

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
SEPTEMBER 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 September 17, 2007 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, Charles Beauregard, Sr., Keith Thibault, Bob Mitchell and alternates Bob DeRocher and Marty Geheran. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following items were addressed:

1. Minutes from September 10, 2007. Motion by Beauregard to approve the minutes from September 10, 2007 as submitted. Seconded by Thibault. Vote: All in favor with Geheran abstaining.

2. Public Hearing (Special Exception) – Robin L. Florence requests a special exception pursuant to Section V.B.2.e. to construct a single family home on a proposed new lot, said lot being shown as Lot 71, Lot 8-2 on a proposed subdivision map and consisting of 1.129 acres. The property is situated at 888 West Swanzey Road and shown at Tax Map 71, Lot 8 situated in the Business Zoning District. Seated were: Hutwelker, Beauregard, Thibault, Mitchell and Geheran (seated for Jenn Gregory). Paul Grazewicz appeared before the Board on behalf of the applicant. No abutters were present. Public hearing opened.

Grazewicz noted that the special exception application is being submitted in conjunction with a proposed two lot subdivision. The intent is to subdivide the property and be able to utilize the new lot as a building lot. Grazewicz stated that the property is currently being used for a single family home.

Grazewicz stated that the property had previously consisted of two separate lots as a result of a prior subdivision. When the property was subdivided in 1986, State subdivision approval was obtained, as well as construction approval for a septic system design. Subsequently, the two lots were merged.

DeRocher noted that the construction approval was no longer valid and stated that he wanted a letter from a licensed septic designer that a septic system, meeting all state and local requirements, could be

installed on the property. Grazewicz stated that he is a licensed septic designer. After discussion amongst Board members, it was decided that they wanted a written opinion regarding the suitability of the property for a proposed septic system.

Geheran stated that he had concerns about putting a house on Route 10, due to the traffic and speed. He felt that vehicles traveling on Route 10 would be more aware of vehicles turning into a business and would not anticipate or be aware of traffic turning and entering into a residence. Thibault stated that a typical single family residence generates approximately 9 to 10 vehicle trips per day.

Motion by Mitchell to continue this matter to October 15, 2007 without further notice, in order that information regarding the capacity of the lot to sustain a septic system can be provided. Seconded by Beauregard. Vote: All in favor with the exception of Thibault who voted against the motion.

3. Public Hearing (Appeal from Administrative Decision) - RT

Cummings Developers, Inc. challenges a determination rendered on June 18, 2007 by Homer S. Bradley, Jr. on behalf of the Swanzev Board of Selectmen. The appeal application states that the letter “unreasonably interprets the 1977 subdivision plan, recorded at Cabinet 1, Number 56 of the Registry of Deeds, as failing to show the road furnishing access to the lot in question. The letter incorrectly concludes that the plan fails to satisfy the requirements of RSA 674:41,I(b)(2).” The property is situated off Lady Slipper Lane and is shown at Tax Map 14, Lot 14-1 situated in the Rural/Agricultural Zoning District. The property is owned by Nicole and Wayne Dunham. In the alternative, the Applicant requests the ZBA to grant an exception under Section II of RSA 674:41. Continued from August 20, 2007. Seated were Hutwelker, Beauregard, Thibault, Geheran (seated for Jenn Gregory) and DeRocher (seated for Bob Mitchell). Attorney Thomas Hanna appeared before the Board on behalf of the Applicant. Attorney Homer Bradley was present on behalf of the Swanzev Board of Selectmen. Abutting property owners were present.

Bob Mitchell, in the interest of full disclosure, stated that he had personal relationships with each of the attorneys present. However, he stated that he did not feel that he had any conflict of interest. It was further noted that Mitchell was not seated as a voting member on this matter, but was seated at the table as a non-voting member. Hanna and Bradley stated did not feel that there was any conflict and that they had no objection to Mitchell being at the table as a non-voting member. Public hearing opened.

Hanna reviewed the materials that he had previously provided to the Board dated September 10th. Hanna stated that it was his position that the variance obtained in 1977 applied to Map 14, Lot 14-1 and to Map 14, Lot 14-2. Hanna stated that he felt that it was clear that the Planning Board was aware that variances were needed prior to approving

the subdivision. Hanna felt that since the Planning Board eventually granted the subdivision, the variances must have been obtained. Hanna stated that he would prefer if the record was more complete (he stated that he felt that there were missing ZBA minutes from September 19, 1977); however, he felt that the intention of the ZBA and the Planning Board was clear and that intention was that both Lots 14-1 and 14-2 were building lots. In addition, Hanna stated that the documents signed by Eugene Lehto indicate that it was the intent that Lot 14-1 was to be a buildable lot.

Attorney Bradley stated that the variance application submitted in 1977 was solely in Lamothes' name and strictly applied to lot Map 14, Lot 14-2. Bradley noted that Map 14, Lot 14-1 was the subject of a variance application in 2005 and stated that the variance was denied at that time. Bradley indicated that if the property owner thought that Map 14, Lot 14-1 already had a variance granted in 1977, an application would not have been submitted in 2005.

Hanna stated that it was his position that Map 14, Lot 14-1 was a buildable lot pursuant to RSA 674:41,I(b)2. Bradley stated that he did not feel that Map 14, Lot 14-1 met the requirements of the statute as the street giving access to the lot was not shown on the plat..

Bradley also stated that he does not believe that the subdivision and the right to build on Map 14, Lot 14-1 ever vested in the developer. Hanna disagreed, further stating that while he felt that vesting had occurred, that it was inapplicable to this situation.

Hanna provided copies of opinions from Powers Appraisal, noting that the value of the property increases from \$15,000. to \$66,000. if the lot is determined to be a buildable lot.

Public hearing closed. Hutwelker stated that the only item being reviewed by the Board at this time is the appeal from an administrative decision. It was noted that if the applicant does not prevail on the appeal, that Hanna has the right to come back to the Board and have the Board conduct the public hearing on the exception request under Section II of RSA 674:41.

Board members expressed concern and confusion as to how to proceed. Members noted that in addition to the arguments set forth in Bradley's June 18, 2007 letter and in Attorney Hanna's filing of the Appeal from Administrative Decision (filed with the Town on July 17, 2007) many other issues and arguments were raised. Members felt that legal counsel was required and instructed Town Planner Sara Carbonneau to pursue the same. Motion by DeRocher to continue this matter without further notice to Thursday, September 27, 2007 at 7:00 p.m. Seconded by Geheran. Vote: All in favor with the exception of Beauregard who voted against the motion.

4. Public Hearing (Application for ZBA Junkyard Verification pursuant to RSA 236:114-115) – Buffum Auto Parts seeks a determination by the ZBA that the location of the junkyard, when established, was not in a district restricted against such uses or otherwise contrary to the Town’s zoning ordinance. The property is shown at Tax Map 52, Lots 28 & 30, currently situated in the Commercial/Industrial and Residence Zoning Districts, and is located off Route 10. The property is owned by Franklin D. Buffum. Seated were: Hutwelker, Thibault, Beauregard, Mitchell and DeRocher (seated for Jenn Gregory). Attorney Larry Kane appeared before the Board on behalf of the applicant. Mr. Buffum was also present. No abutters were present. Public hearing opened.

Kane stated that his position is that Buffum was operating his junkyard prior to 1965 and is therefore exempt from needing a junkyard verification from the Zoning Board of Adjustment.

Kane stated that documentation has been provided (receipts and canceled checks) that provide some evidence that Buffum was in the junkyard business prior to 1965. Kane noted that the corporate records that had been purged at some point by his former attorney. In addition, Kane noted that due to the passage of time, many records previously maintained by F. Buffum no longer exist.

In addition, oral testimony from witnesses (Ernie DeCotto and Wayne Brown) established that Buffum was buying and selling junkyard materials from the current location as far back as 1955.

Buffum provided the Board with a site plan indicating the current location of the junkyard and stated that the junkyard has been in this location since the mid-1950s. Public hearing closed.

Motion by DeRocher that Buffum’s junkyard was established prior to 1965 and is thereby exempt from needing a ZBA Junkyard Verification. Seconded by Beauregard. Vote: All in favor.

5. Public Hearing (Area Variances) – Joan Prevost-Mazzeo requests area variances from Sections VIII.C.3., XI.B.2., IV.B.3. and XI.C.1. (if necessary) to permit the construction of a proposed addition consisting of approximately 96 s.f. and construction of a 42 s.f. +/- concrete pad for an outdoor shower, neither of which meet required setbacks. The property is located at 12 Sunset Point, shown at Tax Map 19, Lot 16 situated in the Residence and Shorelands Protection Overlay Zoning Districts. Seated were: Hutwelker, Beauregard, Thibault, Mitchell and DeRocher (seated for Jenn Gregory). Attorney Thomas Hanna appeared before the Board on behalf of the applicants. Also present were Mr. and Mrs. Mazzeo. No abutters were present. Public hearing opened.

Hanna noted that Mrs. Mazzeo’s family has owned by property for over 70 years and that minimal changes have been made to the property during that time. Hanna stated that the applicants are seeking variances so that the existing bathroom, consisting of 62 s.f., can be expanded to

create space for two bathrooms and a laundry room (within a space of 158 s.f.).

In addition, Hanna stated that the applicants would like to construct a concrete pad consisting of 42 s.f. for an open outdoor shower. Hanna characterized the outdoor shower as being an uncovered patio. This shower would have edges or sides on it, to prevent the waste water from draining into the pond. This shower would be connected to the sewer system. Hanna noted that the properties along Wilson Pond are now connected to public water and sewer.

Hanna stated that the applicants have spoken with the abutting property owners regarding the application and noted that they “are fine” with the proposal.

Hanna noted that due to the location of the kitchen window, underground utilities and encroachments on setbacks, it is not feasible to construct the addition to the southeast corner of the premises.

Hanna reviewed the criteria for granting the area variances. Hanna stated that the property is unique in that it is surrounded on 3 sides by Wilson Pond.

Carbonneau informed the Board that it was her opinion that a waiver from the State Shoreland Protection regulations was required. Public hearing closed.

The criteria for granting the requested area variances were reviewed. Board members found that the applicant met all the criteria. Motion by Beauregard to grant the requested area variances, notably variances from Sections VIII.C.3, XI.B.2., IV.B.3. and XI.C.1., subject to receipt of a waiver and/or variance from the New Hampshire Department of Environmental Services in order to expand a nonconforming structure. In the event that NH-DES does not require a waiver and/or variance, a letter must be obtained from NH-DES stating the same. Seconded by Mitchell. Vote: All in favor.

Motion by Beauregard to adjourn. Seconded by Thibault. Vote: All in favor. Meeting adjourned at 10:20 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner