

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
DECEMBER 17, 2007**

Note: 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.

The December 17, 2007 meeting of the Swanzev Zoning Board of Adjustment was called to order at 7:00 p.m. by Chair Bill Hutwelker. Members present: Bill Hutwelker, Jenn Gregory, Bob Mitchell, Keith Thibault and alternates Bob DeRocher, Bob Smith and Marty Geheran. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read, noting that the special exception application submitted by Barton and Darlene Smith had been withdrawn, and the following matters were addressed:

1. Minutes from November 19, 2007 and November 24, 2007.

Motion by Gregory to approve both sets of minutes as submitted. Seconded by Smith. Vote: All in favor with Geheran abstaining.

2. Public Hearing (2 Variances & Area Variance) – Russell Gocht, on behalf of Ronald and Nancy Gocht, requests an area variance from Section III.E. and use variances from Section IV.A. and XI.C.1. to permit the construction of a second dwelling unit on property situated at 46 East Shore Road. The property is shown at Tax Map 45, Lot 12 and situated in the Rural/Agricultural and Shorelands Protection Overlay Zoning District. Continued from November 19, 2007. Russell, Ronald and Nancy Gocht appeared before the Board. Seated were: Hutwelker, Gregory, Mitchell, Smith and DeRocher. No abutters were present. Public hearing opened.

Carbonneau reminded the Board that an area variance from Section III.E. was not required, as a variance regarding the lack of frontage on a town maintained road was obtained in 1976.

Russell Gocht stated that they have submitted the variance application to the State of NH (DES) and have yet to receive a response. Gocht stated that the variance from the State is required, as the property does not have enough lake frontage to permit 2 single family dwellings.

Carbonneau noted that she had spoken with Thomas Flavin, land surveyor, regarding this application. He informed Carbonneau that he had been contacted by Molly Symons, the abutting property owner.

Flavin stated that he wanted to make sure that the Board was aware that a portion of the circular driveway serving Symons' property was located on the Gocht parcel. Russell Gocht stated that the Symons' property does not have a deeded easement over the Gocht property. Gocht stated that the circular driveway was in place when his parents purchased the property. Gocht stated that the issue regarding any rights Symons may have over the Gocht property is between the landowners.

Russell Gocht reviewed the handout entitled "Representative Properties on Swanzey Lake (going counter-clockwise around the lake)." Board members acknowledged that they all had received a copy of this document. Gocht stated that the information regarding the lake properties was obtained from the on-line assessing data base. Gocht noted that the information gathered indicates that guest house on Swanzey Lake are common. Board members questioned whether the guest cottages were grandfathered, permitted by variance (or some other Town approval) or were developed without the appropriate Town approvals. Gocht stated that he didn't know. Also, Board members inquired as to how many of these guest accommodations had plumbing, electricity, etc. Gocht stated that this information was not available on line.

In addition, Russell Gocht reviewed the supplemental answers to the use variance criteria questions, specifically addressing the changes to Item 3.1. (hardship criteria).

Gocht stated that he did not understand the import of Section XI.C.1. Board member stated that they did not know the history behind this ordinance. However, the ordinance was clear that to develop a non-conforming lot within the Shorelands Protection Overlay District, the lot must/shall comply with the current regulations of DES without waivers. The proposal in question does require a variance from DES (which is more difficult to obtain than a waiver). Therefore, the Gochts needed a variance from Section XI.C.1. However, it was noted that should the variance request from Section IV.A. be denied, there was no need to pursue the variance from Section XI.C.1.

Russell Gocht stated that he felt that the proposal that was brought before the Board best suited the needs of his family. The proposal was also developed with the best interests for the environmental health and beauty of Swanzey Lake.

Board members questioned whether there were other options that may be pursued, such as expanding the existing structure. Gocht stated that expanding the existing structure would have a greater environmental impact on the property. Gocht also stated that he felt that expanding the existing structure would be less likely to receive permitting from the State of NH.

Gocht also stated that much larger structures have been constructed on Swanzey Lake, both in the past and in recent years. Gocht noted that the total square footage of the proposed new structure,

together with the square footage of the existing structure, is substantially less than many other structure on the lake (citing the information provided on the handout for support). Public hearing closed.

Geheran stated that the Board has not granted 2 single family dwellings on a single parcel, to his knowledge. DeRocher stated that he would prefer seeing an addition to the existing structure versus granting a variance to permit two single family dwellings. Gregory stated that granting the variance would set a precedent and that 2 dwelling units on a single parcel are clearly not the direction that the Town wishes to go.

Smith expressed concerns that granting the variance could potentially diminish Symons' property values, as it would impact the use of her property/driveway. However, the consensus was that there would be no diminution in surrounding property values should the variance be granted.

Board members felt that granting the variance would be contrary to the public interest as it would increase the use of the property within the shoreland protection district. Gregory also stated that 2 single family houses on a single parcel is not permitted under the zoning ordinance and granting such a request may lead to additional requests. In addition, the potential for future requests to subdivide the property may result, noting that the Board has seen similar requests in the past.

With respect to the hardship criteria, Board members concurred that the applicants currently have reasonable use of the premises. It was noted that while the applicants characterize the existing property as having 2 bedrooms and a loft, it may be possible to convert the loft to a "real" bedroom, since the existing septic system has the permitted capacity. In addition, the Board felt that there was a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property. Board members were not clear as to whether the variance would injure the private rights of others, but did feel that the public rights could be injured, as granting the variance may set a precedent that was not envisioned.

Board members did not feel that the spirit of the ordinance would be observed should the variance be granted, nor would granting the variance do substantial justice based upon the discussions during the review of the other criteria.

Motion by Gregory to deny the variance from Section IV.A. based on the above review of the criteria for granting a use variance, noting that the applicant did not prevail on 4 out of the 5 criteria. Seconded by DeRocher. Vote: All in favor.

Russell Gocht requested that the Board address the variance request from Section XI.C.1. Board members stated that this variance request was moot, as the applicant did not prevail on the underlying variance request from Section IV.A.

B. Public Hearing (Area Variance) – Matthew Conrad requests an area variance from Section XI.B.2. to permit the construction of an addition to the existing structure situated at 18 Aylward Avenue. The existing structure does not meet required setbacks. The property is shown at Tax Map 72, Lot 105 situated in the Business Zoning District. Seated were: Hutwelker, Mitchell, Gregory, Thibault and Geheran. Matthew Conrad appeared before the Board. No abutters were present. Public hearing opened.

Conrad stated that he wishes to construct an addition to his existing home. The house is non-conforming as it does not meet the required front setback by Aylward Avenue. Conrad noted that due to structural issues, constructing a second floor is not possible. Conrad stated that the proposed addition itself meets required setbacks. Conrad noted that the surrounding uses on Aylward Avenue are all residential, with the exception of a small business at the end of the street. Conrad reviewed the criteria for granting an area variance as set forth in his application. Conrad stated that the proposed addition is reasonable and would not have a negative impact on the surrounding uses and property values. Conrad noted that the property is connected to public sewer and has a private well. Public hearing closed.

The criteria for granting an area variance were reviewed. Board members felt that the applicant met all of the criteria. It was specifically noted that the area, while zoned business, is primarily residential in nature. Also, the proposed addition met all setback requirements and was “going away” from the front setback encroachment on Aylward Avenue. Motion by Geheran to grant the area variance based on the review of the criteria. Seconded by Thibault. Vote: All in favor.

4. Public Hearing (Use Variance) – Ralph & Jo Gregory request a use variance from Section VI.1.d. to permit the existing residential use to become a permitted use. The property is located at 129 Ash Hill Road, shown at Tax Map 51, Lot 6 situated in the Commercial/Industrial Zoning District. Seated were: Hutwelker, Mitchell, Gregory, Thibault and Smith. Ralph & Jo Gregory appeared before the Board. No abutters were present. It was noted that Board member Jennifer Gregory is no relation to the applicants. Public hearing opened.

R. Gregory stated that he is seeking a use variance to establish his existing house as a permitted use. The purpose is seeking the variance is to be able to obtain building permits for residential construction without needing to come back to the Zoning Board each time. R. Gregory stated that Ash Hill is residential in nature and is not suited for commercial use due to the slope of the road. It was noted that Atwood Way, which is near his property and is also located in the Commercial/Industrial Zoning, is not likely to be developed for commercial uses since it is a dead-end road. R. Gregory noted that their house has been there for many years and pre-dates the

commercial/industrial zoning district. Thibault stated that in the event that the variance is granted, it is possible that a commercial use could be established next to the Gregory's property. R. Gregory stated that he was aware of that possibility. Public hearing closed.

The Board reviewed the criteria for granting a use variance. Board members felt that the applicant met all of the criteria. Board members specifically noted the residential nature of Ash Hill Road; the fact that commercial development is unlikely off Ash Hill Road due to the slope of the road; and that the Gregory's house pre-dated that establishment of the Commercial/Industrial Zoning District. Motion by Smith to grant the use variance based on the review of the criteria. Seconded by Thibault. Vote: All in favor.

Hutwelker seated the following for the remainder of the agenda:
Hutwelker, Gregory, Thibault, Mitchell and DeRocher.

5. Consideration of Motion for Rehearing – filed by Attorney Susan H. Hassan on behalf of David Webster. Board members noted receipt of the “Motion for Rehearing;” a letter from Attorney Hassan (sent via fax) stating that she was unable to be present this evening; and a fax transmission from Town counsel Beth Fernald. Code Enforcement Officer Jim Weston stated that David Webster had been present earlier in the evening, but left as he was not feeling well.

Hutwelker stated that, while the motion was captioned a “Motion for Rehearing,” the Board should address it as a request for reconsideration of the Board's decision rendered on November 19th. Hutwelker noted that there was no “hearing” held on November 19th. Hutwelker also noted that the discussion at the November 19th meeting dealt exclusively with the determination as to whether the application was filed in a timely manner and the underlying merits of the appeal were not discussed.

DeRocher stated that he felt that the Board did not err in its decision that the appeal was not filed in a timely manner. DeRocher stated that the Board's Rules of Procedure set forth the time frame for filing appeals from administrative decisions. DeRocher further stated that the Board's Rules of Procedure do not allow the Board to waive its rules. DeRocher stated that he felt that the 30 day appeal time frame is reasonable. Board members concurred with DeRocher's statement that he felt that the Board did not make a mistake.

Hutwelker stated that the Board's Rules of Procedure establish a 30-day time frame for appeals from administrative decisions, noting that there are no provisions for extending the filing time should the filing date fall on a Saturday, Sunday or legal holiday.

Thibault noted that while Hassan states that “October 13, 2007 was a Saturday; therefore the Appeal would be due in the normal course

on Monday October 15, 2007,...” she provided no statutory or case law support for this position.

Motion by Thibault that the Board’s decision rendered on November 19, 2007 (that Webster’s Appeal from an Administrative Decision was not filed in timely manner) was correct; noting that the Board considered Hassan’s “Motion for Rehearing” as a request for reconsideration as there was no hearing held on November 19th to “re-hear” and that Hassan provided no statutory or case law in support of her position that the Board erred. Seconded by DeRocher. Vote: All in favor.

Motion by Thibault to adjourn. Seconded by Gregory. Vote: All in favor. Meeting adjourned at 9:45 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner