

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
FEBRUARY 11, 2008**

[Note: Minutes are not final until review and approved by the Board. Review and approval of minutes generally takes place at the next regularly scheduled meeting of the Board.]

The February 11, 2008 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, Keith Thibault, Charles Beauregard, Sr., Bob Mitchell, Jenn Gregory and alternate Bob Smith and Bryan Rudgers (arriving at 7:15 p.m.). The Board was assisted by Town Administrator Beth Fox and Town Planner Sara Carbonneau. The agenda for the evening's meeting was read (with Hutwelker noting that the Board would address the Request for Rehearing submitted by Gocht immediately following disposition of the Whittemore applications) and the following matters were addressed:

1. Minutes from January 21, 2008 – Motion by Thibault to approve the minutes from January 21, 2008 as submitted. Seconded by Smith. Vote: All in favor.

2. Public Hearing) Appeal from an Administrative Decision – Richard Whittemore challenges a determination rendered on December 4, 2007 by Swanzey Code Enforcement Officer Weston denying a Building Permit Application for a new one-family dwelling to be located on property situated at 259 Watson Road. The property is shown at Tax Map 85, Lot 11 situated in the Rural/Agricultural District. Continued from January 21, 2008. (The Board was assisted at the table by Town Administrator Elizabeth Fox on this matter, as Town Planner Carbonneau resides on Watson Road in Winchester, but is not a direct abutter.) Attorney Andrew Sullivan appeared before the Board on behalf of the Applicant. Also present were Richard Whittemore and his brother, Robert Rome. Whittemore had indicated previously that Rome was also authorized to speak on his behalf. No abutters were present. Seated for this matter were: Thibault (acting a Chair on this matter), Gregory, Beauregard, Mitchell and Smith. Public hearing was re-opened.

Board members had previously been provided with copies of correspondence from Town Counsel Sam Bradley (dated February 8, 2008) and from Attorney Sullivan (dated February 11, 2008). Attorney

Bradley also provided the Board with memorandum dated February 11, 2008 in further response to Attorney Sullivan's letter.

Sullivan reminded the Board that Whittemore has resided on the property since 1979. In addition, he noted that the Town was aware of Whittemore's residing on the property, as Whittemore advised that he filed a tax abatement case against the Town in 1982. Also, Sullivan stated when the abutting property owners (Bushes) built on their property they did not have any road frontage at the time.

Sullivan reviewed RSA 674:41, noting that it was his opinion that the applicant met the "practical difficulty" condition. Sullivan also stated that it was his opinion that the proposed structure does not relate to existing or proposed streets. He stated that there will be absolutely no changes or any impacts to the existing streets should the single family dwelling be constructed. Therefore, he felt that the applicant met the "test" for appealing pursuant to RSA 674:41,II.

Sullivan stated that the Town of Swanzey does not have an official map. He stated that he briefly reviewed the Town's Master Plan and found it to be replete with statements that the Town wishes to retain its rural character. Sullivan felt that permitting the construction of a single family home would retain the Town's rural character and would not be contrary to the intent of the Master Plan. Sullivan stated that the applicant would be willing to sign a release for municipal liability. In addition, recitations would be included in the deed alerting purchasers of such a release. Sullivan stated that it was his opinion that the criteria for granting relief pursuant to RSA 674:41,II had been met.

Bradley commented on Sullivan's reliance on Dube v. Senter, attached to Sullivan's letter. Bradley stated that this case is not applicable. In addition, Bradley noted that RSA 674:41,III (adopted in 1988) is the exclusive remedy in this matter. Both Bradley and Sullivan agreed that they were unaware of any case law that addressed the language in RSA 674:41,II that the buildings or structures be related to existing or proposed streets.

Mitchell stated that it was his opinion that the proposed single family dwelling does, in fact, need to be related to a street. Mitchell stated that oral testimony from the Town's Emergency Management Director and written testimony provided by the Town's Fire Chief reflected difficulties they would face in providing emergency services to this property as it is not located on a Town maintained road. Mitchell stated that he felt that appropriate ingress/egress onto a town-maintained road was necessary for a residence.

Mitchell also stated that the assessing card currently lists this property as a "hunting camp" and that the applicant is proposing a build a 1,200 s.f. home, which, in his opinion, is very different from the existing structure. Mitchell stated that in addition to the difficulty of providing emergency services, regular services (such as school bus pick-up) would be difficult. Public hearing closed.

Board members evaluated whether the applicant had standing to appeal pursuant RSA 674:41,II. Mitchell stated that he felt that the standard for determining whether the applicant met the “practical difficulty” test was pretty low, as he felt that “practical difficulty” was a very broad term. Board members concurred.

Board members evaluated whether the proposed building was related to existing or proposed streets. Board members stated that they felt that a single family dwelling should be and is required to be related to existing or proposed streets, citing the prior statements of Mitchell. Mitchell also noted that the zoning ordinance consistently relates specific uses (including single family dwellings) to town maintained roads, thereby indicating that the Town does feel that there is a relation between single family homes to existing or proposed streets.

Mitchell stated that he felt that there was a mis-statement in Bradley’s letter of February 8, 2008 on page 2 in the paragraph beginning “These questions have to be answered.... Motion by Mitchell to re-open the public hearing in order to obtain clarification. Seconded by Gregory. Vote: All in favor. Bradley clarified his letter. Public hearing was re-closed.

Motion by Mitchell to deny the applicant’s right to appeal pursuant to RSA 674:41,II as the circumstances in this case do require the proposed single-family dwelling to be related to the existing street. Seconded by Beaugard. Vote: All in favor.

3. (Public Hearing) Use and Area Variance Applications – In the event that Richard Whittemore does not prevail on the Appeal from an Administrative Decision (item #2 herein), the Applicant seeks a variance from Section IV.A.3. The applicant has requested both an area variance and a use variance (if required by the Board) from Section IV.A.3. to build a new one-family dwelling on the property situated at 259 Watson Road. The property does not have any road frontage. Hutwelker chaired this matter. Seated were: Hutwelker, Beaugard, Gregory, Thibault and Mitchell. Hutwelker stated that prior to opening the public hearing on this matter, he felt that the Board should addresses whether or not it felt that the Board had jurisdiction to hear this application. Hutwelker stated that Bradley letter (dated February 8, 2008) stated that RSA 674:41,III was the exclusive remedy in the matter and that the Board did not have any authority to hear the variance requests. Sullivan stated that he disagreed, stating that he felt that RSA 674:41,III did not supercede the statutory authority to seek relief in the form of a variance.

Motion by Mitchell to not accept the applications for variances based on the opinion from Town counsel that RSA 674:41,III was the exclusive remedy. Seconded by Thibault. Vote: All in favor.

(Carbonneau assists the Board from this point forward.)

4. Request for Rehearing – Ronald and Nancy Gocht request a rehearing regarding the Board’s decision rendered on December 17, 2007. Seated were: Hutwelker, Thibault, Gregory, Beauregard and Mitchell.

Hutwelker asked Board members whether they reviewed the request for rehearing. Board members indicated that they had done so. Hutwelker asked the Board members if there was any evidence that the Board had made a mistake or if there was evidence that was previously unavailable. Board members did not feel that they erred in the decision rendered on December 17, 2007, nor did they feel that there was any evidence provided that was previously unavailable.

Motion by Beauregard to deny the request for rehearing. Seconded by Gregory. Vote: All in favor.

5. (Public Hearing) – Special Exception and Area Variance

Applications – Southwestern Community Services (SCS) requests a special exception pursuant to Section V.B.2.b. to construct multi-family housing (38 dwelling units contained within one building) and an area variance from Section III.Q.1. (to permit 44 parking spaces where 76 spaces are required). The property is situated in the Business Zoning District and is shown as a portion of Tax Map 19, Lot 66. The property is located off 183 Monadnock Highway and is owned by Sandra Page. Thibault stated that he was employed by the applicant and would not be seated on this matter. Thibault left the meeting. Seated were: Hutwelker, Beauregard, Mitchell, Gregory and Rudgers (for Thibault). Numerous abutters were present, as well as property owner Sandra Page and her husband, Glenn Page. Present on behalf of the applicant were Rob Hitchcock from SVE Association and Darren Duffy (from SCS) Public hearing on the Special Exception Application was opened.

Hitchcock reviewed the proposed plans. Hitchcock stated that the project needs special exception for multi-family housing. In addition the application is also requesting a variance on the parking requirements. This application will also need approval from the Planning Board to subdivide the property – the proposed project will be located on a 6.82 acre parcel), as well as Site Plan Review Approval.

Hitchcock stated that the proposal is for 38 units of senior housing, to be located in one building. The proposed building is 3 stories high and has a footprint of approximately 15,760 s.f. Each unit will consist of 560 s.f. and will be exclusively one-bedroom units. Hitchcock stated that the building will have fire sprinklers and an elevator. Duffy noted that residents must be 55 years of age or older and meet certain income restrictions (must earn less than 60% of the area’s median income).

The applicant proposes 44 parking spaces where 76 are required pursuant to the ordinance. Hitchcock stated that the building would be located approximately 1,000 from Route 12 and would be buffered by

existing woods and wetlands. Hitchcock also noted that the elevation of the third story would be at or below the road level elevation of Route 12.

Hitchcock stated that the applicant proposes to utilize the existing curb cut (serving the Page residence at 183 Monadnock Highway) – this would be a shared driveway serving both the Page residence and the proposed project. Hitchcock stated that he has correspondence from NH DOT that they would likely issue a driveway permit for this project upon submission of final plans. The Board was provided a letter from the Swanzey Sewer Commission stating that the wastewater treatment facility has the capacity to support this project. In addition, an unsigned letter from the North Swanzey Water & Fire Precinct indicated that the water system has the capacity to serve this project.

Hitchcock stated that it is projected that the 38 units of housing will generate approximately 30 cars for the residents, based on similar projects operated by SCS. Duffy noted that this project would be limited to one car per unit, as are similar projects operated by SCS (senior housing – age 55 and over with income limitations).

Hitchcock reviewed the criteria for granting a special exception, as set forth in the submitted application.

Architectural renderings of the proposed building were shown to the Board. It was noted that these were preliminary renderings. Duffy stated that the building would be 3 stories, with a pitched roof. Siding would be vinyl, clap-board style. Windows would be six over six, double hung. Laundry facilities would be provided on site, as well as a few common rooms. In addition, each resident would have a storage area located on their floor (separate from their dwelling unit), approximately 8' x 8'. Duffy stated that the units would be all rental units and would be restricted to people ages 55 and over, meeting certain income guidelines. Duffy noted that these restrictions must remain in place due to the funding restrictions (the money for the project is being obtained under a HUD Section 202 grant).

Abutters expressed concern about the adequacy of the reduced number of parking spaces versus what is required pursuant to the zoning ordinance. Duffy stated that similar projects operated by SCS have indicated that approximately 80 to 85% of the residents have cars, noting that many residents who qualify under the income guidelines often cannot afford vehicles. Duffy provided the Board with oral testimony regarding the number of dwelling units and parking spaces in similar projects operated by SCS.

Abutters expressed concern about the traffic on Route 12. Hitchcock stated that there is adequate site distance. Hitchcock also stated that NH-DOT District IV has not indicated that it feels a slip lane (or some other modification to Route 12) is necessary. Residents in the area noted that the speed limit in the area is not obeyed. Hitchcock also noted that pedestrian safety would not be a concern, as he did not see the residents walking to any destinations.

Abutters questioned whether their property values would be negatively impacted. Hitchcock stated that he did not feel that this would be the case, as the building would be situated far off the road and barely visible. He also noted that senior housing projects typically have very little impact on the surrounding areas.

G. Page stated that the property was in the business district and that this project would have the benefit of extending water and sewer along Route 12, thereby increasing property values. He also noted that extending the water and sewer would provide additional opportunities for commercial development along Route 12.

Rudgers moved that the Board continue the public hearing without further notice to Saturday, February 16, 2008 at 9:00 a.m. to conduct a site visit. Seconded by Gregory. Vote: All in favor. It was noted that the public is invited to attend. Parking for the site visit will be available at the Page's house.

Hutwelker stated that following the site visit, the Board would next consider this matter at the regularly scheduled March meeting, to be held on March 17, 2008 at 7:00 p.m. Hutwelker reminded the applicant that they should be prepared with a draft driveway agreement (since the proposed access is a shared driveway), as well as a signed letter from the North Swanzey Water & Fire Precinct. Hutwelker also recommended that the Sewer Commission revise its letter.

Motion by Mitchell to adjourn. Seconded by Rudgers. Vote: All in favor. Meeting adjourned at 9:55 p.m.

Submitted by,

Sara H. Carbonneau for Items 4, 5 and 6 herein.
Town Planner

Submitted by,

Elizabeth A. Fox for Items 1, 2 and 3 herein.
Town Administrator