

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
OCTOBER 2, 2006**

[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 October 2, 2006 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:00 p.m. by Chair Bill Hutwelker. Members present: Bill Hutwelker, Jenn Gregory, Keith Thibault, Bob Mitchell, Charles Beauregard, Sr. and alternates Bob DeRocher, Marty Geheran and Don Simeneau (who left the meeting at 9 p.m.). Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following matters were addressed:

1. Minutes from September 18, 2006. Motion by Beauregard to approve the minutes from September 18, 2006 as submitted. Seconded by Mitchell. Vote: All in favor.

2. Public Hearing (Administrative Decision Appeal). Kevin Jefts challenges a determination rendered on July 25, 2006 by Code Enforcement Officer Jim Weston denying a Building Permit Application for property shown at Tax Map 88, Lot 3-1. Seated were: Hutwelker, Mitchell, Gregory, Thibault and Beauregard. Kevin Jefts appeared before the Board. No abutters were present. Also present were Code Enforcement Officer Jim Weston and the Town's attorney Beth Fernald. Public hearing opened.

Jefts reviewed the letter of denial from Weston dated July 25, 2006, item by item. Item 1 dealt with the septic design for the property. Jefts stated that Weston would not sign the plan in order for him to submit it to the State for approval. Weston stated that a septic system could not be constructed until the lot was approved as a buildable lot. Carbonneau noted that it was her recollection that Weston did not want to sign the septic design until such time as the buildable lot issue was resolved, in order to save Jefts from paying the septic design application fee. Weston acknowledged that Jefts does have septic plans prepared by licensed septic designer Tom Forest and said plans would probably be approved by the State when submitted.

Jefts stated that Item #2, "Restriction Against Use of the Property as a 'housetot,'" as noted on the plan recorded at Plan Book 39, Page 4B

was not included in any of the subsequent deeds. Jefts provided the Board with copies of deeds recorded at Vol. 930, Page 287, Vol. 2065, Page 396 and a deed from Douglas E. Wood and Myrna R. Wood to the Town of Swanzey. In addition, Jefts stated that he did not know why the restriction was included on the plan.

Jefts stated that he has a lot of record, as defined by the Swanzey Zoning Ordinance (Section XIII) and that a lot of record is entitled to be built on if it meets the provisions of Section III.E. and XI.C. of the Swanzey Zoning Ordinance. (Jefts provided copies of these provisions for the Board.)

Fernald stated that Jefts does not have a lot of record, as the lot was not in conformity with the ordinance as it was created by an illegal subdivision. Fernald reviewed the history of the property, noting that the lot was originally part of the property now owned by Margaret Lynott and shown at Tax Map 88, Lot 3. In 1977 the Planning Board granted a "line change" conveying .546 acres to Douglas Wood without a public hearing. Fernald noted that in 1977, had the Planning Board considered this to be a subdivision, a public hearing would have needed to be held. In addition, Carbonneau noted that the ZBA would have also had to be involved as the lot did not meet minimum acreage requirements.

Jefts stated that the lot has been taxed separately for over 30 years and that it is shown as a separate parcel on the tax maps. Fernald stated that does not automatically allow the lot to be conveyed separately from the parcel it was to become part of (now owned by Richard and Carol Leger shown at Tax Map 88, Lot 5-1). Fernald stated that the actions of the Planning Board in 1977 combined the two parcels now shown at Tax Map 88, Lot 3-1 and Tax Map 88, Lot 5-1 into one lot for zoning purposes.

Jefts stated and it was later confirmed by Douglas Wood that requests had been made to the Town to combine Map 88, Lot 3-1 and Map 88, Lot 5-1 into one lot and was denied. Woods stated that he was told that the lots could not be combined on the tax map, as they are separated by the road. Carbonneau stated that there is no record of this request in the land use files.

Fernald noted that the conveyance of Map 88, Lot 5-1 to the Legers in August 2003 created an illegal subdivision.

Jefts also noted that two title searches had been conducted on the lots and that this restriction was not noted anywhere. Fernald stated that a title search should have revealed the restriction on Map 88, Lot 3-1, as it is clearly indicated on the plan recorded at the Registry of Deeds. Carbonneau also noted that information contained on plans also has the same legal effect as information contained in deeds.

Phil Alther, Jefts potential builder, stated that it was his opinion that this was a lot of record and was able to be built on. Jefts cited RSA 674:13 ("Official Map of the Municipality") as authority for this being a lot of record. Weston stated that a community has to adopt an "official

map” meeting the requirements of the statute and that only two communities in New Hampshire have an “official map” and that Swanzey is not one of the two communities. Alther asked what happens should the ZBA deny the appeal from the administrative decision. He was told that a rehearing would need to be requested within 30 days. If the rehearing request is denied, the applicant has the opportunity to appeal to Superior Court. Alther asked if there was any other way that Jefts could be allowed to build on the property. Board members stated that he should consider contacting an attorney for legal advice. Public hearing closed.

The Board members reviewed the decision issued by Weston on July 25, 2006 and felt that there was no evidence presented that Weston’s decision was incorrect. Board members noted that the septic issue was more of a housekeeping matter and that it would, in all likelihood, be a moot issue if the lot was determined to be a buildable lot. Board members also noted that Items 2 and 3 in Weston’s letter were also correct. Board members felt that there was no mistake or error in Weston’s administrative decision to deny the building permit application. Motion by Mitchell to deny the appeal from administrative decision due to the applicant’s failure to overturn the facts presented in Code Enforcement Officer Weston’s letter dated July 25, 2006. Seconded by Beaugard. Vote: All in favor.

3. Public Hearing (Application for Variances). Kenneth & Joyce St. Lawrence request a variance from Section V.B. to permit an existing building situated on property located at 51 Pine Street to be used as a residence (there is currently an existing residential use on the property) and from Section VII.E.2. to permit the construction of a septic system that does not meet setbacks from wetlands. The property is shown at Tax Map 57, Lot 128 situated in the Business Zoning District. Kenneth and Joyce St. Lawrence appeared before the Board. No abutters were present. This item was chaired by Thibault. Members seated: Thibault, Hutwelker, Gregory, Mitchell and Beaugard. Public hearing opened.

J. St. Lawrence reviewed the history of the property, noting that the property used to consist of 3 separate parcels, which were later combined by their predecessor in title into one lot for taxation purposes. J. St. Lawrence stated that when they were purchasing the property, they were provided a plan which indicated that there were two houses on the property. This plan was recorded at the Cheshire County Registry of Deeds. Thibault noted that a variance was required in order to occupy two houses on a single parcel of land, which was being requested by the applicants. Board members felt that the applicant may want to further research the past use of the property, as well as other properties that may be similarly situated.

J. St. Lawrence also stated that they are applying for a variance in order to place a septic system on the lot, which does not meet the

required 125 foot setback from wetlands. J. St. Lawrence provided a letter from licensed septic designer Carl Hagstrom that indicated that a septic system could be installed that would meet State septic system requirements, including the State's 75 foot setback restriction from wetlands. It was not clear from Hagstrom's letter how far the proposed system would be from the wetland areas. J. St. Lawrence indicated that it was her understanding that the system would be approximately 117 feet from wetlands. Board members felt that this information needed to be confirmed by a licensed septic designer in writing. Board members noted that a letter from the Conservation Commission had been received indicating that the Commission was not in favor of granting variances concerning wetlands setbacks.

J. St. Lawrence acknowledged that the current structure does not meet the required minimum square footage for a single family dwelling. She stated that should they get approval to utilize the structure as a house, they would construct an addition so that the structure meets the minimum requirement of 540 square feet on the first floor.

J. St. Lawrence requested that the Board continue consideration of the matter until its November meeting in order for her to obtain additional information. Motion by Beauregard to continue this matter to November 20, 2006 at 7:00 p.m. without further notice. Seconded by Hutwelker. Vote: All in favor.

4. Public Hearing (Special Exception and Area Variance Applications). William B. & Sandra A. Mispel request an area variance pursuant to Section IV.B.3. and a special exception pursuant to Section IX. To permit the construction of a carport on property situated at 33 Whitcomb Road. A variance is required as the proposed carport does not meet required setbacks; a special exception is required as the carport is situated within the Flood Plain District. The property is situated in the Residence Zoning District and shown at Tax Map 23, Lot 3-15. Thibault steps down from the table due to a potential conflict of interest. Hutwelker resumes his seat as chair. Simeneau left the meeting at 9:00 p.m. Seated were: Hutwelker, Gregory, Mitchell, Beauregard and Geheran (for Thibault). Public hearing opened.

W. Mispel reviewed the proposed plan before the Board. He noted that while the property is listed as being within the 100-year flood plain, the area of the proposed location of the carport, as well as the location of his house did not experience any flooding last October. W. Mispel provided photographs of the property which indicated that the area where he would like to construct the carport is off of the existing driveway and is shielded by trees. W. Mispel noted that his neighbor does not object to the construction of the carport.

Weston stated that Mispels do have the opportunity to site the carport on other areas of their property that would meet required setbacks. S. Mispel stated that the proposed location is the least

obtrusive aesthetically and most convenient location. She stated that if the Board members viewed the site, they would note that it is the best location and the only reasonable area in which to construct it.

Geheran stated that he felt that a site visit would be useful.

Motion by Mitchell to conduct a site visit on Monday, October 9, 2006 at 5:30 p.m. and to reconvene immediately following the site visit to further consider this matter at Town Hall without further notice. Seconded by Beauregard. Vote: All in favor. It was recommended that the applicants stake out the proposed location of the carport, as well as the location of the well.

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