearn, no; Thibault said no, there was no evidence that it would.**

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

a. **Members said: Mitchell said the property has a totally unshaded west side and putting the porch on the east side would not be effective; safety issue of the stairs, and the new porch would be equivalent in projection from the building to the existing porch. All agreed with Mitchell and said yes.**

- b. *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 said no**
- c. *Are the proposed uses a reasonable one?* **Members said: all said yes, Kallio said it will provide shelter to the owners of the property and it isn't more non-conforming. Skantze, said yes; Mulhearn, yes; Mitchell, yes; Thibault, yes.**
- d. *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: N/A.**

The Chair reported that “**yes**” prevailed and he entertained a motion to grant the request for Variance from Sections V.B.3. and XI.B.1.

**Motion** was made by Mulhearn to grant the request of Heidi LaPlante for variances from Sections V.B.3. and XI.B.1. to permit the construction of a porch where neither the house nor porch meet setback requirements on property located at 868 West Swanzey Road and situated in the Business District and shown at Tax Map 71, Lot 6. There was a second to the motion by Skantze and Geheran added that granting the variance is based on the plan submitted to the ZBA on September 18, 2017. All were in favor. **Motion passed.**

**Motion** was made to adjourn by Mitchell, second by Mulhearn. All were in favor. **Motion passed.** Meeting adjourned at 6:46 p.m. Geheran left the meeting.

The meeting of the Swanzey Zoning Board of Adjustment (ZBA) was re-opened at 7:00 p.m. at Whitcomb Hall by Chair Keith Thibault. Present were Thibault, Bob Mitchell, Bill Hutwelker, Alternate Jane Skantze, Alternate Eric Kallio, Alternate Adam Mulhearn and Beverly Bernard, Recording Secretary.

**Absent:** Bryan Rudgers, Sarah Tatro, and Alternate Shane Bryant

**Others Present:** Director of Planning and Community Development Sara Carbonneau, Wendy Pelletier, David Williams, Licensed Professional Engineer Tim Goldthwaite, Attorney James M. Callahan, Residents Adam Cullis, Bradley Howe, Chad Bryant, Travis Castor, Rachel O’Leary, Donna Aron, Tim Carrier, Richard and Barbara Sault, and Dan Lang representing Aolin Properties.

**MINUTES:**

- The Board considered the minutes of July 17, 2017. **Motion** was made by Mitchell to approve the Minutes of July 17, 2017. There was a second by Skantze. All were in favor. **Motion passed.**
- The Board considered the minutes of August 21, 2017. **Motion** was made by Mitchell to approve the Minutes of August 21, 2017. There was a second by Kallio. All were in favor. **Motion passed.**

**PUBLIC HEARINGS**

**Special Exception Application**

Wendy Pelletier, agent on behalf of David Williams, requests a special exception pursuant to Section V.B.2.b. to construct a multi-family housing project (15 unit condominium complex). The property is situated at 23 West Street, located in the Business District and shown at Tax Map 57, Lot 7. Public hearing continued from August 21, 2017 and from September 11, 2017 site visit/public hearing.

Public Hearing opened at 7:04 p.m.

**Discussion:** Thibault recused himself for this hearing. Seated for this hearing was Vice Chair Mitchell who took over running the meeting, Hutwelker, Mulhearn for Thibault, Kallio for Rudgers and Skantze for Tatro.

Discussion and Public Comment:

Mitchell asked Pelletier and Williams to present their proposed project. He asked that all questions from the attendees be addressed through Mitchell.

Pelletier pointed to the drawing for the multi-family project in a business district. She stated that if a business was to locate on the property and access from Route 10, it would put the building near the residential uses due to the 75 foot setback requirement. She noted there is a multi-family unit in the neighborhood. She passed out materials: a summary of the traffic and drainage studies and a letter from an abutter in favor of the project. Drainage will all be handled onsite. Anything draining to the wetlands will continue to drain to the wetlands. Mulhearn clarified that the documents refer to drainage and a letter from a realtor that the project would not negatively impact the value of surrounding properties. Pelletier continued saying snow storage will be in the swales. She noted that a portion of the front building will be removed.

Mitchell asked Pelletier to read the letter regarding the cleaning of the property. She read it to the attendees. In the letter Larry Alley from M& L Asphalt stated that he was hired to clean up the property and remove the contents, which he did. Pelletier said that the storage was right behind the house, and not further to the rear of the property.

Travis Castor interjected that he had a crew digging up automobile parts in the adjacent to the swamp.

Attorney Callahan said that last week that the Swanze Planning Board approved the plan, subject to the ZBA approving the special exception. He said that Engineer Tim Goldthwaite addressed the issue of possible contamination at the site and he did a search on the New Hampshire Department of Environmental Services (NH DES) website and other than a school bus, nothing was noted as being present on the property.

Patricia LaFountain said she has a natural spring on her property and what guarantee her spring will not be impacted by the development. Williams said there would be an artesian well for units, which goes down deep and should not impact springs.

LaFountain asked about drainage into her field – she said the drainage will be going to the west, toward the units, and her concern is that the water will back up on her property. She pointed out the property line and Williams said her property ends where the driveway turns to the west. Goldthwaite said the infiltration basins will send water into the ground. Attorney Callahan pointed out that Goldthwaite is a Licensed Professional Engineer.

Castor asked about the wetlands possibly moving toward California Street. He said it has been moving in that direction for the last several years. He said he is concerned because his property might be impacted by that movement of the water. Goldthwaite said the water will be the same or less given the drainage plan. Castor said the pitch is toward his property. Goldthwaite said there will be an infiltration basis along that property line. There was a discussion about the pitch of the unit's roofs. Williams said there is a flow north to reach a culvert at the northwest corner so that it will drain under State Route 10. Mitchell pointed out that the developer is not putting any more water into the wetlands.

Barbara Sault spoke about the water almost coming up to her house and going into the cellar in the spring. She said the boundary lines have been changed. She said the boundary line is not correct. Mitchell said the land has been surveyed by a professional surveyor. Sault said that they have also had survey done and it doesn't agree. Callahan said that he would like to see any survey that is different from their licensed surveyor. He said there is no contradictory evidence based on title; there has been only anecdotal evidence. Castor said he is pricing out a surveyor and a lawyer and he feels that he should have a fair chance to present evidence of a new survey.

Pelletier said there is no public record about any survey done in the past. Pelletier said she has not registered the new survey yet since they wanted to complete the application process first. She said she did research and there are no surveys on record at the Cheshire County Registry of Deeds regarding adjacent properties. Mitchell said the ZBA cannot use anecdotal evidence in support another survey. Callahan said everyone gets an opportunity to produce evidence. And if it happens after the fact, then there is an opportunity to file for reconsideration.

Tim Carrier said that Sault should be given the opportunity to produce another survey report. Travis Castor said that they did not have two years to prepare the information and will have it done shortly. He requested time to do so. He said the pitch of the land and units bothers him since he said he believes that water will flow into his property. He asked how his property gets protected. Goldthwaite addressed the pitch on the plan, saying the grade being shown was for the road and he pointed to a sewer manhole. Goldthwaite said it goes to the end of the road, front of the buildings, but not as far as to Castor's property.

Hutwelker asked about the Planning Board decision. Carbonneau said the Planning Board approved the site plan which includes the drainage.

Brad Howe asked about checking out drainage on State Route 10. Carbonneau confirmed that there was a meeting regarding culverts on State Route 10. She named the people who attended the meeting. Howe asked if the culverts were still working. Carbonneau said the State will be inspecting the culverts. The State is responsible for culverts going under State Route 10 and they are to report back to the Town. Williams said they found two culverts. Williams said there is a

tree down which is probably backing up some of the water. There was a discussion about maintenance of the culverts. Howe said expansion of property near California Street might have impacted on the wetlands and State Route 10 is acting like a dam. The water should run toward the west side of State Route 10. Mitchell said if all the outflow is retained in the development, the issue of whether or not culverts under State Route 10 are working is not applicable to the request under discussion.

Carbonneau noted that the Selectmen discussed the drainage concerns of the residents and that discussion is what precipitated the meeting. The Town is taking steps to review and hopefully address the situation. Howe said the Town of Swanzey approved development at the end of California Street and required road improvements to Route 10, which led to the water problems in the area.

Rachel O'Leary spoke about water that used to go into the wetlands. She asked for an independent environmental study, to see what impact to wetlands there might be from the proposed development.

Barbara Sault spoke about her survey being done 40 years ago and she said she thought the pins have been moved. Mulhearn said no other survey has been provided to the Board to date. Castor asked for the opportunity to do that. He said the pin he knew of has disappeared that he remembers where the pin was. He noted that the neighbors agree that the swamp is growing into their direction. He said he would like to take the card of Attorney Callahan to talk to his (Castor) lawyer.

Hutwelker said the last meeting was a month ago and the neighbors had an opportunity to bring information forward. He noted that casting dispersions on a licensed professional is a serious accusation and could force the surveyor to lose their license. He said that unless there is new evidence, the ZBA needs to move forward. If later the abutters can engage an attorney, and a surveyor, than a re-hearing can be requested. Carbonneau relied that there is a 30 day period from the date of decision in which to request a re-hearing.

Chad Bryant said yes there was an opportunity to bring more information to the table but it was a learning experience for everyone. There is also a financial element. It is a financial burden to impose a timeframe.

Barbara and Richard Salt said they never got a letter about the meeting on the 4<sup>th</sup>. Mitchell said that the Town records show that letters were sent out. LaFountain said her letter was certified. Carbonneau said she has a list of those who were sent certified mail.

Callahan said the State has enacted a statute for land development. He said it has been followed to a tee, and evidence has been supplied by a professional engineer. He noted an objection to delay the decision and he said the Town should be playing by the rules. For the record he has been a lawyer for years and never seen a requirement for environmental study for this kind of project. He said it is a very expensive procedure. They object to condition like that. There was a discussion about phase 1 environmental studies – which is just the public record documents.

Mitchell said this Board has an obligation to move on the application. No one on the Board is a professional engineer and they must rely on professionals to provide evidence. He said he was inclined to move forward tonight.

Adam Cullis said he would like to review the questions that the Board needs to review to make a decision. Mitchell said that the criteria for a special exception are less stringent than for a variance. The use is allowed by regulation subject to meeting specified conditions. Mitchell read the checklist for granting a special exception to the gathering.

Tim Carrier asked for a repeat of the criteria and it was provided to him. He then spoke about the traffic study and said he has a concern about the traffic on a short street with a few houses. He would like to hear traffic concerns addressed. He said he felt that the project was basically tripling the size of the neighborhood.

Goldthwaite spoke to the traffic study. He said they used Institute of Transportation Engineers (ITE) Engineers numbers to generate trip usage figures. He said he used averages. He said the average weekday increase would be about 10%. Carrier said he assumed that the majority of the cars will take a right to go out to State Route 10. The increase would be 20-30% on West Street said Goldthwaite based on very large developments. But he said he thought it would be more like a 10% increase in traffic on West Street because of the small size of the project. Carrier said that people walk on West Street; there is a lot of pedestrian activity and he said he is concerned. He said there could be two cars per unit. Carrier said there is a safety issue coming out onto West Street.

Donna Aron said she agrees with her son, Tim; when she backs out, she often almost hits another car. She said there will be a lot more traffic and that is a concern as well. Williams noted that people would not be backing out onto West Street from this project, but would be driving out instead. Bradley Howe said that if that house was gone at the entry and Williams built a nice-looking entry, then it might be more acceptable to the neighbors. If it was more inviting with more visibility from both sides, it would be better said Howe.

Mitchell asked for any new information. Rachel O'Leary asked for barriers on the northern edge of the property. Pelletier said there are none planned. Castor spoke about the wetlands having tires, asphalt, chairs and asked if that would be a consideration to the Board.

Rachel O'Leary spoke about Dollar General's willingness to put in shrubbery to block the view from her house in Troy. And having a vegetative buffer would make for a good neighbor. Tim Carrier said he was told at the site visit on September 11<sup>th</sup> by an unnamed "older woman" if you want a fence built, you can request that at the next meeting. He said that he would be okay with a fence to give him privacy.

Castor asked about the decision of the Planning Board. Carbonneau said there is a 30 day appeal period to Superior Court unless it is a consideration of a question of Zoning. If the ZBA renders a decision, the first step is a request for re-hearing, within 30 days of the date of the decision.

Adam Cullis asked about the criteria again and pointed out one criterion that had to do with reducing value of the property, or otherwise be offensive to the neighborhood. He said it would be offensive to the neighborhood and to this particular neighbor. Reduce offensive nature of the project – there is opportunity to do this. LaFountain asked about the people who didn't have a chance to attend the Planning Board meeting and what might be recourse. Mitchell made a distinction between the Planning Board and ZBA work. LaFountain asked if the Planning Board decision can be addressed again. Mitchell pointed out that there is an appeal process.

Public Hearing closed at 8:15 p.m.

Mitchell asked for comments from the Board members. Hutwelker said the question of a buffer should be considered and has been done before by the ZBA. He said it would be beneficial to all concerned. Mulhearn said he agreed with Hutwelker. He noted much of the commentary was not within the jurisdiction of the ZBA. He spoke about perceived value of offensive nature to the neighbors and certain things could be done, adding a fence or some sort of privacy buffer. Kallio said based on the testimony he is also in favor of a buffer and was concerned about the front part of the property being a concern. Skantze had no additional comments. Mulhearn said the task is to review the special exception criteria with best case information provided. He also noted approval by the Planning Board as well as the opportunity for others to provide other testimony.

The Vice Chair reviewed the **Checklist for Granting a Special Exception** with the members of the Board:

*Is the exception allowed by the ordinance?* **Members said: Mulhearn said yes, based on Town ordinances, yes by Kallio, yes by Skantze, yes by Hutwelker. People need to take a look at zoning ordinances when voting and the ZBA is interpreting them, not making them. It is allowed and multi-family use is nearby on Swanzey Street and Haley Heights is around the corner. Mitchell 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: Kallio said yes, since there are other multi-family in area, Skantze said yes, Hutwelker said yes, Mulhearn said yes, other examples in the area are similar, Mitchell 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?* **Members said: Skantze said no, Hutwelker said he would like to have a discussion with regard to buffering and Mitchell said that could be part of a motion. Attorney Callahan interjected that the Applicant is willing to provide an arborvitae buffer. Hutwelker said no, it would not reduce property values and there is a need for this type of housing. Mulhearn said he did not see testimony showing value would be reduced but recognizes that there is a group of folks who do find it offensive. Mulhearn voted yes, the people in the neighborhood find it obnoxious and offensive. He also mentioned that a border of shrubbery would reduce the offensiveness. With no abutting visual block, Mulhearn said he would vote yes, but with an abutting visual block, no. Kallio said no, and he said he felt the project is reasonable. Mitchell, no,**



there is no evidence that property values will be reduced. He said it is clear that the neighbors believe it will be injurious to them. But he said that there is no evidence of that injury. 4 – vote no; 1 - yes. Hutwelker said he wanted for the record that his opinion that property value is not reduced by the presence of the proposed project is based on his own personal opinion and no other.

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

Members said: Hutwelker said people will be driving out head on and the engineer from Meridian indicated 300 feet of sight line and that would be sufficient for safety. He noted the tree line will be removed and if we do grant the approval, and removal of portion of the L of the house and tree line that makes the visual line even better. Mulhearn based on testimony, impact within tolerances of the road, no; Kallio said based on the testimony and traffic study the level of traffic is acceptable, no; Skantze said no; Mitchell said no.

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

Members said: Mulhearn since it was approved by the Planning Board who looked at other issues like parking, the size of the units and he said yes; Kallio said yes it is adequate given the applicant will provide arborvitae; Skantze said yes. Hutwelker said he would like to make a recommendation to the developer to tie into the West Swanzey Water Company for water to serve the development and also paving the driveways since the stone driveway doesn't absorb as much water as one would think and the noise level is higher. Hutwelker voted yes. Mitchell said yes.

The Chair entertained a motion to **grant** the request for a special exception to special exception pursuant to Section V.B.2.b. based on the responses to the checklist for granting a special exception.

Mulhearn **moved** to grant the request of Wendy Pelletier, agent on behalf of David Williams, for a special exception pursuant to Section V.B.2.b. to construct a multi-family housing project (15 unit condominium complex) on property is situated at 23 West Street, located in the Business District and shown at Tax Map 57, Lot 7 subject to a raising a visual buffer to abutting properties **No second to the motion.**

Carbonneau recommended re-opening the public hearing – moved by Hutwelker **moved** to re-open the public hearing for the sole purpose of discussing vegetative buffers. There was a second to the motion by Skantze.

Public Hearing Re-opened at 8:38 p.m.

Pelletier said Williams has agreed to put an arborvitae hedge on north boundary and on east boundary and Williams said he isn't planning taking many trees down on south side, only the ones which are dead and could be hazardous. Carrier said he would be happy with some vegetation as well on the south side where the driveway for the project turns to west. Donna Aron asked how big the arborvitae would be. Williams estimated four feet from ground at beginning and they will grow larger over time. Rachel O'Leary asked about staggering the arborvitae so they can grow together. LaFountain asked about salt maybe killing the trees. Mitchell said that is beyond the scope of this Board. Castor asked about the spacing. Williams

said they could be staggered to create a wall. Williams said buyers will want their privacy too. Castor said the thicker the better. Pelletier said they have a landscape professional who did the landscape plan. The location of the proposed vegetative buffer was indicated on the plan by Pelletier.

Public Hearing closed at 8:45 p.m.

**Motion** was made by Mulhearn to approve the request of Wendy Pelletier, agent on behalf of David Williams, for a special exception pursuant to Section V.B.2.b. to construct a multi-family housing project (15 unit condominium complex) on property situated at 23 West Street, located in the Business District and shown at Tax Map 57, Lot 7 subject to the installation of vegetative buffer as testified during the public hearing. There was a second by Kallio. All were in favor. **Motion passed.**

Carbonneau gave information to the public present as to what to do about requesting an appeal to the ZBA decision should they wish to do so.

Mitchell called a 5 minute recess at 8:48 p.m.

Recess ended at 8:52 p.m.

- **Public Hearing – Variance Application**

Aolin Properties requests a variance from Sections V.B.3. and XI.B.1. to permit the construction of an addition that does not meet required setbacks onto a non-conforming structure. The property is located at 223 Monadnock Highway and is situated in the Business District. The property is shown at Tax Map 19, Lot 65-1.

Chair Thibault returned to the table and seated himself, Mitchell, Hutwelker, and Mulhearn for Rudgers and Skantze for Tatro.

Public hearing opened at 8:53 p.m.

Discussion: Dan Lang was present representing Aolin Properties. Carbonneau spoke about the public notices and notices to Department Heads which went out without feedback. She said the business is not served by public water and sewer. She said the setback requirement is 75 feet and the furthest point of the current building is setback 44 feet from the property line. The setback from State Route 12 is non-conforming.

Lang said he wants to put a lean-to for storage to keep the property cleaned up. He said the proposed roof off the back is 14 foot. He said the lean-to will not be enclosed and have just posts and roof.

Mitchell said the lean-to does not make the building any less in compliance. Mitchell also said this is really in back and not viewable from the street. Lang said he wants to get the property cleaned up. Carbonneau asked why it couldn't go on west side of building further away and Lang said he isn't sure where the septic is and the future plans are to add to the building in that area.

He said he would like to save that side of the building for something more useful and appealing. He said that there is a makeshift septic system and the Town does not have any information about it. If they expand the structure with enclosed space in the future, they will need a new septic system. This will be 56 feet from State Route 12.

Thibault asked for comments from the public and there were none.

Public hearing closed at 9:00 p.m.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

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

**Members said: Given the addition will be less non-conforming, no said Hutwelker. No benefit to the public. Skantze said no, Mulhearn said no, Mitchell said no and Thibault as well.**

*Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: Mitchell said yes, and it is well below grade and not in view of the public. All the other members of the Board agreed and said yes.**

*Would the granting the variances do substantial justice?*

**Members said: Mulhearn said yes, well within acceptable. Mitchell yes, Hutwelker said there is no public benefit to deny the applicant and the benefit to the applicant is stronger. Skantze said yes as did Thibault.**

*Could the variances be granted without diminishing surrounding property values?*

**Members said: Skantze said yes, Hutwelker said yes and the project is well below grade not visible, the rest of the members of the Board also said yes.**

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

- e. *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: Existing structure already encroaches and building lot is significantly different since it is below grade, unique characteristic and it sets below Route 12. All concurred.**
- f. *Are the proposed uses a reasonable one?* **Members said: all said yes**
- g. *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.* **N/A.**

The Chair reported that “**yes**” prevailed and he entertained a motion to grant the request for Variance from Sections V.B.3 and XI.B.1

**Motion** was made by Mitchell to grant the request of Aolin Properties for a variance from Sections V.B.3. and XI.B.1. to permit the construction of an addition of 60 X 14 foot lean-to that does not meet required setbacks onto a non-conforming structure on property located at 223 Monadnock Highway, situated in the Business District and shown at Tax Map 19, Lot 65-1.

There was a second to motion by Skantze and no further discussion. All were in favor. ***Motion passed.***

**ADJOURNMENT**

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Beverly Bernard". The signature is written in a cursive, flowing style.

Beverly Bernard, Recording Secretary

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – October 16, 2017

*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 Keith Thibault at Whitcomb Hall, 17 Main Street, West Swanzey, NH. Present were Thibault, Sarah Tatro, Alternate Eric Kallio, Alternate Adam Mulhearn, Alternate Marty Geheran, Alternate Jane Skantzé, Director of Planning and Community Development Sara Carbonneau and Beverly Bernard, Recording Secretary.

**Absent:** Bryan Rudgers, Bob Mitchell, Bill Hutwelker, Alternate Shane Bryant

**Others Present:** Mark & Mary Durling, Realtor Bob Barnard

**MINUTES:**

- The Board considered the minutes of September 18, 2017. **Motion** was made by Mulhearn to approve the Minutes of September 18, 2017. There was a second by Skantzé. All were in favor except Geheran and Tatro who both abstained. **Motion passed.**

**PUBLIC HEARINGS**

**Special Exception Application**

Mark & Mary Durling request a special exception from Section III-AA,B. to permit a detached accessory dwelling unit (DADU). The property is located at 44 Hackler Drive and is situated in the Residence District. The property is shown at Tax Map 33, Lot 34.

For this hearing the Chair seated himself, Tatro, Geheran for Mitchell, Mulhearn for Rudgers, and Kallio for Hutwelker.

Public Hearing opened at 7:11 p.m.

**Discussion:** Carbonneau noted the departments notified, public notices, and a bit of the history of the property. She said this is an outbuilding permitted as a garage/workshop. She noted the original application said there would be no plumbing. She noted an abutter who is in support of the application. She also provided a written response from Code Enforcement Officer Mike Jasmin. She noted the original permit was for 2004 for garage with workshop. Carbonneau said she has the application with colored photos if the committee members wished to see those. Checklist for the ordinance needs to be addressed, as well as the checklist for a special exception.

Thibault said that the normal procedure would be to ask the applicant to show his or her plans for the proposed DADU, but this building is already built. The applicant stated that he now wants to sell the house and learned that he needed to have the proper permits in place.

Mark Durling said that when they first built the garage, they wanted to store equipment and have an office above the storage area. Durling said he had presented a set of plans back then to Code Enforcement. He acknowledged that the permit did not include plumbing but the Building Inspector gave him a Certificate of Occupancy (C.O). , which gave him the impression that everything was okay since the building had a kitchen and plumbing. Durling said a daughter lived in the building after coming home from college. He said he has had the septic tank pumped often. Then after daughter left, his sister has lived in the building. He said that he thought that the assessment showed there was an apartment. Mary Durling said the assessment card said garage/apartment.

Carbonneau confirmed that the permit allowed for electrical but not for plumbing. She asked how the septic tied to the rest of the system. Mark Durling said it is a 1000 gallon tank which is not tied into the septic system for the house, nor does it have its own leach field. He said a leach field and new tank will be coming soon to be installed. He said he installed the 1000 gallon tank for the apartment. Mulhearn asked whether the new septic system will only accommodate the garage and apartment or both the house and apartment. Durling said it would only be for the garage/apartment. Durling said a perc test has been done but it was not ready for today's meeting. He said engineer Tom Forest is confident he can put in a new system. Thibault noted that there would be two wells and two septic systems eventually on about 9 acres of property. When asked about the design, Durling said it is for a two bedroom system. Thibault asked about the work done on the building. Durling said he did the work himself. He is a contractor and he installed the septic system. Thibault asked about the timing for when the unit became an apartment. Durling said the septic tank was not put in until 2005 when daughter needed a place to live.

Geheran said he was struggling with the idea of plumbing being installed without a C.O. for plumbing. He wondered aloud how a contractor who does that kind of work cannot know about the requirement for proper documentation required by the Town. Durling insisted the plumbing was in place when he received the C.O. He said he thought meant it was approved. Thibault reviewed the C.O., which did not include plumbing on it. When asked about his business storage needs, Durling said he operates out of a different location now.

Durling said the space is 655 square feet in total space of garage. Carbonneau noted the measurements need to come under the 750 sq. ft. that is required. The stairway leading to the living space has to be covered since it is outside. Geheran noted that the requirements of Code Enforcement should be included in any approval.

Carbonneau said approval has to be subject to a septic design from a licensed septic designer, and the applicant must submit an application to New Hampshire Department of Environmental Services (NH DES). She said Tom Forest will need to provide a letter that the septic design is in compliance with Town and State regulations/ordinances.

Kallio asked if potential buyers are aware of the issues involved with the DADU and Durling said, "yes".

Mulhearn asked again about the square footage – it could be under the 750, but no one has visited it yet to confirm. There are no septic plans here, but they are being reviewed. Mulhearn said a typical application would have these items ready before the application comes to the ZBA. Geheran suggested that Code Enforcement Officer Mike Jasmin should verify the square footage and other items on the

laundry list. Kallio said he would like to see an actual certification of the septic before making a decision on the application for special exception. Kallio also asked about visiting the site. He also said he would like Jasmin's feedback and Carbonneau said Jasmin would probably go to the site himself before responding. Mulhearn said he would like to know the size of the dwelling and see the certified septic plans before making a decision.

Bob Barnard is the realtor working with Durling. He said he measured the building with Durling and came up with 655 square feet. Geheran said it is necessary to have the laundry list of items done by Jasmin to tell the ZBA members what needs to be done. Kallio confirmed he would like a site walk and Thibault said the ZBA traditionally agrees to a site walk even if only one member requests it.

There was a discussion about when to hold the site walk since it is getting dark earlier. Mulhearn asked to meet on the regular date of the meeting since it is difficult for him to attend on another date. Geheran said it would be difficult for him to arrive before 5 p.m. for any site visit.

**Motion** was made by Kallio for site walk/public hearing to take place at 5:00 pm on November 20, 2017 at 44 Hackler Drive and immediately following the site visit the public hearing will reconvene at Town Hall.

Before a second was called to the motion, Durling said they are under contract to sell the house before November 20<sup>th</sup>. Carbonneau said the State allows for a four year period to install a septic system before the permit issued becomes invalid. She suggested that any approval by the ZBA be on the condition that the septic system be installed within 30 days. Durling said he is already preparing the site for the septic system to get a step ahead of the installation. Carbonneau stressed the Town needs to approve the septic system plan and then it needs to be approved by the State of NH.

Kallio **amended his motion** for site walk/public hearing to take place at 5:00 pm on November 20, 2017 at 44 Hackler Drive and to re-convene the public hearing immediately after at Town Hall without further notice. There was a second by Mulhearn. Mulhearn said he would like to have a layout or drawing of the building as proposed.

Thibault asked if there were any comments from the audience. There were none. Thibault stressed to the members of the ZBA that the public hearing is open and therefore no conversation among themselves about the subject should be conducted unless everyone is seated. All were in favor. Tatro abstained. **Motion passed** four votes in favor, one abstention.

Public Hearing closed at 7:46 p.m.

#### **OTHER MATTERS AS REQUIRED**

Carbonneau said the NH Municipal Association is having workshops in November and if anyone wants to attend let her know.

Carbonneau said that in November meetings can begin to take place once again at Town Hall. She asked for preference for regular meetings. Carbonneau noted that during the week there are not many rentals at Whitcomb Hall. There was a discussion about the noise level at Whitcomb Hall because of tile ceiling and Carbonneau noted there are also issues with hearing at Town Hall. She suggested that maybe microphones would help.

Carbonneau also noted that at 5:00 pm on Wednesday, October 18, 2017, the Selectmen will be visiting the Golden Rod Grange Hall and that meeting is open to anyone who wants to take a look. She said many items have been removed and the building may be useful for town meetings as well.

Kallio spoke about use of microphones, which helps focus the meeting if applicants must speak through microphone.

Carbonneau also informed the ZBA members that the Planning Board appeal period for approval for David Williams's development off West Street has passed. The ZBA approval may be appealed until Wednesday, October 18, 2017 at 5:00 pm of this week for a re-hearing. She noted she did receive a phone call today regarding the appeal process.

**ADJOURNMENT**

**Motion** to adjourn was made by Mulhearn, seconded by Kallio and all were in favor. ***Motion passed.***  
Adjournment occurred at 7:54 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary



Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – November 20, 2017

*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.*

**SITE VISIT/PUBLIC HEARING**

**Special Exception/Public Hearing**

Mark and Mary Durling of 44 Hackler Drive request a special exception from Section III-AA,B . The property is shown at Tax Map 33, Lot 34, situated in the Residence District.

A site visit/public hearing meeting of the Swanzey Zoning Board of Adjustment (ZBA) was continued at 5:00 p.m. by Chair Keith Thibault at 44 Hackler Drive, property owned by Mark and Mary Durling. Present were Thibault, Bob Mitchell, Alternate Eric Kallio, Alternate Marty Geheran, Bryan Rudgers, Director of Planning and Community Development Sara Carbonneau and Beverly Bernard, Recording Secretary. Also present was Mark and Mary Durling, Code Enforcement Officer Mike Jasmin and Real Estate agent Bob Barnard.

**Absent:** Bill Hutwelker, Sarah Tatro, Alternate Jane Skantze, Alternate Adam Mulhearn, and Alternate Shane Bryant.

The meeting began in the garage of the proposed Detached Accessory Dwelling Unit (DADU). Geheran said it was his understanding that the original purpose of the garage was for a business with an office upstairs. Carbonneau noted that a business use was never applied for on this property. Mark Durling explained that a daughter moved into the upstairs and Carbonneau noted the building was converted to an apartment without a permit, as the building permit for the garage did not allow for plumbing. She said the building was not permitted as a dwelling unit.

Jasmin reviewed the laundry list of items that need to be taken care of in order to be in compliance with Swanzey ordinances for a DADU. He spoke about reattaching the smoke detectors and said they could be replaced with heat detectors. The dryer duct has to make its way to outside of the building. Jasmin said 5/8 inch firewall sheetrock needs to cover the entire ceiling of the garage as appropriate for living quarters above a garage.

Carbonneau noted there may have had a business operating in the building in the past but that any future business coming in would need to go to the Planning Board for site plan review and possibly ZBA approval.

Outside review: The group moved outside to the staircase to the apartment. Jasmin said replacement of joist hangers for the stairs was needed and noted some rot because non-pressure treated wood was used. He noted with only one set of stairs outside the structure, those stairs are required to have a roof over head of 6' 8". He also noted that the stairs need a hand rail that is able to be gripped by hand. He

said the stairs also needs lights as well. A second set of stairs not covered would need to be inside and cannot exit inside a garage.

The group entered the building: Jasmin spoke about the maximum of a DADU is 750 s.f. of space, noting that he calculated the area of the DADU at approximately 762 s.f. Carbonneau noted that this was a concern, as the ordinance does not allow more than 750 s.f. He spoke about habitable space needing more than 5 feet overhead. He did not have an exact number and stated that he needs to re-measure and crunch numbers to have a better number. He spoke about the shower needing to be a minimum of 30"X30" and the existing bathroom also needs more space over the toilet. Outlets are in approved spaces, he said. The group all inspected the bathroom. The area above the shower or toilet must be 6'8", minimum height, and as well for the sink. Carbonneau said she was concerned about the square footage and noted that a DADU cannot be more than 750 square feet unless they apply for a variance. Jasmin said he could do more mathematics including the size of the dining area and prepare that for the Board. Carbonneau said that the authority is Code Enforcement for measuring accuracy, not relying on the applicant. Carbonneau said it is important to determine useable space. Habitable space requires a minimum of 5 feet and 7 foot height overall. There was a discussion about what is habitable space, discussing closets and washer/dryer space. There was a discussion about changing the bathroom, and whether anything was impossible to do. Jasmin said the bathroom would be a challenge but it can be done. Jasmin noted the roof could get lifted without increasing the habitable space in order to accommodate the changes required for the bathroom. Thibault asked about two family homes being acceptable in the Residential District and Carbonneau said two separate dwelling units larger than 750 s.f. are not allowed unless they are connected (two-family/duplex).

There was a discussion about an additional stairwell that could be exited through the garage but not into the garage. There were no other questions from the Board. Thibault asked if the building was currently occupied and Mark Durling said yes by his sister. Carbonneau said we do require the owner to reside in one of the units on the property. And she said there doesn't require a family relationship. It was noted there was a balcony outside the bedroom room and it was noted the window is compliant. Carbonneau noted the septic design was submitted to the State of New Hampshire (NH). Bob Barnard handed the septic design operational approval from the State of NH to Carbonneau. Barnard said the new system was designed, approved, and installed. The group left the building to return to Town Hall to continue the public hearing.

### **The Meeting continued at Town Hall**

Seated were Thibault, Rudgers, Mitchell, Geheran and Kallio. Bill Hutwelker arrived at 6:25 p.m., but was not seated for the Durling public hearing.

Discussion: Kallio asked Durling whether he was prepared to complete the conditions to be met as provided by the Code Enforcement officer and Mark Durling said yes. Barnard said that Durling knows what needs to be done as stated by Code Enforcement and the Fire Inspector. Carbonneau noted the document for State of Operation from the State of NH stating the septic system does meet State requirements.

Durling said that it wasn't intended to be an apartment originally but he made the changes for a daughter. He acknowledged he did not go through the permit process but given he was being taxed on it

he thought it was public knowledge. Durling said his sister has moved into the apartment. He noted the property is on the market and the new buyer would like to have a legal apartment.

The members of the Board reviewed the Durling application and the pertinent zoning ordinance. Thibault asked Carbonneau if a DADU can be approved with conditions and she said yes. Geheran asked whether the applicant would need a Certificate of Occupancy (C.O.) for the building and Carbonneau said yes. She also suggested a time limit be imposed should the Board approve the DADU since there is someone living there and there are life-safety issues involved. Barnard said the sellers are willing to do the work immediately and noted they have a buyer lined up.

Mitchell said this is highly unusual in that there is no plan for the Board to review as to how the changes will be made and said he is uncomfortable with the life safety issues involved.

Thibault announced to others present for the rest of the agenda that the Board is dealing with an application that was begun last month. He explained that the policy has been not to go beyond 9 p.m. for a new application should the meeting run that late.

Jasmin reported his measurements/math for the size of the DADU, as a result of re-measuring the unit immediately following the site visit. He came up with 685 square feet for the DADU that is within the 750 maximum allowed for a DADU. Two options were discussed: approval upon condition on C.O. being granted according to Town regulations. Geheran agreed that the Board doesn't make decisions without seeing plans, but Code Enforcement Officer Jasmin will approve the work so he was comfortable with that. Mitchell said he is open on the issues. Barnard said they know what needs to be done and it is a valid point to not have a plan which would alleviate the uncertainty.

Thibault spoke to the fact that someone is living there at the moment and said given life/safety issues, he said that he would like to say no one live there until the issues are resolved. Jasmin said that if a fire warning system was in place in the garage, he would feel better. There was a discussion about a 24 or 48 hour limit to finish the fire warning system.

Public hearing closed at 6:12 p.m.

The Chair reviewed the **Checklist for Granting a Special Exception for a DADU** with the members of the Board:

- a. *The DADU shall maintain an aesthetic continuity with the principal dwelling unit as the single family dwelling.* **Members said: all said yes**
- b. *No more than one accessory dwelling unit shall be permitted per single-family dwelling and/or lot.* **Members said: all said yes**
- c. *A DADU shall be no greater than 750 square feet.* **Members said: Given the information provided by the Code Enforcement Officer, the members said yes**

- d. *Either the principal dwelling unit of the DADU must be owner occupied. **Members said: Geheran noted that if the Durlings move, this is still applicable and would become an enforcement issue. The members said yes that they agreed that Durlings do occupy a home on the property.***
- e. *A building permit for A DADU must be approved and issued prior to its construction and a DADU shall meet all life safety and building codes. **Members said: all said no***
- f. *Adequate off-street parking shall be provided to serve the combined needs of the principal dwelling unit and the DADU. **Members said: all agree that yes, there is sufficient parking for both buildings***
- g. *The DADU shall have no more than two (2) bedrooms. **Members said: all said yes***
- h. *The existing or proposed septic system must be certified by a licensed septic designer or engineer as adequate to support the DADU and principal dwelling unit in accordance with New Hampshire RSA 485-A:38. **Members said: all said yes***
- i. *Prior to occupancy of the DADU, the homeowner shall obtain an occupancy permit from the Code Enforcement Officer. **Members said: all said yes***
- j. *Both the primary dwelling unit and the DADU must remain in common ownership and shall not be subdivided and or transferred to condominium ownership. **Members said: all said yes***

The Vice Chair reviewed the **Checklist for Granting a Special Exception** with the members of the Board:

*Is the exception allowed by the ordinance? **Members said: all 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 residential use and appropriate location – agreed by all***
- 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: members said no***
- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians? **Members said: all said no***
- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use? **Members said: Geheran said yes, with conditions, and the rest agreed.***

The Chair entertained a motion to **grant** the request for a special exception pursuant to Section III-AA,B, based on the responses to the checklist for granting a special exception.

Geheran **moved** to grant the request of Mark and Mary Durling of 44 Hackler Drive for a special exception from Section III-AA,B. on property shown at Tax Map 33, Lot 34, situated in the Residence District on condition that the compliant list provided by Code Enforcement on October 23, 2017 be completed before a Certificate of Occupancy is issued and that Certificate of Occupancy must occur within 60 days and the condition requiring a smoke/heat detector be properly installed within 48 hours. There was a second to the motion by Mitchell and no further discussion. All were in favor. **Motion passed.**

Thibault thanked Jasmin and Carbonneau and the Board for all their efforts on this application.

#### **REGULAR ZBA MEETING AT TOWN HALL, 620 OLD HOMESTEAD HIGHWAY**

The meeting of the Swanzey Zoning Board of Adjustment reconvened on Monday, November 20, 2017 at 6:25 p.m. at Swanzey Town Hall, 620 Old Homestead Highway. Bernard read the roll call and the agenda. Thibault said he could not be seated for items 2 (Castor Request for Rehearing) and 4 (Carrier Variance Application). In the interest of efficient review and to allow Geheran to be seated (and to leave early), Thibault moved item #4 to item #3 in order to address #2 and #4 sequentially. Thibault stepped away from the meeting. Vice Chair Mitchell took over running the meeting.

**Others Present:** Tim and Kim Carrier, Amy Mitchell, Russell Driscoll, Barbara Driscoll, Jim Bialowski, Eric Brosseau

#### **Request for Rehearing**

Travis and Brenda Castor request that the Board grant a rehearing regarding the Board's decision rendered on September 18, 2017 on the special exception application submitted by David Williams. Thibault stepped away from the table due to a potential conflict of interest. Mitchell seated himself, Hutwelker, Rudgers, Geheran, and Kallio for this discussion.

Mitchell noted that there will not be public testimony during this discussion since this is a public meeting, but not a public hearing. Mitchell noted receiving a letter from the Castors, and from Attorney Callahan dated November 12, 2017. Mitchell said the determination of the Board is whether or not an unlawful or unreasonable decision was made on September 18, 2017.

**Motion** was made by Kallio to include Attorney Callahan's letter of November 17 in the discussion. Rudgers seconded the motion. Discussion: Hutwelker said it would be erroneous to accept the attorney's letter without the Castors having the time to comment on the letter. Mitchell called the vote. Kallio was in favor. Four were opposed. The **motion failed, 4 opposed, one in favor.**

Mitchell referred to Castor's letter which was submitted to the Board. Geheran requested time to review the minutes for this matter and Carbonneau supplied minutes going back to August of 2017. The Board members reviewed the minutes provided.

Mitchell addressed the points raised by the Castors. He said the Board was in receipt of a survey done by a licensed professional at the time the decision was made. He noted that as of tonight an alternate survey has not been presented. He also noted that during the application process and including the

evening of the decision there was no evidence that the project in question would have adverse impact on the value of neighboring properties. Rudgers said he didn't see anything that rises to the level of illegal action. There was a discussion about the boundary dispute. Mitchell said that 5 feet adjustment of the boundary would not have impacted his decision. Geheran said he doesn't think there can be an appeal of the decision without new data on the boundary dispute. Hutwelker said the appellant needs to show the Board that the Board made an error. He said the boundary line dispute was considered. The Castors had ample time to obtain a survey to dispute the boundary line provided by the applicant's surveyor at the time of the decision. Hutwelker pointed out the survey was done by a licensed professional surveyor.

Rudgers referred to the real estate valuation and said the Board has no evidence about that, which is the purview of real estate professionals and banks, not this Board. Geheran said there was 4 weeks during which the Castors could have obtained a survey and had sufficient time to provide new data.

Mitchell called the vote on whether or not to grant a re-hearing: **All were opposed.**

**The request of Travis and Brenda Castor for a rehearing regarding the Board's decision rendered on September 18, 2017 on the special exception application submitted by David Walliams was denied.**

#### **Variance Applications/Public Hearing**

Timothy and Kim Carrier request variances from Sections V.B.3. and XI.B.1. to permit the expansion of a non-conforming structure. Both the house and the addition do not meet required setbacks. The property is located at 27 West Street and is situated in the Business District. The property is shown at Tax Map 57, Lot 6.

Public Hearing opened at 6:52 p.m. Seated were Mitchell, Rudgers, Hutwelker, Kallio and Geheran.

Discussion and public comment: Carbonneau spoke about public notices in three public places and the Town website and letters sent to abutting property owners. She noted there has been no comment from Department Heads and that the property is located in the Business District which requires a 75 setback from the road. The property is non-conforming. She noted that the 13' X 13' foot deck in the rear of the building was given a variance in the past and this deck will be replaced by the proposed addition. Tim Carrier was present. He said that the existing deck will be replaced with an 18'X23' three season room; this will be on the back side of the house and therefore will not encroach any further. Carrier described the land to the rear. He said it is thin woods and quite open. He said the property behind him becomes swampy and wet. Kim Carrier was also present. The abutter to the west is Southwest Community Service and to the north is David Williams, 15 unit mini-condo project. And across the street is Monadnock Fence Co. Mitchell said there are mostly residential units on West Street. The Carrier's property is very similar to other properties on the street.

Hutwelker asked about the stairs and how far out they are planned to go and Carrier said maybe 4 or 5 feet out. Plan is to have a door that exits toward the garage side. There is no encroachment in the rear, but because the building itself is encroaching entirely within the 75 setback the property is non-conforming.

Mitchell asked for questions: Kallio and Geheran said they were good. Hutwelker asked about any special conditions and Mitchell noted this house pre-dates the 75 foot zoning ordinance.

Mitchell asked for any public comments and there was no further comment.

Public Hearing closed at 7:05 p.m.

Mitchell said he sees this type of application frequently where the new construction is not in direction of existing encroachment. He noted this one is away from the front, to the rear, and the house is representative of the neighborhood. Hutwelker said the ordinance used to state the home had to be 75 feet or in-line with other homes on the street and “in-line” was removed some time in the past, making this home, which is in line with other homes on the street, non-conforming.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

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

**Members said: Geheran said yes given the addition is in the rear of the building and away from the encroachment and not creating a new encroachment and there is no other way to build it. And no one is going to see it. All were in agreement.**

*Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: Mitchell said the ordinance was applied to existing properties and there is no further harm to the front boundary. The others agreed.**

*Would the granting the variances do substantial justice?*

**Members said: Geheran said a home owner has the right to improve his property and there is no further encroachment. All agreed.**

*Could the variances be granted without diminishing surrounding property values?*

**Members said: Hutwelker said there is no evidence of the addition diminishing surrounding property values. All agreed.**

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

- a. Members said: Mitchell said that the neighborhood is unusual and because it is an old neighborhood it is closer to the street than today’s ordinance would allow. Hutwelker said it is special in that it is larger than other lots on the street. All agreed.**
- b. 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 that there was not a fair and substantial relationship.**
- c. Are the proposed uses a reasonable one? Members said yes**
- d. 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: N/A**

The Chair reported that “yes” prevailed and he entertained a motion to **grant** the request for Variance from Sections V.B.3. and XI.B.1.

**Motion** was made by Kallio to grant the request of Timothy and Kim Carrier for variances from Sections V.B.3. and XI.B.1. to permit the expansion of a non-conforming structure where both the house and the addition do not meet required setbacks on property located at 27 West Street, situated in the Business District and shown at Tax Map 57, Lot 6. There was a second to the motion by Geheran. All were in favor. **Motion passed.**

Geheran left the meeting at 7:12 p.m. and Thibault rejoined the meeting.

#### **Variance Application/Public Hearing**

Douglas and Amy Mitchell request a variance from Section XI.B.1. to permit the expansion of a non-conforming structure. The property is located at 71 West Street and is situated in the Residence District. The property is shown at Tax Map 73, Lot 11.

Public Hearing opened at 7:13 p.m. Thibault seated himself, Kallio for Tatro, and Mitchell, Hutwelker, and Rudgers for this hearing.

Discussion and public comment: The Vice Chair noted for the record that while his name is Mitchell as well as the applicants, he is not a relative of Douglas and Amy Mitchell.

Amy Mitchell said they want to rebuild the kitchen, expanding one wall closer to the driveway and add a room on top of that to be a second story. The overall footprint will be smaller since a portion of the existing house will be torn down. They also would like to raise the house and put in a poured concrete foundation. She explained the roofline will be a bit offset. The catalyst for the project was critters found to be living in the crawl space provided by the field stone foundation, which Mitchell said she was unhappy about. When they bought the house it was just she and husband and now they have three children thus the need for more space. She spoke about having a breezeway connected to the garage and house. Carbonneau said the non-conformity is that one side of the house is too close to neighbor's property. The area of the new construction will meet the setbacks.

Carbonneau noted the legal notices and said there was no comment from the Department Heads. She said Amy Mitchell has been in touch with Code Enforcement and she has drawings from an architect. Carbonneau noted that Kallio is not an abutter.

There were no further comment from the Board and when Thibault asked if there was any comment from the public, Russell Driscoll said he was next door neighbor and his concern was that the new construction does not block their view. He said that he supports his neighbor in their efforts to improve the home. No further comment.

Public Hearing closed at 7:24 p.m.



The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

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

**Members said: All said yes**

*Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: All said yes – makes the property more conforming.**

*Would the granting the variances do substantial justice?*

**Members said: All said yes.**

*Could the variances be granted without diminishing surrounding property values? (The question was phrased as follows: Would the variance diminish surrounding property values?)*

**Members said: all said yes and perhaps improve them. No evidence of diminishing of property values.**

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

- a. Members said: It is unique in size said Thibault and Mitchell said there is no foundation and it is the smallest lot in the area. All said yes.**
- b. 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 that there was not a fair and substantial relationship.*
- c. Are the proposed uses a reasonable one? Members said – all said yes*
- d. 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: N/A*

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

**Motion** was made by Mitchell to grant the request of Douglas and Amy Mitchell for a variance from Section XI.B.1. to permit the expansion of a non-conforming structure on property located at 71 West Street, situated in the Residence District and shown at Tax Map 73, Lot 11. There was a second to the motion by Kallio. All were in favor. **Motion passed.**

### **Variance Applications/Public Hearing**

Norma Mallory/N&M Winchester Properties, LLC requests variances from Sections XI.B.1. & VIII.C. to permit the demolition of the existing non-conforming structure and the building of a new structure that does not meet required setbacks. The property is located at 170 Old Homestead Highway and is situated in the Residence District & Shoreland Protection Overlay District. The property is shown at Tax Map 19, Lot 5.

Public Hearing opened at 7:28 p.m. The Chair seated Kallio for Tatro for this hearing, as well as himself, Mitchell, Hutwelker, and Rudgers.

Carbonneau noted legal notices, no feedback from Department Heads. She said Code Enforcement is working with the owners regarding permits. The applicant has the right to rebuild on same footprint within one year. The concern is that one corner is going to go beyond the existing footprint.

Jim Bialowski was present and Hutwelker noted that both he and Bialowski are contractors with the Masiello group. He explained why he recused himself for the Durling application but said he didn't think in this case that he needed to do so. The rest of the Board acknowledged Hutwelker's comments and he continued as seated for this hearing.

Bialowski said the property is a pre-existing non-conforming property in bad disrepair. Mr. Mallory wishes to build a single story structure. Bialowski said the owner wants to square off the structure and the structure is not 125 feet back from the waterfront, but it will be reducing the overall footprint, and reducing the coverage overall by 22%. He said the new construction would enhance the neighborhood and increase the value of the neighborhood. Thibault asked about a garage and Bialowski said that none is being contemplated. The deck will stay. One side is going outside the existing footprint and therefore need the approval of the ZBA. Shoreline approval should be subject to shoreline approval from the State of NH. Conservation Commission did not comment on the application. Hutwelker asked if there is any characteristic unique to this property and Bialowski responded that .42 acres is very small and the building was built about 100 years ago when there were no shoreline setbacks. When asked if the home could be repositioned to avoid the setback issue, Bialowski said that they want to preserve some of the land to avoid backing out onto a busy road. A turnaround is planned for safety. There would be more setback issues if the house was moved from the current footprint. It was noted the building is connected to water and sewer and there is an old well on the property that is not used.

There were no further questions and no comments from the public.

Public Hearing closed at 7:41 p.m. Mitchell said that there are a lot of pluses – modern attractive home versus a dilapidated home.

The Chair reviewed the Checklist for Granting a Variance with the members of the Board:

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

**Members said: all said yes**

*Would the spirit of the ordinance be observed if the variances were granted?*

**Members said: yes – Mitchell said it is net gain to the community – to reduce non-conformity**

*Would the granting the variances do substantial justice?*

**Members said: all said yes**

*Could the variances be granted without diminishing surrounding property values? (The question was phrased as follows: Would the variance diminish surrounding property values?)*

**Members said: All said yes -**

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

- a. **Members said: none of the houses were originally built for year round living – all said yes**
  
- b. *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 that there was not a fair and substantial relationship – getting better property**
  
- c. *Are the proposed uses a reasonable one?* **Members said yes**
  
- d. *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: N/A**

The Chair reported that **“yes”** prevailed and he entertained a motion to **grant** the request for Variance from Sections XI.B.1. & VIII.C.

**Motion** was made by Rudgers to grant the request of Norma Mallory/N&M Winchester Properties, LLC for variances from Sections XI.B.1. & VIII.C. to permit the demolition of the existing non-conforming structure and the building of a new structure that does not meet required setbacks on property located at 170 Old Homestead Highway, situated in the Residence District & Shoreland Protection Overlay District and shown at Tax Map 19, Lot 5. There was a second to the motion by Mitchell. All were in favor. **Motion passed.**

### **Special Exception Application/Public Hearing**

Eric Brosseau requests a special exception from Section III-AA,B. to permit a detached accessory dwelling unit. The property is located at 62 Birch Road, situated in the Business District and shown at Tax Map 3, Lot 35-3.

Public Hearing opened at 7:46 p.m. Seated were Kallio for Tatro, Thibault, Mitchell, Hutwelker, and Rudgers.

Discussion and Public Comment: This is an existing structure. Carbonneau spoke about legal notices, and said the applicant has spoken to Code Enforcement and septic design has been submitted but not received from the State of NH as yet. Brosseau said the old septic system has to be torn out and replaced with a new system. Brosseau said he built the garage and got a C.O. for an office but his father is living with them now and they would prefer to have the office back into the house and move his father into the garage apartment. He said the room above the garage has been emptied. It was noted that the outdoor stairway is covered. It was also noted that Birch Road was formerly Massey Hill Road and there are some single family residences and a couple of duplexes on the road. Brosseau said he has to update the septic. Carbonneau said the septic design has to be approved by NH Department of Environmental Services (NH DES). She noted that the DADU is considered a bedroom and a half for septic design purposes. Brosseau said he needs a 2500 gallon tank and it is on the plan. Thibault asked about additional parking space and Brosseau said there is enough for six or seven cars. The DADU is very close to the existing home, only inches away. Hutwelker said any approval should be subject to approval from the NH DES for the septic system.

Public Hearing closed at 7:56 p.m.

The Chair reviewed the **Checklist for Granting a Special Exception for a DADU** with the members of the Board:

- a. *The DADU shall maintain an aesthetic continuity with the principal dwelling unit as the single family dwelling. **Members said: all said yes***
- b. *No more than one accessory dwelling unit shall be permitted per single-family dwelling and/or lot. **Members said: all said yes***
- c. *A DADU shall be no greater than 750 square feet. **Members said: all said yes***
- d. *Either the principal dwelling unit of the DADU must be owner occupied. **Members said: all said yes***
- e. *A building permit for A DADU must be approved and issued prior to its construction and a DADU shall meet all life safety and building codes. **Members said: all said yes***
- f. *Adequate off-street parking shall be provided to serve the combined needs of the principal dwelling unit and the DADU. **Members said: all said yes***
- g. *The DADU shall have no more than two (2) bedrooms. **Members said: all said yes***
- h. *The existing or proposed septic system must be certified by a licensed septic designer or engineer as adequate to support the DADU and principal dwelling unit in accordance with New Hampshire RSA 485-A:38. **Members said: all said yes***
- i. *Prior to occupancy of the DADU, the homeowner shall obtain an occupancy permit from the Code Enforcement Officer. **Members said: all said yes***
- j. *Both the primary dwelling unit and the DADU must remain in common ownership and shall not be subdivided and or transferred to condominium ownership. **Members said: all said yes***

The Vice 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?*

- e. *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 - Carbonneau said this is business district – the members said yes**
- f. *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**
- g. *Will there be a nuisance or serious hazard to vehicles or pedestrians?*  
**Members said: no**
- h. *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 for a special exception pursuant to Section III-AA,B, based on the responses to the checklist for granting a special exception.

Kallio **moved** to grant the request of Eric Brosseau for a special exception from Section III-AA,B, to permit a detached accessory dwelling unit on property located at 62 Birch Road, situated in the Business District and shown at Tax Map 3, Lot 35-3 subject to septic approval by NH DES and construction C.O. There was a second to the motion by Mitchell and no further discussion. All were in favor. **Motion passed.**

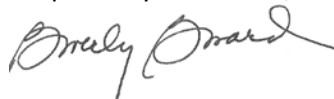
**MINUTES:**

- The Board considered the minutes of October 16, 2017. **Motion** was made by Mitchell to approve the Minutes of October 16, 2017. There was a second by Kallio. Thibault said the applicant had stated his employee and sister living there, needs to be added and Bernard agreed to add that to the minutes. All were in favor except Hutwelker and Rudgers who both abstained. **Motion passed.**

**ADJOURNMENT**

**Motion** to adjourn was made by Mitchell, seconded by Kallio and all were in favor. **Motion passed.** Adjournment occurred at 8:04 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – December 18, 2017

*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 7:00 p.m. by Vice Chair Bob Mitchell. Present were Vice Chair Mitchell, Bill Hutwelker, Bryan Rudgers, Alternate Adam Mulhearn and Beverly Bernard, Recording Secretary. Also present was Director of Planning and Community Development Sara Carbonneau.

**Absent:** Chair Keith Thibault, Sarah Tatro, Alternate Jane Skantze, Alternate Marty Geheran, Alternate Eric Kallio, Alternate Shane Bryant

**Others Present:**

Dennis Amer

**MINUTES**

- The Board considered the minutes of November 20, 2017. **Motion** was made by Rudgers to approve the Minutes of November 20, 2017. There was a second by Hutwelker. All were in favor. **Motion passed.**

**PUBLIC HEARINGS**

**Variance Application**

Mitchell explained to the applicant that his request needs 4 positive votes and his option is to ask for a continuance if he needs to provide additional information to support his request or wishes to have his request heard by five members of the Board. The applicant decided to have his request heard and decided on this evening.

Public Hearing opened at 7:02 p.m.

Mitchell seated himself, Rudgers, Hutwelker, and Mulhearn for Tatro, for this hearing.

Discussion: Carbonneau noted that one acre is required for multi-family housing and since there is less than an acre, the property owner therefore needs a variance. Carbonneau said if he had one acre, he could do many units given town sewer. She went on to say that for 3 units, he would need special exception and one acre of land, but no minimum acreage requirement for a duplex if on town sewer.

Mr. Amer explained what he wants to do. He referred to the building which faces State Route 10. He pointed to the units which are one bedroom units, and the section of the building that was commercial. He said the tenants in that commercial section have not been successful and the last tenant he had to

be evicted because they left a mess which caused neighbors to complain. Amer pointed to the office area for the commercial business which has an existing kitchen and a bathroom. If said if he adds a wall, he can make a bedroom. He said he is not changing the footprint of the building. He pointed to the location of the building being surrounded by residential development. He said that if he was allowed to put one more apartment, he would have 900 square feet for cold storage. He said it would make it financially viable for him. He said he has two ladies that currently rent now. He said he is not changing the parking lot and the building is on town sewer and West Swanzey Water Company water. He said he felt it would be an improvement for the neighborhood. He spoke about speaking to the owner for Monadnock Fence who is running out of space for his business and he may be interested in renting some space in the Amer building in the future. He noted that each apartment unit is about 600 square feet.

Hutwelker asked Amer if he had plans for the exterior and Amer said he doesn't have any plans to change things since the building is in good shape right now. Amer spoke about needing to build an L shape wall to make a bedroom. He said he will have the appropriate inspections for the Fire Department and Code Enforcement. Hutwelker asked at what point is a sprinkler system required. Carbonneau said she wasn't sure and added there is a separation between units (fire wall).

Amer noted that the remaining space would be cold storage and Monadnock Fence might want a fence to showcase his products. Amer showed a diagram of the interior and where a wall would go. Rudgers asked about entrances to the building. Mulhearn asked about any current restrictions. Carbonneau said the whole property is in the Business District. She said Mr. Amer has owned the property for many years and his commercial tenants have shown a lot of turnover. About ten years ago he came in to ZBA for a second unit. She noted there is sufficient parking. Carbonneau said this property was of concern to the West Street residents because of the type of commercial uses there in the past. She said it is a difficult property for commercial use since it is surrounded by homes.

Amer said the previous commercial tenant would buy vehicles at auction and take the vehicle apart and tires, transmissions, fenders would be left behind. One car caught on fire. Amer said that the property may be good as a business property in the future but a garage business doesn't belong there in a nice neighborhood.

Mitchell asked for additional questions.

Rudgers asked if Amer would try to squeeze another business in there. Amer said no; it isn't large enough and it doesn't work on that lot.

Hutwelker asked if there were special conditions of the property and asked if there were multi-family units in the area on less than an acre and Carbonneau said she did not know. She said the ordinance anticipates that anywhere from 3 to X number of units to fit on the property, assuming meeting setbacks, height requirements, and adequate parking.

Mulhearn noted the total acreage is .65 acres.

Mitchell said it is a highly residential neighborhood in the Business District and the proposed use is a less intensive use. He also noted that the ZBA has approved multi-family use on West Street. Hutwelker asked about the building meeting setbacks. Carbonneau said it probably does not meet the front setback, but was not sure. Mitchell referred to other buildings in the area having similar setbacks as the building in question.

There was a brief discussion about the Cutler School's access being odd in that it doesn't go out to State Route 10 but instead has a right of way to the rear of Amer's property.

Public Hearing closed at 7:28 p.m.

Rudgers said his concern was Amer trying to add another business along with the apartment and Amer said he would not be doing that. Hutwelker noted the Monadnock Fence would be a business use and Amer said that he would have to come to the PB, and possibility the ZBA, should Monadnock Fence want to rent the storage area.

The Chair reviewed the **Checklist for Granting a Variance** with the members of the Board:

1. *Could the variances be granted without being contrary to the public interest?*  
**Members said: Rudgers said yes, it would not be contrary because there have already been commercial tenants that were not good for the neighborhood. Mulhearn said yes, and he didn't see any evidence of to the contrary. Hutwelker, yes, but he would like to see the exterior enhanced. Mitchell said yes.**
2. *Would the spirit of the ordinance be observed if the variances were granted?*  
**Members said: Mitchell said yes since it speaks to density and intensity of usage and a third apartment is less intense usage than auto sales or another commercial use. And residential is more in keeping of the current make-up of the neighborhood. Hutwelker said yes, but unfortunate to grant so many variances and special exceptions for residential instead of business use. Mulhearn said yes. Rudgers said yes and noted that State Route 10 heading south has predominantly business use on the right side but the left side, where the Amer property is located, is more residential.**
3. *Would the granting the variances do substantial justice?*  
**Members said: Mulhearn said yes because of the issues the applicant referred to by the prior commercial tenants. Rudgers said yes. Hutwelker said yes since it makes it more in conformity with existing neighborhood. Mitchell said yes.**
4. *Could the variances be granted without diminishing surrounding property values?*  
**Members said: Rudgers said yes, all others agreed – no evidence to the contrary**
5. *Do special conditions of the property exist that distinguish it from other properties in the area?*  
**Members said: Hutwelker said lots are below one acre and this is lot that has a right-of-way that goes through it. Rudgers agreed. Mulhearn acknowledged the right-of-way at the backside of the property and then passed. Mitchell 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?* **Members agreed that**



**there was not a fair and substantial relationship with Mitchell noting that the proposed use is less intense than prior commercial uses on the premises.**

b. *Are the proposed uses a reasonable one?* **Members said: Mulhearn said yes, Hutwelker said yes, Rudgers said yes, and Mitchell 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.* N/A

The Vice Chair entertained a motion to grant the request for Variance from Section V.B. based on the responses to the Checklist.

**Motion was** made by Mulhearn to grant the request of Dennis Amer/RDH Property Management, LLC for a variance from Section V.B. to permit multi-family housing (3 units as set forth in the application) on property situated at 704 West Swanzey Road, in the Business District and shown at Tax Map 72, Lot 85. There was a second by Rudgers and no further discussion. All were in favor. ***Motion passed.***

#### **OTHER MATTERS**

Carbonneau reminded the Board that next meeting is the second Monday of the month for January and February. Rudgers asked if all meetings will be at Whitcomb Hall. Carbonneau said that it depends on the agenda and the number of folks who might be in attendance. She also said she has limited ability to work at Whitcomb Hall when there is extra time before the meeting begins.

#### **ADJOURNMENT**

**Motion** to adjourn was made by Rudgers, seconded by Mulhearn and all were in favor. ***Motion passed.*** Adjournment occurred at 7:45 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary