

Town of Swanzey, New Hampshire  
**Swanzey Zoning Board of Adjustment**  
Meeting Minutes – July 20, 2020

**CALL TO ORDER:**

This meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 7:00 p.m. by Chair Keith Thibault. The meeting was held via Zoom software for electronic conferencing due to the COVID-19 health emergency in the State of New Hampshire. Emergency meeting pursuant to Executive Order 2020-04, Section 8 and Emergency Order #12, Section 3. Members present: Thibault, Vice Chair Adam Mulhearn, Anne Karasinski, Bryan Rudgers, Bill Hutwelker, Alternate Eric Kallio, Alternate Ruth Snyder, Recording Secretary Beverly Bernard and Director of Planning and Economic Development Matthew Bachler. Bernard called the roll and read aloud the agenda for the meeting.

Roll call for the meeting:

Keith Thibault – present at home and in a room alone  
Ann Karasinski – present at home and in a room alone  
Bill Hutwelker – present at home and in a room alone  
Bryan Rudgers – present at home and in a room alone  
Adam Mulhearn – present at home and in a room alone  
Alternate Eric Kallio – present at home and in a room alone  
Alternate Bob Mitchell – not present  
Alternate Ruth Snyder – present and at home in a room alone

**OTHERS PRESENT:**

John Finnell and a number of the members of the public who did not speak

**PUBLIC ACCESS:** The public access to the meeting online via [www.zoom.us](http://www.zoom.us), using the Zoom App on a cell phone or tablet or laptop, or using a landline by calling (929) 205-6099 and entering Meeting ID number 235 370 4380. If there is difficulty accessing the meeting, please call (603) 352-7411 ext. 108.

**MINUTES:**

- The meeting Minutes of June 15, 2020 were considered. Bachler noted that Avanru Development Group has requested that the ZBA not approve the minutes since they would like to review them once again after reviewing the recording of the Zoom meeting. Rudgers suggested it would be appropriate to allow Avanru to have the time. Mulhearn asked if the applicant has had a chance to review the written minutes and was told by Bachler that as far as he knows, “yes” they have. The draft minutes have been posted on the Town’s website since a few days following the June 15<sup>th</sup> meeting. Bernard noted that the written minutes are considered to be the official minutes of a Town meeting.

**Motion** was made by Mulhearn to approve the meeting Minutes of June 15, 2020. There was a second to the motion by Karasinski and no further discussion. All were in favor by roll call except Bill Hutwelker and Eric Kallio who both abstained. ***Motion passed.***

**PUBLIC HEARINGS:**

### **Appeal of Administrative Decision Application**

Susan Tierney of 147 Monadnock Highway has filed an Appeal of Administrative Decision in regards to the Green2Green Energy, LLC Site Plan Review application for 163-165 Monadnock Highway that was approved by the Planning Board on May 14, 2020. The Site Plan Review application was for a gas station, car wash, and convenience store with a fast food drive thru lane and pick up window.

Thibault said he has had a business to business relationship with Susan Tierney but felt he had no reason to withdraw from sitting on the case. Hutwelker recused himself because Tierney is a client of his and he left the meeting. Thibault seated Kallio for Hutwelker.

Thibault said these are relatively rare cases. He asked Bachler to review what is being asked and what is history. Bachler referred to the clarification from Tierney as to the nature of the appeal. Ms. Tierney was not present but Bachler submitted an email from Tierney describing her intent. The email states, "What I am arguing is that the combination of the gas-station and convenience store along with the drive-through restaurant plus a drive-through car wash is a different overall use than the gas/convenience store plus hotel already approved." She also notes that her concern is the complexity of the project and its impact on traffic and therefore warranted a review by the Zoning Board of Adjustment.

Bachler provided information to the Board as to the history of the property. Site plan from 2006 was displayed via screen share. The proposal included a gas station and a convenience store and a car wash and in addition to the north a 61-room hotel and 8 residential condo units. This required a Special Exception for the gas station and for the car wash and it was approved. Special Exception is still required today. He said the ZBA was not asked to approve anything to do with the hotel but they did require a right turn lane on the highway as a condition of approval. The proposal ended up being withdrawn during the Site Plan Review process. In 2011 a new plan was proposed: the hotel/condo was removed but gas station and convenience and car wash facility remained. Variance application was for the car wash and the gas pumps and a free-standing sign to be located within the setback requirements. No revised Special Exception application was presented at that time. Since 2012 Special Exception approvals now have a 2 year clause, which means a proposed development must be acted on within that time or the approval is null and void. Since the Special Exception was approved before the 2012 change adding the 2-year clause, the older Special Exception remains intact. Bachler said the gas station and car wash have the 2006 Special Exception approval still in force. He noted that at the Planning Board meeting of May 14<sup>th</sup> there was a public hearing on the new application and a right turn lane was included in the site plan per the ZBA's requirement from 2006. The decision by the Planning Board was to approve the application. He said Tierney did submit her appeal within the required timeframe. Bachler said a driveway permit will be required by the New Hampshire Department of Transportation (NH DOT). He referred to nearby drive-through restaurants already permitted in the district as approved by the Planning Board in the past and fully understands the concerns of Tierney. He said there is no specific ordinance regarding drive-through food services and is willing to work with the Planning Board on developing something specific for consideration at Town Meeting next year.

Rudgers asked whether Bachler has been working on terminating a permit on this property or on another property. Bachler said the Zoning Ordinance was amended in 2019 to allow the Town to go through a process that would terminate all Special Exceptions approved before the change in the law in 2012 and that would be a blanket termination for all older Special Exceptions that have gone unfulfilled. He said that the Town is following the required procedures for this and that April 1, 2022 will be the

date by which there can be a response from a developer before all such Special Exceptions will be terminated..

Karasinski asked for more detail on the 2011 application for a Variance for setback, which was denied at the time. She asked about the most recent site plan and noted the two drive-through lanes, which are parallel to each other. Bachler showed the egress for the car wash and the egress for drive-through window. He noted it is similar to gas station and carwash and drive-through at the Citgo gas station on Base Hill and State Route 10. She noted concerns about the traffic pattern exiting both the car wash and drive-through but also noted that it is a Planning Board job for site plan review. Bachler said the Planning Board does look at internal traffic circulation. Karasinski said she could understand Tierney's concerns.

Thibault noted that in 2006 the approved plan had gas pumps, a drive-through lane and a car-wash lane. Thibault said the drive-through was contemplated from the beginning. He said the only change now is that there is no longer a proposed hotel. Thibault asked about the number of cars that can get stacked and Bachler said nine for the drive-through and ten for the car wash. Thibault asked if Tierney was focused on the drive-through which seems to be the basis for her appeal. Bachler said the drive-through lane was in the 2006 application. Bachler said we should have specific provisions for drive-through windows, which we do not have now. Bachler said he reviewed the 2006 minutes for that approval and the Special Exception was for the gas station and car wash. The ZBA was not asked to look at the drive-through specifically at that time. Thibault noted the site plan from 2011 the drive-through was there as well and Bachler said that was correct.

Mulhearn said the applicant will have to deal with NH DOT to make safe movement on the property. One could argue that the complexity could be reduced by the lack of a hotel and traffic would be reduced. Kallio said based on procedure, this would be the responsibility of the Planning Board.

Thibault asked Bachler what the basis of her appeal is given the discussion just held. Bachler said he thought that Tierney is appealing (and he cannot speak for her) that there is a substantial enough change for the site such that even though there was approval in 2006, there is now enough of a change it would warrant a new application to the ZBA. Thibault pointed out that a drive-through was part of the original decision and Karasinski said perhaps Tierney did not notice the drive-through on the site plan. Bachler noted there was so much being proposed at that time that the drive-through wasn't prominent.

Kallio asked Bachler what would happen next. Bachler said if the ZBA decides there is not grounds for overturning the decision, it stands. If the ZBA decides there is grounds for overturning the decision, a new application would be required of Green2Green.

Snyder said via Chat that this appeal does not have merit.

The Chair asked for concerns of the Board. Mulhearn said there would have to be substantial reason to overturn something already approved. There would have to be a significant change. He noted the drive-through lanes were present on all applications. Rudgers agreed with Mulhearn. Karasinski said the Planning Board needs to address the issues. Kallio had no further comment.

**Motion** was made by Mulhearn to deny the appeal of administrative decision in regard to the Green2Green Energy, LLC Site Plan Review application that was approved on May 14, 2020. There was a second to the motion by Kallio and no further discussion. All were in favor by roll call. Five in favor and none opposed, ***motion passed***.

### **Variance Application**

John and Cristine Finnell have requested a Variance from Section IV, Article B.3 of the Zoning Ordinance to construct a garage that would be located in the side yard setback at 21 Sugar Hill Road. The subject property is shown at Tax Map 20, Lot 111 and is located in the Residence District.

Bachler spoke of the public hearing notices and also said the garage is proposed to replace an existing garage that has fallen into disrepair. A Variance is needed in this case because the new garage would be located 16 feet from the side property line and a 20-foot side setback is required. The structure would be in compliance with all other setbacks. Bachler said an abutter reported that she had no concerns about the proposal. Thibault seated Kallio for Hutwelker.

Public Hearing opened at 7:58 pm

Discussion: Mr. Finnell was present via Zoom. He spoke about an existing garage when he bought the property in 2009 and said that it was not built correctly and now it is falling down. He said he wants to build a 24' x 28' two-car garage. He said he cannot move the garage to the left because of the presence of a leach field. He said he did speak to the neighbors and has had the building inspector look at the site. He said he has no option to put the garage anywhere else. He said the garage has to go. He said they need the space for parking and storage.

Kallio asked about estimated property line. Finnell said he saw the pin at the road and the pin at the back, but because of trees cannot run a line directly so it is estimated and difficult to determine exactly a number. Finnell said it could be 16 or 17 feet. Kallio asked about the leach field and asked if he spoke to a septic company so that there are no issues. Finnell said there is a stone wall that goes back to the rear of the proposed garage. He said the leach field was replaced four years ago. The stone wall is a separator between the garage and the leach field line.

Bachler said Code Enforcement Officer Mike Jasmin did attest to the fact that the existing structure is in poor condition.

Karasinski asked about trees between his property and the neighbor. She encouraged him to leave the trees for a buffer. Finnell said there would be some trimming but the intent is to keep the trees. Finnell said the existing shed/garage is entirely coming down.

Thibault said in review of assessment card there are a couple of stone walls and Finnell said the wall is a foot tall or so and runs all the way back to the shed.

Thibault asked if there were members of the public that would like to speak. Bachler reminded the public as to how to raise a hand to speak or press \*9 to participate by phone. He also noted comments can be made via Q&A. Bachler said he did not see any indication of a resident desire to speak.

The Chair asked for any other questions or comments from the Board. Bachler noted 137 feet of frontage for the property. The neighboring properties are very similar. Finnell said there is no room on the other side of the property to build the garage. The Board consulted the satellite photo of the property showing property lines and acknowledged that most available land is on the right side of the property. Finnell thanked the Board for their time

Public Hearing closed at 8:15 pm

There were no further comments or questions.

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

1. *Could the variance be granted without being contrary to the public interest?*  
**Members said:** Mulhearn said yes and there is no benefit to the public to denying the application. Rudgers said yes, Karasinski said yes, Kallio said yes, Thibault said yes.
2. *Would the spirit of the ordinance be observed if the variances were granted?*  
**Members said:** Rudgers said yes; Karasinski said yes, the spirit is there to protect the abutter and they abutter approves; Kallio said yes; Mulhearn said yes that he appreciates Finnell going to the abutter and explaining his need.
3. *Would the granting the variances do substantial justice?*  
**Members said:** Karasinski yes; Kallio yes, the property is correcting a deficiency; Mulhearn said yes, Rudgers yes, and Thibault yes
4. *Could the variances be granted without diminishing surrounding property values?*  
**Members said:** Kallio yes, no evidence to the contrary, the rest agreed, saying yes
5. *Do Special conditions of the property exist that distinguish it from other properties in the area?*  
**Members said:** Thibault said there is a septic line which prevents moving the location of outside buildings, which distinguishes from nearby properties; Rudgers said yes; Karasinski said yes; Kallio said yes; Mulhearn said he has only seen a stone wall go down a center of a property once, so position of sewer line and stone wall distinguishes this property and voted yes.

*A.i. 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:** Mulhearn yes; Rudgers yes; Karasinski yes; Kallio yes; Thibault yes

*A.ii. Is the proposed use a reasonable one?*

**Members said:** All said yes

*If the criteria in subparagraph a. and b. are not met, an unnecessary hardship will be deemed to exist if, and only if:*

*B. 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:**

**Motion** was made by Mulhearn to grant the request of John and Cristine Finnell for a Variance from Section IV, Article B.3 of the Zoning Ordinance to construct a garage that would be located in the side yard setback at 21 Sugar Hill Road on property shown at Tax Map 20, Lot 111 and located in the Residence District. There was a second to the motion by Rudgers and no further discussion. All were in favor by roll call.

In favor by roll call: 5

Opposed by roll call: 0

***Motion passed.***

## **OTHER BUSINESS/DISCUSSIONS**

### **Virtual Meetings**

Mulhearn asked if there is a plan to return to in-person meetings at some time in the future. Thibault said the next Board of Selectmen's meeting will include a discussion on that topic. Bachler said that Governor's order allows for Zoom meetings for now. Mulhearn said there is a lot of flexibility to a Zoom meeting. Bernard added that there could be an option to continue virtual meetings for someone who is immune compromised or because of age who cannot attend in person. Karasinski said increased participation might continue given some folks cannot attend in person. Thibault said that is what it is about for public participation. We are improving access by continuing virtual meetings at the same time as in-person meetings once they are again allowed.

Bachler will provide updates and Thibault asked for information about the Selectmen's meeting as to when that will occur.

Rudgers said a virtual meeting has become a valuable tool. He suggested a big screen TV and camera and microphone to allow for shut-ins to participate in the future. Thibault praised the virtual meetings held thus far when everyone had a chance to be heard for a major application. The medium works. Thibault thanked all who participated in making the virtual meetings go so smoothly. Kallio said he supports this format as well. He noted virtual meetings are good alternative when there is inclement weather.

## **ADJOURNMENT**

**Motion** to adjourn was made by Mulhearn and seconded by Karasinski and all were in favor by roll call.

***Motion passed.*** Adjournment occurred at 8:33 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary