SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
NOVEMBER 15, 2010

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.

ATTENDANCE
William Hutwelker, Chair, Keith Thibault, Vice Chair, Charles Beauregard, Sr., Bob Mitchell, Jerry Walker. Alternates John Arnone and Bryan Rudgers. Town Planner Sara Carbonneau also was present.
Chairman Hutwelker called the meeting to order at 7:00.

MINUTES
Motion by Beauregard to approve the minutes of the October 18, 2010 meeting. Second by Thibault. All in favor.

1. (Public Hearing) Special Exception
Applicant: Jen Wyman
Property owner: Abraham and Jen Wyman
Property location: 51 Pasture Rd Tax Map 18, Lot 98
Zoning District(s): Business
Request: Special exception pursuant to Section V.B.2.a to permit the property to be utilized for a daycare facility
Members seated: Hutwelker, Beauregard, Sr., Mitchell, Walker. Rudgers was seated for Thibault, who recused himself due to a possible conflict of interest.
Representing the application: Jen Wyman
Abutters present: none
Hutwelker re-opened the public hearing (continued from October 18, 2010) at 7:04.

DISCUSSION
Wyman stated that she seeks to conduct an unlicensed day care facility at her home. In response to the ZBA's October 18 request for more information, Wyman presented a page printed from NH Department of Health & Human Services web site regarding types of child care not requiring licensing by the Child Care Licensing Unit. Wyman directed the Board's attention to this item:

> "Private homes in which any number of the provider's own children, whether related biologically or through adoption, and up to 3 additional children are cared for regularly for any part of the day, but less than 24 hours, unless the caregiver elects to comply with the provisions of this chapter and be licensed."

Wyman supplied the Board with her homeowners' insurance policy, and stated that the insurer has full knowledge of the presence of family dogs, and has no issues with insuring her personal liability as well as the child care operation.

Wyman stated that she looked into options for making more "impermeable" the fence between the children's play area and the dogs' area. Wyman stated that the expense of all possible options would exceed $100. She said that, given the separation between dogs and children, and her constant supervision of the children at play, she feels no justification for what would be, to her, an undue and unnecessary financial burden.

From 7:09 to 7:10, the Board took a recess to allow Carbonneau to photocopy Wyman's materials for ZBA members.

In response to questioning by the Board, Wyman said that her CPR certification has expired, but is not required for an unlicensed day care. Wyman and Board members discussed their interpretation of the State licensing exemption regarding number of children in excess of the provider's own children. Hutwelker said that he understands the limit of additional children to be three, regardless of days of attendance. Walker and Rudgers concurred. Wyman stated that while she cares for 4 children (not her own), only 3 of the 4 are present at any given time. Wyman said that she understands the limit to be three additional children on any given day. Wyman stated that she has not licensed her facility because her day care will not be permanent; she anticipates running the day care only until her children get older.

Hearing no further comments or questions, Hutwelker closed the public hearing at 7:14. Recapitulating the October 18 discussion for Rudgers, Mitchell said that some ZBA members had expressed concern about the lack of separation between the dogs and children's fingers, and sought such separation. Mitchell said that the Board also had requested documentation of what triggers the requirement for day care licensing. Members reviewed the criteria for granting the requested special exception.

1. Is the exception allowed by the ordinance?

Members agreed that the ordinance does allow the exception.

2. Are specific conditions present under which the exception may be granted?

a. Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?

Members agreed that the applicant had testified that others in the area operate day care businesses. Members noted that childcare is common in the district.

b. Will such approval reduce the value of any property within the District, or otherwise be injurious, obnoxious or offensive to the neighborhood?

Members agreed that they had received no testimony to that effect.

c. Will there be a nuisance or serious hazard to vehicles or pedestrians?
Members agreed that the operation would not create a nuisance or serious hazard.

d. Will adequate and appropriate facilities be provided for the operation of the proposed use?
The group was divided on this issue. Some members felt that facilities would be appropriate if the fence prevented potential contact between dogs and children's hands, and other members felt that the facilities were adequate. At 7:20 Hutwelker re-opened the public hearing to ask Carbonneau whether the Board could condition an approval on the provision of an impermeable fence. Carbonneau advised members to address the application as presented. At 7:21 Hutwelker re-closed the public hearing. Members discussed the fence further, recalling that the Board had made it clear on October 18 that the fence issue would have to be resolved before the Board could make a favorable determination. Members acknowledged that Wyman had stated that her use of the yard minimized contact between dogs and children, but also had expressed her unwillingness to alter the fence.

Motion by Mitchell to deny the special exception pursuant to Section V.B.2.a to permit the property to be utilized for a daycare facility, such denial based on the failure of the applicant to provide adequate and appropriate facilities; specifically, failure of the applicant to provide adequate separation between children and dogs. Second by Walker. Hutwelker, Mitchell, Walker, Rudgers in favor. Beauregard, Sr. opposed. Motion passes.

Hutwelker advised Wyman of her rights to appeal the decision.

2. (Public Hearing) Modification to Previously Granted Special Exception
Applicant: Tasoulas Realty Limited Partnership
Property owner: Tasoulas Realty Limited Partnership
Property location: West Street Tax Map 81, Lot 7-1
Zoning District(s): Business
Request: Modification to a previously approved special exception (granted February 8, 2010). The applicant seeks to reduce the number of units approved from 8 to 6, to increase the footprint from 3,648 sf to 4,056 sf, and to reduce parking spaces from 19 to 16, thereby reducing total lot coverage, traffic and stormwater runoff. The applicant also has modified the building design, lowering the buildings to 1½ story.
Members seated: Thibault, Beauregard, Sr., Mitchell, Walker. Arnone was seated for Hutwelker, who recused himself due to a possible conflict of interest.
Representing the application: Dave Bergeron (Brickstone Masons), John Tasoulas
Abutters present: Martha Joyal and Brian Pickering
Vice Chairman Thibault called the public hearing to order at 7:25.

DISCUSSION

Members received a Nov 12, 2010 application summary from Town Planner Carbonneau.

Bergeron presented a site plan of the 1-acre property, and explained that the proposed configuration is similar to that of the prior application. Bergeron said that a revision to the plan (just submitted this evening) includes the relocation of the driveway towards the center of the property in order to retain some large trees. The overall lot coverage would remain unchanged, Bergeron stated; the units' increased size (total increase of 400 sf) would be balanced by reduced paving (fewer parking spaces, due to the reduction in number of units). Bergeron stated that the proposed units would have three bedrooms, and stated that the reduction in number of units would be more in keeping with the neighborhood than the prior proposal.

Bergeron presented the written responses to questions submitted in the application. As proposed, Bergeron stated, the property would be connected to public sewer (capacity attested to in a letter from the Swanzey Sewer Commission) and to the private West Swanzey Water Company (capacity attested to in a letter from the company). Bergeron submitted a letter from an appraisal company stating that the proposal would not reduce surrounding property values, as well as a traffic analysis concluding that the proposed development would not be a nuisance or serious hazard to vehicles or pedestrians. Bergeron said that drainage would be handled on-site, through infiltration.

Abutter Joyal stated her recollection that the prior application had proposed an 8' privacy fence to run the full length of the property line between Map 81 Lot 7-1 and Map 81 Lot 7-2. Bergeron said that it might be necessary to remove trees before installing a fence along the property line. Carbonneau said that the prior approval did not specify fence height; to allow for maintenance, it is recommended that fences be installed a foot to two feet inside a property line. Bergeron said that the applicants would discuss the location of a fence with the Planning Board.

Referencing existing poor drainage on West Street, Joyal and Pickering expressed concern about drainage on the site. Bergeron said four stone-filled catch basins for infiltration would assure that the proposal met regulations regarding retention of water on the property. In response to a question from Joyal, Carbonneau stated that a subdivision plat recorded in 1976 confirms that the property is surveyed and contains a true acre.

Regarding his motivation to increase the number of bedrooms from two to three, Tasoulas stated that he believes Swanzey already has sufficient two-bedroom units.

In response to Pickering's question, Bergeron said that the buildings likely will be constructed with fire safety walls rather than sprinkler systems. Tasoulas said Fire Chief Skantze supports the construction of two-hour fire separation between units, from basement through roof.

Hearing no further comments or questions, Thibault closed the public hearing at 7:45. Members agreed that there is no density limit (other than setback requirements) for parcels connected to public sewer. Members agreed that some of the abutters' concerns would be addressed by the Planning Board during site plan review, and urged abutters to talk with the developer about remedies to the concerns.

Members reviewed the criteria for granting the requested special exception

1. Is the exception allowed by the ordinance?
Members agreed in the affirmative.

2. Are specific conditions present under which the exception may be granted?

a. Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?
Members agreed in the affirmative.

b. Will such approval reduce the value of any property within the District, or otherwise be injurious, obnoxious or offensive to the neighborhood?
Members agreed that they had received no evidence to the contrary.

c. Will there be a nuisance or serious hazard to vehicles or pedestrians?
Members agreed that the proposal would create no nuisance or serious hazard to vehicles or pedestrians.

d. Will adequate and appropriate facilities be provided for the operation of the proposed use?
Members agreed that public sewer and adequate private water both are available.

Motion by Walker to approve the modification to the previous granted special exception as submitted. Second by Mitchell. All in favor.

3. (Public Hearing) Variance
Applicant: Charles Sheaff
Property owner: Charles and Carol Sheaff
Property location: 26 Ridge Rd Tax Map 18, Lot 40
Zoning District(s): Residence
Request: Variance from Section IV.B.3 to permit the construction of a storage shed that does not meet required setbacks.
Members seated: Hutwelker, Thibault, Beauregard, Sr., Mitchell, Walker.
Representing the application: Charles Sheaff
Abutters present: Donald and Sondra Blake
Hutwelker called the public hearing to order at 7:53.

DISCUSSION

Members received a Nov 12, 2010 application summary from Town Planner Carbonneau, who stated that the .28 acre corner lot is served by the North Swanzey Water and Fire Precinct for public water, and has a private septic system. Carbonneau noted that the rear property line is a retaining wall.

Sheaff presented his plan to construct a 12' x 16' storage shed near the northeast corner of the house. The shed would be 22 feet from the edge of Ridge Road, which wraps around the south and east sides of the house. As proposed, the shed would be about 10' from the lot line that is shared with Map 18 Lot 41.

At length, Board members discussed which dimensions of the lot should be considered for front or side setbacks. Members felt that it could be argued that the lot lacks a rear lot line, instead having one side lot line (shared with Map 18 Lot 39) to the west, a second side lot line (shared with Map 18 Lot 41) to the north, and a long front lot line on the south and east, where Ridge Road wraps round two sides of the property. The property has two driveways off Ridge Road—one to the east and the second to the south.

Sheaff and members agreed that the request should more properly be for two variances: the first, to exceed the 30' setback on the east side (front) of the property, and the second, to exceed the 20' setback on the north side (side) of the property. Sheaff said that the shed could not be situated over the septic leach field because the system is raised.

Abutter Donald and Sondra Blake (Map 18, Lot 12, across Ridge Road) stated that they had no objections to the proposed shed, and said that the shed would be an improvement to the property.

Hearing no further comments or questions, Hutwelker closed the public hearing at 8:32. Members agreed to consider the two variance requests concurrently, and reviewed the criteria for granting the requested variances.

1. Could the variance be granted without the proposed use being contrary to the public interest?

Members agreed in the affirmative.

2. Would the spirit of the ordinance be observed if the variance is granted?

Members agreed in the affirmative, noting that one function of the ordinance is to protect neighbors; the shed would be located 22' away from the street.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, because the shed would provide storage much needed by the owner on what members agreed to be a unique property.

4. Could the variance be granted without diminishing surrounding property values?

Members agreed in the affirmative, referencing testimony that the shed would help to improve surrounding property values.

5. Do special conditions of the property distinguish it from other properties in the area?:

Members agreed that the lot's 200 feet of continuous frontage on .28 acres is a distinguishing special feature.

A. Owing to the property's distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

AND

(ii) Is the proposed use a reasonable one?

Members agreed that the proposed use is reasonable.

B: Owing to 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 therefore necessary to enable a reasonable use of the property, for the following reasons:
Members agreed in the affirmative.

Motion by Beauregard, Sr. to approve two variances from Section IV.B.3. to permit the construction of a storage shed that does not meet required setbacks. Second by Mitchell. All in favor.

4. **Discussion** regarding "spirit of the ordinance: criterion in variance applications.

Members discussed various applicable court cases summarized by Carbonneau. To better inform decisions, members agreed that certain applications may merit deliberation over why a part of the ordinance exists. Carbonneau said that the Board doesn't necessarily have to consider all aspects of the entire ordinance, but might be well served to look beyond the provision in question (for example, to consider the purpose and intent of the applicable section). Members agreed that such deliberation should be clearly set forth in the minutes to justify a conclusion that a proposal is in the spirit of the ordinance.

ADJOURNMENT
Motion by Beauregard, Sr. to adjourn. Second by Walker. All in favor. The meeting adjourned at 9:01 p.m.

Respectfully submitted,

Victoria Reck Barlow
Recording Secretary