TOWN OF SWANZEY

OFFICE OF PLANNING AND COMMUNITY DEVELOPMENT

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Swanzey Planning Board Meeting Agenda

January 23, 2025

6:00 PM

The regular meeting of the Swanzey Planning Board will be held on **Thursday, January 23, 2025, at 6:00 p.m. at Whitcomb Hall, 17 Main Street, Swanzey.** The public may also access the meeting via Zoom by going to www.zoom.us, using the Zoom App, or by calling (929) 205-6099 and entering Meeting ID number 235 370 4380. More information on public access to the meeting is available on the Town's website at: www.swanzeynh.gov.

1) Call to Order

2) Approval of Minutes

A. January 9, 2025

3) Public Hearings

A. None

4) Discussions/Other Business

A. Conditional Use Permits – Discussion

B. Other business as required

5) Adjournment

Town of Swanzey, New Hampshire
Swanzey Planning Board
Meeting Minutes – January 9, 2025
Whitcomb Hall, Main Street, Swanzey, NH

CALL TO ORDER:
The meeting of the Swanzey Planning Board was called to order at 6:03 p.m. by Chair Scott Self. The meeting was held at Whitcomb Hall and via Zoom software for the public. Members present: Scott Self, Brandon Self, Michael York, Mark Scalera, Richard Lane, Victoria Ames, and Selectmen Representative Charles Harbeck. Also present was Town Planner Adam Paquette, Assistant Town Planner Stephon Mehu, and Garrett Ranney with FACT TV. The Chair called the roll and read the agenda for the evening. A quorum was present.

Absent:
Alternate Steve Malone and Alternate Michael Scungio

Others Present:
Conservation Commission Chair Cheri Domina, Swanzey Resident Sharee Howard, and John Noonan of Fieldstone Consultants

Regional Impact: The members considered whether any items on the agenda could be construed as having potential for regional impact. No material was found to be considered of regional impact.

MINUTES:

- The meeting Minutes of December 19, 2024 were considered. **Motion** was made by Lane to approve the meeting Minutes of March 19, 2024. There was a second by Scalera and no further discussion. All were in favor. ***Motion passed.***

APPLICATIONS AND PUBLIC HEARING(S)
Warrant Article Public Hearing: Article 2, Amendment 1; Amendments 8 – 12 (Public Hearing Required)

Public hearing opened at 6:07 pm

Discussion pertaining to Amendment 1:
Scalera explained the goal is to come up with more consistent, condensed definitions for the Town Ordinance.

Motion was made to move Amendment 1 to Warrant by York. There was a second by Scalera. **Motion Passed**.

Discussion pertaining to Amendment 8:
Ames asked if further information was to be provided by the Conservation Commission Chair. Self asked Cheri Domina, ConCom Chair to present said provided information. Domina explained the original description of Wetlands Conservation District. Domina explained what the Wetlands Conservation District does and explained that it was decided that the ordinance fails to protect the wetlands and its inhabitants. Background information on the process of acquiring further information to bolster the strength of this

section of the ordinance was explained. Domina stated that new information was to become part of a reworking of the existing Open Spaces Plan, to be created in 2026. Differing aspects of wetlands were explained and Moosewood Ecological data collection and evaluations discussed. Domina stated that the function of the wetlands is being hindered due to a lack of protection, as well as the importance and function of a buffer.

Proposed amendments are said to include a 75ft setback for all wetlands; they would also expand upon language pertaining to permitted uses and reduce the presently established 125-foot setback for septic in proximity of wetlands. The minimum lot size and setback requirements in relation to wetlands would be reduced. Domina clarified that the proposed amendments only cover new developments; everything established prior would be exempt. A comparison of Swanzey's zoning ordinance with those of neighboring towns was made by Domina; she explains that exemptions from the ordinance can be obtained from the Zoning Board of Adjustment. She highlighted the use of the Town GIS software to identify wetlands and that properties containing the land type are taxed at a lower rate; wetlands of any size may go into current use. Through the current use designation, a wetland buffer of up to 75 feet may be applied to current use land.

John Noonan of Fieldstone Consultants spoke on wetland setbacks and their effects. He spoke of a project currently being worked on; he used an illustration to show the impact of the proposed 75-foot buffer. He explained the project would not be allowed per the new amendments. The majority of Industrial Park District would not be buildable. This would affect the Tax Increment Financing District in place, and therefore, curb municipal funds for Town improvements. Shows additional property that would be affected; previously approved projects would not be allowed following institution of buffer. Noonan proceeded to show illustration of the impact upon the Town's proposed firehouse. He urged reconsideration in light of how projects will be affected by new zoning and recommends adoption of a Conditional Use Permit and/or Special Exceptions that address this concern. It was explained that under this set of amendments to the Wetlands Conservation District, developers would always have to obtain a Variance from the Zoning Board. Noonan estimated that 60% of the existing TIF District would likely be affected.

Scalera questioned staff about the establishment of a Conditional Use Permit and offered the assistance of the Conservation Commission in its drafting; Paquette explains it is already underway. Noonan summarized the function of a Conditional Use Permit as a tool used to analyze the potential impact of a project by a Conservation Commission, planners, and discussed the applicant. Jay Ward, Conservation Commission and Zoning Board member, questioned the balance of a potential permit, its efficiency, and the effectiveness of the proposed amendments. Vicky Scalera questioned the 75-foot buffer; she asked how much of a buffer Noonan recommends. Noonan explained he has no recommendation and points out how there is nothing allowed within the proposed buffer; no case-by-case relief. Sara Carbonneau, past Director of Planning for the Town of Swanzey, spoke on regulations; the public good versus private rights. Carbonneau suggests the changes could be considered a taking of people's property and that the proposed buffer has too large an impact; she recommended more work be done on the ordinance.

Ames asked if surrounding communities also use Conditional Use Permits or the like. Noonan explained they have that or similar functions for relief. Barbara Skuly asked if the amendments could be corrected on the spot to push amendments through; Planner Paquette explains that they could not. Skuly insisted the public good be observed in making these decisions. Lane recommended that the 75-foot buffer be supported and adjusted, as needed, moving forward. Self questioned if any wetlands have been impacted in the absence of the proposed buffer. Skuly discussed the degradation of local wetlands with Self. Domina then explained that language representing relief from the proposed buffers was supposed to be included and that the proposal is just to start the process of improving the ordinance concerning wetlands.

Ames and Domina discuss the process and moving forward with the amendments. Ward asks the Planning Board to heavily consider the implementation of Conditional Use Permits, and the like, to protect wetlands in future development. Carbonneau further spoke to the impact of proposed buffer. Mike Faulkner showed an illustration of a 1-acre lot with current zoning and the proposed buffer's potential effects.
Self summarized his analysis of the amendment introducing the buffer as a taking of people's property.
York voiced that a lower tax rate is not just compensation and legal action may ensue if acted upon.
Paquette read comments from Swanzey residents; letters submitted by Kimberly Miller, Connor Moroney, and Swanzey Board of Selectmen.

Motion to deny moving Amendment 8 to Warrant made by York; seconded by Brandon. Roll call vote. All members in support, short of Richard Lane. **Motion passed**.

Amendment 9 discussed:
Self explained that Amendment 9 defines a wetland and states Amendment 9 is redundant, as it is already included in the current zoning ordinance. Domina explains this is a more comprehensive coverage of the definition of current ordinance's language. Ward asks for clarification on Board members disapproval of rewording effort through language. Self says it is repetitive language.

Motion by Scalera to support moving Amendment 9 to Warrant; seconded by Lane. Roll call vote. All in support, except Scott Self. **Motion passed**.

Amendment 10 discussed:
Ward requested clarification on point 5 of the Amendment 10 language. Domina explains that this is an important step in protecting wetlands. Noonan explains how part of the amendment would prevent the construction of a road or driveway in wetlands.

Motion to deny moving Amendment 10 to Warrant made by Scott Self; Brandon seconded. Roll call vote. Mark, Lane, Ames, and Harbeck voted No. York, Scott Self, and Brandon Self, voted Yes. **Motion failed**. **Amendment 10 moved to Warrant**.

Amendment 11 discussed:
Ames asks Carbonneau about the origin of the 125ft buffer. Barbara Skuly explains how studies show that nutrients may move more than 90 feet through some soils. Selectmen Hutwelker comments that Amendment 11 is contingent upon Amendment 8 and all amendments should be improved upon through later collaboration. Faulkner explains the constrictions of the use of private land.

Motion to deny Amendment 11 was made by Brandon; seconded by Lane. Roll call vote. All in favor. **Motion passed**.

Amendment 12 discussed:
Motion made by Scott Self to approve Amendment 12; seconded by Mark. Roll call; all in favor. **Motion passed**.

Public hearing closed at 7:58p.

Petitioned Zoning Amendment: Rezoning of Base Hill Road (Public Hearing Required)

Public Hearing opened for Base Hill Rd petitioned amendment at 8:01p.

Self read the criteria pertaining to the petitioned amendment. Ward asked for clarification as to whether it is or is not an error in past planning.
Self explained the pitfalls of the proposed amendment. Non-conforming uses were discussed. Sharee Howard explained the uniqueness of the road, connecting two highways with housing residences and businesses. The traffic along the road was said to pose an issue. Owner of BDM Sweeper voiced concern as to the presence of rural community vs businesses presences. Debra Sprague mentioned that one business was present in 1975.

The hearing closed.

Motion for the Planning Board to not endorse the Petitioned Amendment for the Rezoning of Base Hill Road was made by Brandon Self. Seconded by York. Roll call vote. Scalera, Ames, and Charles Harbeck voted No. **Motion passed**.

DISCUSSION AND OTHER BUSINESS

Voluntary Merger – Edward and Michele Mack requested a voluntary merger between Tax Map 225 Lot 54 and Tax Map 225 Lot 55.

Voluntary Meger discussed:
Self stated that the merger does not create new lots; he addresses that the merger cannot be undone due to lack of frontage and Staff confirmed the applicants are knowledgeable on this.

Motion to approve merger by Lane; seconded by Brandon. All were in favor. **Motion passed**.

Other - Improvements to Route 101 and its regional impact discussed.

ADJOURNMENT

Motion to adjourn was made by Lane. There was a second to the motion by B. Self with no further discussion. All were in favor. ***Motion passed.*** Adjournment occurred at 8:45 p.m.

Next Meeting: January 23, 2024

Respectfully Submitted,

Stephon Mehu, Assistant Town Planner

DRAFT

B. Municipal Boards[1]

1. Conditional Use Permits

RSA 674:21 provides that innovative controls may be administered through the use of conditional use or special use permits. Conditional use permits are similar to special exceptions, and can be used to accomplish the same results. However, special exceptions can only be issued by the ZBA, RSA 674:33, IV, while conditional use permits may be issued by any municipal board which has been given authority under the zoning ordinance, RSA 674:21, II.

It is important to understand that the authority to require a conditional use permit must come directly from the municipality's zoning ordinance. RSA 674:21. Because municipalities have only the authority granted to them by the legislature, conditional use permit requirements are restricted to zoning matters. Of course, this is not to say that the planning board cannot administer conditional use permits at the same time as site plan or subdivision review.

Regardless of which board is given authority to administer conditional use permits, in order to avoid a due process claim, municipalities must ensure that the conditional use permitting requirement and process is laid out in detail, including the factors that must be met for the conditional use permit to be issued. The conditional use permit provisions must "include [] the necessary specifics that involve the application procedure and the grant or denial" of the conditional use permit. *Fisher v. Viola, 789 A.2d 782, 788 (Pa. Cmwlth. 2001)*. Also, a conditional use permit provision will be deemed unconstitutionally vague and a violation of due process "when persons of common intelligence must guess at its meaning" and applicability. *Id. at 787*. As such, the conditional use permit provision should be drafted to sufficiently convey clear warning to the average person of the covered activities. *Id. at 787*.

2. Planning Board

Conditional use permit requirements are often administered in the same manner as site plan and subdivision regulations, as this allows a more efficient and cost-effective review process before a single board.

Typically, planning board decisions on zoning matters are appealed to the ZBA. In contrast, innovative land use control decisions by the planning board, although they directly involve zoning matters, are appealable only to the superior court. RSA 676:5, III. This is an important distinction.

3. Zoning Board of Adjustment

The ZBA also has authority under RSA 674:21 to administer innovative controls, if so provided by the municipality's ordinance. As such, the ZBA can be given the authority to review applications for, and grant, conditional use permits. For those developers that also must go through a site plan or subdivision process with the Planning Board, giving the ZBA authority over conditional use permits, as opposed to

[1] Parts of this description come from *N.H. Town and City*, "Look Before you Leap: Understanding Conditional Use Permits", C. Christine Fillmore, Esq. (January 2006)

the planning board, requires the developer to go through an extra step and appear before another municipal board. Certain municipalities may find this second review desirable for certain types of large or complex developments.

When the ordinance provides for such administration by the ZBA, all innovative control proposals must still be reviewed by the planning board. RSA 674:21, II. The Planning Board must comment on the proposal in writing and the ZBA must either incorporate the Planning Board's comments in the final decision or tailor its findings and decision to address the Planning Board's comments. RSA 674:21, II. Innovative Land Use Controls: Reexamining Your Zoning Ordinance

4. Conservation Commission (administration of wetlands)

A Wetlands Ordinance that is administered by a Conservation Commission could include a requirement for conditional use permits, so long as it relates to zoning.

Again, however, when the ordinance provides for administration by a board other than the planning board, all innovative control proposals must still be reviewed by the planning board. RSA 674:21, II. The Planning Board must comment on the proposal in writing and the ZBA must either incorporate the Planning Board's comments in the final decision or tailor its findings and decision to address the Planning Board's comments. RSA 674:21, II.

From Innovative Land Use Controls: Reexamining Your Zoning Ordinance - NHMA Law Lecture #3, Fall 2012 (page 13)