

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – August 17, 2020

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:

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, Anne Karasinski, Bryan Rudgers, Bill Hutwelker, Alternate Ruth Snyder, Alternate Bob Mitchell, 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 – not present
Alternate Eric Kallio – not present
Alternate Bob Mitchell – present at home and in a room alone
Alternate Ruth Snyder – present and at home in a room alone

OTHERS PRESENT:

None

PUBLIC ACCESS: The public access to the meeting online via 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 January 13, 2020 were considered. **Motion** was made by Mitchell to approve the meeting Minutes of January 13, 2020. There was a second to the motion by Hutwelker and no further discussion. All were in favor by roll call except Thibault, Rudgers, Karasinski, and Snyder who abstained. **Motion passed.**
- The meeting Minutes of July 20, 2020 were considered. **Motion** was made by Rudgers to approve the meeting Minutes of July, 2020. There was a second to the motion by Snyder and no further discussion. All were in favor by roll call. **Motion passed.**

REGIONAL IMPACT:

Board members considered whether any items on the agenda could be construed as having potential for regional impact.

Motion was made by Mitchell that there is no item on the agenda which can be construed to have potential for regional impact. There was a second by Snyder with no further discussion. All were in favor by roll call. **Motion passed.**

OTHER BUSINESS/DISCUSSIONS

The Chair turned the meeting over to Bachler to review ZBA Rules of Procedure. Bachler said 2011 was the last time the rules were reviewed, nearly ten years ago.

From reviewing the Board's current rules and the suggested language from NH OSI, Bachler said he would suggest the Board discuss the following possible changes:

Review of ZBA Rules of Procedure

- **Alternate Members**

Change language in Paragraph 1 to state the voting on appointment of alternate members shall occur at a regular Board meeting rather than at a date and time included in the posted notice of vacancy. There was general agreement to make this change.

- **Meetings**

Change meeting location in Paragraph 1 to Whitcomb Hall from Town Hall.

In Paragraph 2.a note that if an applicant chooses to postpone a hearing due to not having a full Board available that the Board will announce the time, date, and location of the continued hearing.

Under Paragraph 3, add a new subsection providing guidance on the threshold for disqualification. The NH OSI recommends using the questions asked of potential jurors to determine qualification (RSA 500-A:12):

- a. Expects to gain or lose upon the disposition of the case
- b. Is related to either party
- c. Has advised or assisted either party
- d. Has directly or indirectly given an opinion or formed an opinion
- e. Is employed by or employs any party in the case
- f. Is prejudiced to any degree regarding the case
- g. Employs any of the counsel appearing in the case in any action then pending in the court

There was much discussion over this section. Bachler noted that this guidance for disqualification is focused on jurors. Rudgers said that Bachler should add an item h. to cover any other issues that may arise pertinent to the question. Mitchell asked about the "employed a person in the case" and he has employed workers in the past who might be appearing at the ZBA. Rudgers said so long as that is disclosed, he feels that is okay. Thibault added a contractor is not employed in a permanent sense. Bachler said if there is uncertainty, a member of the Board can ask other members of the Board to take a vote on it. Bachler said he would look at item g. to be re-worded. Thibault asked about being an abutter and whether that would disqualify a member. Mitchell said he has always stayed away from neighbor's cases. He said he has done so out of an abundance of caution so as not to cause any neighborhood ill feeling. Bachler said there is no mention of abutters since this is taken from a list of disqualification for jurors. He said it stands to reason that an abutter might gain or lose upon the disposition of an

application. Bachler said he would add an abutter line for disqualification. There was a discussion about changing “party” in b. and c. and e. to “applicants”. Thibault suggested “interested party”. Bachler said he would add “interested” to reference to party. Thibault said item g. refers more to a jury and not a ZBA action. Hutwelker said in the past an attorney asked him to step off the Board based on a past association and this might happen in the future. Bachler said if a member of the Board used Attorney A and then an applicant hired Attorney A, that would be a conflict. Bachler said by adding the catchall item discussed earlier will cover this and remove item g. entirely. The Board agreed by consensus.

Hutwelker noted that meeting times in January and February are different than for the rest of the year.

In Paragraph 5 (Order of Business), add “Call to Order by Chair” before the roll call and add “Other Business” before adjournment. The members agreed with those changes.

- **Applications/Decisions**

Under Paragraph 3 (Public Hearing), amend subsection “i” to clarify that in addition to those in favor of the application, the applicant themselves and those in favor of the appeal will also be allowed to speak in rebuttal to those opposed. The members agreed.

Add a new Paragraph 5 to address voting procedures: “Should a motion result in a tie vote or not receive the necessary 3 votes to decide in favor of the applicant, the opposite of the failed motion does not automatically prevail. The Board must put forth a new motion to affirmatively set forth a decision and it must receive the necessary 3 votes.” Bachler said there was a change in State law a few years ago that seeks to clarify the result of the vote. Mitchell asked if that was practiced in the past and he thought the members had not been doing so. Bachler said this is a new State law: need to have three affirmative votes to take any action. Hutwelker said apparently, we have not been doing it correctly. Mitchell says it sounds like the Board needs to make an affirmative action of denial if the initial motion fails. Bachler said if you cannot get three votes, then the only action is to table the vote until three votes could be obtained. Thibault said it would be important to tell the applicant about this kind of vote. Hutwelker asked the timeframe for the Board to come to a decision. Bachler said he would check on this and report back. Hutwelker said he would hope that the applicant has a right to a speedy process. The situation whereby there is a continuance, the timeframe is involved. Discussion was held about what “taking action” means. Bachler said he believes “taking action” means making a decision because a Board could table an application indefinitely. Bachler said he would research the timeframe details and get back to the Board.

Hutwelker asked about 2.c. Public Notice – about failure to pay costs - constitute valid grounds for denial. Bachler pointed out that the statement doesn’t say that the Board MUST take action to deny an application under these circumstances.

- **Miscellaneous**

Under Paragraph 3 (Amendments) add that the adopted Rules of Procedure will be filed with the Town Clerk and available for public inspection pursuant to RSA 676:1.

Add a new Paragraph 4 (Waivers) that states: “Any portion of these Rules of Procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant and a waiver would not be contrary to the spirit and intent of the rules.” Bachler said this type of language is helpful to a Board to have an opportunity to waive the rules. And they must be within the spirit and intent of the rules. Thibault said he is concerned about the opinion of the Board, and perhaps it should be a vote of the Board. Mitchell said to consider any non-statutory rule could be waived, but nothing pertinent to the statutes of the State of New Hampshire can be waived. There was consensus.

Bachler said he would draft a redlined version of the Rules of Procedure to be reviewed by the Board before scheduling a vote on it. Rudgers asked how often the rules should be reviewed. Bachler said he didn’t think every year was necessary but certainly whenever there is a statutory change. He did suggest every few years to review them. Mitchell asked to incorporate into the Rules a review every two or three years. Bachler said he would add that the Board will review the Rules of Procedure every three years unless to be done earlier as required by statutory changes.

The Board thanked Bachler for his work on the Rules of Procedure.

Public Meetings During COVID-19 Pandemic

Discussion was held regarding the options provided by the Board of Selectmen and Town staff available to Town committees, which are:

- Continue to meet fully over Zoom / or at least with public participation limited to Zoom.
- Meet in person without Zoom.
- Meet in person and “broadcast” over Zoom. This may include only members of the board present and the public participating over Zoom or members of the public being welcome in person or over Zoom. In some ways this is the most difficult because having a meeting with people physically present and trying to audio and video broadcast over Zoom are somewhat in conflict (i.e. for the participants to be seen and heard over Zoom they must be somewhat closely together, which is not conducive to spreading out).

Bachler said the State of Emergency is still in effect and the Board can continue to use Zoom for meetings until the State of Emergency ends. He noted that should the Board decide to meet in person, he would strongly encourage the wearing of masks and social distancing. Bachler said there are applications where there will be a large turnout from the members of the public and that would have to be done safely.

Mitchell said if you went to in-person meetings you might have a problem getting a quorum. Rudgers said Zoom will be valuable to folks during the winter. He said his opinion is to continue to use Zoom without in-person gathering. Karasinski said she agrees with Rudgers and then asked about technology changes that would assist having an in-person meeting assisted by Zoom. The noted a Zoom camera can be purchased that looks at the speaker and will move to them automatically. Bachler said it would cost dollars to invest in technology but that would benefit all the Boards. He noted with Zoom the meetings do have the ability to be recorded which can be helpful. He noted putting money into Whitcomb Hall with specialized cameras would make it difficult to secure the equipment. Thibault agreed that for the time being the Board continue with Zoom. Thibault said Mulhearn did speak to him about this and Mulhearn pointed out the public has been participating in meetings on a regular basis with Zoom.

Bachler said he would inform the Board about any changes in State regulations about this issue. Snyder said via Chat that she would like the Board to keep doing what we are doing for the time being.

Bachler said the September 21, 2020 meeting should have a full agenda.

Hutwelker thanked the Board members who participated in the Webinar with Attorney Stephen Buckley and he said the Board of Selectmen will continue to support this kind of training.

Hutwelker commented on the death of Charlie Beauregard who had served the Town in many capacities in the past. Hutwelker said he was a terrific man.

ADJOURNMENT

Motion to adjourn was made by Mitchell and seconded by Rudgers and all were in favor by roll call.

Motion passed. Adjournment occurred at 8:08 p.m.

Respectfully Submitted,

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

Beverly Bernard, Recording Secretary