

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
SEPTEMBER 20, 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. Alternates Bryan Rudgers (arrived at 7:06), Charles R Beauregard, Jr. (arrived at 7:12) and Jim Vitous. Town Planner Carbonneau also was present.

Chairman Hutwelker called the meeting to order at 7:00 p.m.

MINUTES

Motion by Beauregard, Sr. to approve the minutes of the August 16, 2010 meeting. Second by Vitous. All in favor.

1. (Public Hearing) Special Exception

Applicant: Jen Wyman

Property owner: Jen Wyman

Property location: 51 Pasture Rd Tax Map 18, Lot 98

Zoning District(s): Business

Requests: Special exception pursuant to Section V.B.2.a to permit the property to be utilized for a daycare facility.

Members seated: Hutwelker, Thibault, Beauregard, Sr. Rudgers was seated for Mitchell, and Vitous was seated for Walker.

Motion by Beauregard, Sr. to continue, at the applicant's request, the public hearing to October 18, 2010. Second by Rudgers. All in favor.

2. (Public Hearing) Special Exception – application withdrawn at the request of the applicant.

Applicant: Russell Gocht

Property owner: Ronald & Nancy Gocht

Property location: 46 East Shore Rd Tax Map 45, Lot 12

Zoning District(s): Rural/Agricultural and Shoreland Protection Districts

Request: Special exception from Section XI.B.1 and XI.C.1 to permit the expansion of a non-conforming structure.

3. (Public Hearing) Special Exception - Modification

Applicant: Gregory Getty

Property owner: Gregory Getty

Property location: 20 Base Hill Rd Tax Map 52, Lot 1-2

Zoning District(s): Commercial/Industrial

Request: Modification to a previously approved special exception from Section XI.A.2 to permit the expansion of a non-conforming use by constructing an accessory garage, said garage being larger than the garage approved on August 16, 2010.

Members seated: Hutwelker, Thibault, Beauregard, Sr. Beauregard, Jr. was seated for Mitchell, and Vitous was seated for Walker.

Representing the application: Gregory Getty

Abutters present: none

In the applicant's absence, **Motion** by Beauregard, Sr. to continue the hearing until later in the meeting. Second by Thibault. All in favor.
The ZBA addressed agenda items #4 and #5. At 7:46, Hutwelker called to order the public hearing for agenda item #3.

DISCUSSION

Members received a September 15, 2010 application summary from Town Planner Carbonneau. Carbonneau stated that the square footage of the garage proposed on August 16, 2010 was 728 s.f. The square footage of the garage proposed in the pending application is 832 s.f., in a building that is 26' x 32' (the approved building is 26' x 28'). This evening the applicant stated that he wished to expand the garage even further to 884 s.f. (26' x 34').

Hearing no further comments or questions, Hutwelker closed the public hearing at 7:50. Hutwelker advised the group that the requested approval is for additional space, and not for the use itself. Board members were of the opinion that the proposed expansion of the garage to 884 s.f. did not have an impact on their prior decision granting the special exception.

Motion by Thibault to grant the requested modification of the special exception from Section XI.A.2 to permit the expansion of a non-conforming use by constructing an accessory garage of 884 s.f. Second by Beauregard, Sr. All in favor.

4. (Public Hearing) Variance

Applicant: Aaron Thornton

Property owner: Aaron Thornton and Cassandra Will

Property location: 88 Westport Village Rd Tax Map 88, Lot 27

Zoning District(s): Residence

Request: Variance from Section XI.B.1 and IV.B.3 to permit the expansion (addition of a deck) of a non-conforming structure, said expansion also not meeting setback requirements.

Members seated: Hutwelker, Thibault, Beauregard, Sr. Rudgers was seated for Mitchell, and Vitous was seated for Walker.

Representing the application: Aaron Thornton

Abutters present: none

Hutwelker called the public hearing to order at 7:08.

DISCUSSION

Members received a September 16, 2010 application summary from Town Planner Carbonneau. Carbonneau stated that construction on the deck commenced without a building permit, and that Code Enforcement Officer Weston issued a Notice of Violation on August 23, 2010. Carbonneau said that she had received no feedback from heads of Town departments, and said that the property is served by a private septic system and well. Carbonneau said that the district requires a 30' front setback, and said that the deck is an expansion of a non-conforming structure.

Describing the neighborhood, Thornton said that all the other homes are on small lots, and are situated close to the road. He said that, in his opinion, most construction in the neighborhood would require zoning relief.

Thornton said that he had built the deck about a month ago, and apologized for failing to first obtain a building permit. Carbonneau said that Code Enforcement Officer Weston has no issues with the construction itself. Thornton stated that the deck is situated 26' from Westport Village Road, and said that his house is 21' from the road, limiting the use of the front yard. Thornton said that he and his wife had designed the deck to create a safe play area for their young children. Thornton said that he selected a location for the deck designed not to interfere with existing windows on the front of the house, thereby avoiding a potential safety hazard; improving the appearance of the house was also a consideration.

Hearing no further comments or questions, Hutwelker closed the public hearing at 7:24. Members reviewed the criteria for granting the requested variance.

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

Members agreed in the affirmative, stating that the use would be compatible with the neighborhood.

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

Members agreed in the affirmative, noting that the deck is located farther from the road than the house.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, observing that the existing architecture of the house could create a safety hazard if the deck was situated so as to meet the setback.

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

Members agreed in the affirmative, having heard no evidence to the contrary.

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

Members agreed that all houses along the road are situated in similar way, but felt that zoning created the issue, and partly made the house non-

conforming.

a.i. Owing to the property's distinguishing special conditions, is there a fair a substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

a.ii. Is the proposed use is a reasonable one?

Members agreed in the affirmative, and stated that they felt confident that the ZBA would have approved the deck had Thorton applied for a building permit and variance prior to construction.

Motion by Beaugard, Sr. to approve the variance from Section XI.B.1 and IV.B.3 to permit the expansion (addition of a deck) of a non-conforming structure, said expansion also not meeting setback requirements. Second by Rudgers. All in favor.

5. (Public Hearing) Special Exception

Applicant: Robert and Michelle (Tolman) Walters

Property owner: Nicole Beth Tolman and Kristen Leight Tolman c/o Michelle Ranea Tolman

Property location: 71 Westbrook Ct Tax Map 27, Lot 13-3

Zoning District(s): Rural/Agriculture

Request: Special exception from Section IV.A.2 to permit the construction of an accessory building (garage) in excess of 1,000 s.f.

Members seated: Hutwelker, Thibault, Beaugard, Sr. Rudgers was seated for Mitchell, and Beaugard, Jr. was seated for Walker.

Representing the application: Robert Walters

Abutters present: none

Hutwelker called the public hearing to order at 7:30.

DISCUSSION

Members received a September 16, 2010 application summary from Town Planner Carbonneau. Carbonneau stated that the property is served by private septic and water. Carbonneau said that she had received no feedback from heads to Town departments, and said that Code Enforcement Officer Weston is aware of the application.

Walters said that he and his wife would like to have protected storage for convertibles and other vehicles, as well as for items like wood pellets and a work bench. Walters said that the upper level will be used for storage; in the future, the upper level might be finished for use as a family room or game room. Carbonneau advised Walters to be aware that some proposed uses of the upper level space – for example, an accessory apartment--might trigger the need for ZBA review. Walters said that, because he does not want to compromise space for vehicles, he does not visualize installing interior stairs to access the upper level.

Hearing no further comments or questions, Hutwelker closed the public

hearing at 7:40. 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 specified 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 the approval would not be injurious, obnoxious or offensive to the neighborhood.

c. Will there be a nuisance or serious hazard to vehicles or pedestrians?

Members agreed that granting the special exception would pose no hazard.

d. Will adequate and appropriate facilities be provided for the operation of the proposed use?

Members agreed in the affirmative.

Motion by Beauregard, Jr. to grant the requested special exception from Section IV.A.2 to permit the construction of an accessory building (garage) in excess of 1,000 s.f. Second by Rudgers. All in favor.

6. (Public Hearing) Variance

Applicant: Mary & Lynn Griffin-Bales

Property owner: Mary & Lynn Griffin Bales

Property location: 31 West Shore Rd Tax Map 61, Lot 52

Zoning District(s): Rural/Agricultural and Shoreland Protection Districts

Request: Variance from Section VII.E.1 to permit the construction of a septic system that does not meet required setbacks from wetlands; a variance from Section III.F. as the proposed system is designed for a two-bedroom structure.

Members seated: Hutwelker, Thibault, Beauregard, Sr. Rudgers was seated for Mitchell, and Vitous was seated for Walker.

Representing the application: Tom Forest

Abutters present: Bud and Kathy Winsor

Hutwelker called the public hearing to order at 7:55.

DISCUSSION

Members received a July 16, 2010 application summary from Town Planner Carbonneau. Reviewing the summary with the Board, Carbonneau stated that Shoreland Impact Permit 2010-00874 was issued by the State on May 7, 2010. Carbonneau reminded the Board that the ZBA granted a variance on June 21, 2010 to permit the construction of a one-family dwelling to replace the existing structure, with the new structure increasing cubic volume and modifying the

footprint from the existing structure. Carbonneau advised the Board to handle both variance requests with a single public hearing, but to deliberate each matter separately. Forest agreed with this approach.

Members reviewed plans for the location of the proposed septic system, and discussed the technology of the Clean Solution system. Forest said that the Clean Solution system is more compact than a conventional septic system, because aerobic bacterial treatment takes place within a chamber and not in the dispersal field. Forest said that the size, soils and slope of the lot influenced his decision to recommend the Clean Solution system, which has been used with success by other property owners on Swanzey Lake. Forest said that he proposes to situate the system at the greatest distance possible from Swanzey Lake (75') and any wetlands. Forest said that limitations of the lot prevented him from meeting lot loading requirements for a 3-bedroom system; however, he said, he has used exactly the same system for 3-bedroom homes.

Those present discussed the merits of amending the ordinance to permit 2-bedroom septic systems. Thibault recommended keeping the zoning the same, and reviewing applications on a case-by-case basis.

Winsor expressed concern about odor, having experienced a strong odor from the system at Pilgrim Pines Conference Center. Forest said that the Clean Solutions system has no venting pipes, and should generate no odor.

Hearing no further comments or questions, Hutwelker closed the public hearing at 8:22. Members reviewed the criteria for granting the requested variance from Section III.F.

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 the original approval restricts expansion of the number of bedrooms.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, because the proposed septic system would replace an inferior system (the holding tank).

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

Members agreed in the affirmative.

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

Members agreed, citing the two-bedroom limitation, the shape of the lot, and type of soil.

a.i. Owing to the property's distinguishing special conditions, is there a fair a substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

- a.ii. Is the proposed use is a reasonable one?

Members agreed that the use is reasonable because it would replace an inferior system, and continues the previously approved two-bedroom limitation.

Motion by Rudgers to approve the variance from Section III.F. as the proposed system is designed for a two-bedroom structure. Second by Vitous. All in favor.

Members reviewed the criteria for granting the requested variance from Section VII.E.1.

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, because the system is proposed for a location at the greatest possible distance from wetlands.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative.

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

Members agreed in the affirmative.

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

Members agreed, citing the shape of the lot, lot-loading limitations of the soil, and the system proposed for replacement--a holding tank.

a.i. Owing to the property's distinguishing special conditions, is there a fair a substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

a.ii. Is the proposed use is a reasonable one?

Members agreed that the use is reasonable.

Motion by Thibault to approve the variance from Section VII.E.1 to permit the construction of a septic system that does not meet required setbacks from wetlands. Second by Rudgers. All in favor.

7. Other matters as may be required

Gocht v. Town of Swansey (Zoning Board of Adjustment) Members and Carbonneau discussed the status of the Gochts' appeal to the NH Supreme Court, including generalities of the Superior Court approach to such cases, town response, scheduling and the likely cost of defense. As the case is pending, Carbonneau advised ZBA members not to discuss specifics.

ZBA internal training Members decided to reserve a portion of each meeting to review items on the checklists for granting variances and special exceptions. Carbonneau will provide supporting material prior to the meeting, as well as available case law.

Zoning amendments Carbonneau apprised members of proposed zoning amendments currently under development and discussion by the Planning

Board. Hutwelker encouraged ZBA members to attend Planning Board meetings to learn more about the amendments.

ADJOURMENT

Motion by Beauregard, Sr. to adjourn. Second by Rudgers All in favor. The meeting adjourned at 9:25 p.m.

Respectfully submitted

Victoria Reck Barlow,
Recording Secretary