

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
JULY 26, 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 July 26, 2006 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:00 p.m. by Acting Chair Keith Thibault. Members present: Keith Thibault, Jenn Gregory, Bob Mitchell and alternates Bob DeRocher and Marty Geheran. Mitchell was seated for Bill Hutwelker. Geheran was seated for Charles Beauregard, Sr. 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 June 26th, July 15th (Brnger) and July 15th (Cross). Motion by Gregory to approve the June 26, 2006 Minutes as submitted. Seconded by DeRocher. Vote: All in favor.

Motion by DeRocher to approve the minutes from the July 15, 2006 site visit and public hearing re Brnger. Seconded by Mitchell. Vote: All in favor.

Motion by Geheran to approve the minutes from the July 15, 2006 site visit re Cross with the following amendment to the 3rd paragraph as follows: "Abutting property owner Craig Lougee pointed out the location of the "prime hunting area" on his property and stated that he felt that the development on the Cross property would infringe on his hunting rights and he further stated that State law prohibits firing of guns within 300 feet of any house." Seconded by Gregory. Vote: All in favor.

2. Public Hearing (Special Exception Application). SVE Associates, agent on behalf of Mirle Cross, requests a special exception from Section III.P.2.e. to permit the development of a cluster subdivision, consisting of 24 house lots. The property is located off Talbot Hill Road, shown at Tax Map 43, Lot 11, situated in the Rural/Agricultural Zoning District. Present on behalf of the applicant were: Rob Hitchcock and Russ Huntley from SVE Associates, Attorney Thomas Hanna, Marty Reyes, Chuck Beauregard and Laurie Rauseo, P.E. (traffic consultant). Numerous abutters and interested residents were also present. Public hearing opened.

Attorney Hanna was asked if the Applicant had any objection to Bob Mitchell being seated for this matter. Mitchell stated that he had attended the site visit and reviewed the prior minutes in this matter. Hanna stated that the Applicant did not object to Mitchell being seated.

Hanna provided the Board with a list of houses on Talbot Hill Road and surrounding streets, as requested by Bill Hutwelker at the last meeting.

Hitchcock reviewed the preliminary drainage plans with the Board and explained what factors contributed to the decision to include 4 detention basins on the site. Hitchcock stated that the intent is that the post-development runoff will not exceed pre-development runoff. Hitchcock stated that final drainage plans will need to be submitted to the State for review and approval. Hitchcock stated that the detention ponds will need to be maintained in order to retain their efficiency. This will be the responsibility of the homeowners' association per Reyes.

Huntley provided the Board with test pit data. Plans were submitted showing a 4K area, proposed house location and protective well radius. Huntley noted that the locations are not definite, but simply reflect the ability of each lot to be able to sustain a septic system and the required setback for the well. Huntley stated that each test pit and perc test meet the minimum State specifications. It was noted that Huntley is a licensed septic designer.

Beauregard stated that he had spoken with the bus company and that it is not willing, at this time, to arrange another bus stop on Talbot Hill Road. However, Beauregard stated that they would make provisions to insure that a bus would be able to safely turnaround on the property in the event that the bus company reconsiders.

Traffic consultant Laurie Rauseo reviewed with the Board with her report dated July 26, 2006. Rauseo stated that it was her conclusion that the "proposed development will not create a serious hazard to vehicles or pedestrians." However, based on existing conditions, Rauseo made the following recommendations:

1. The Town of Swanzey needs to install a STOP sign on the right side of Talbot Hill Road at Route 32.

2. The Town of Swanzey should request NHDOT to consider relocating the start of the 40 mph zone along Route 32 to the south of Hackler Drive. It is preferable that the request be made by the Swanzey Chief of Police to Mr. Doug Graham, District Engineer at NHDOT.

3. The Town should request NHDOT to review the condition of a catch basin located in the northwest corner of Route 32/Talbot Hill Road/Sawmill Road and determine if the catch basin could be raised to more closely match the level of the existing pavement."

Police Chief Richard Busick was present and stated that he felt that the recommendation regarding the relocation of the speed zones on Route 32 was a good recommendation and that he would follow through on the same.

Rauseo stated she had reviewed the State's data base and determined that there was only one reported accident at the intersection of Talbot Hill Road and Route 32 during the past 3 years. Beaugard stated that he had reviewed the records at the Swanzy Police Department and determined that there was only one reported accident at the intersection of Talbot Hill Road and Route 32 during the past 5 years.

Abutting property owner Craig Lougee expressed concern that the standards for new road construction include a maximum grade of 8%. He stated that it was his understanding that Talbot Hill Road included grades of 11%. He further stated that he felt that Talbot Hill Road was "intrinsically unsafe." Interested citizen Mike Lilly stated that he felt that "Talbot Hill already has problems" and that adding 24 new homes would make the situation worse.

Interested citizen Grace Lilly stated that she had recently attended a luncheon where the Police Chief spoke and reported that he needed additional staff for items such as traffic enforcement. G. Lilly felt that adding additional homes would further tax the Police Department, as well as other town services.

G. Lilly also stated that she was concerned that the applicant and his attorney were making representations and asked how the Board could be sure that such representations were accurate or would be followed through. Board members noted that if they had concerns about specific representations being met, it could impose conditions on any approval. Hanna also informed her that New Hampshire case law provides for zoning boards being able to rely on oral and written representations by the applicant.

G. Lilly inquired if the Board was able to consider the financial impact of this development on Town and School District services. She was informed that the ZBA, by law, is only able to consider the criteria set forth for granting a special exception.

G. Lilly asked what the responsibilities of the homeowners' association would be. Hanna stated that the homeowners' association documents are not finalized yet. However, basic responsibilities may include the management of the open space and the maintenance of the drainage basins.

G. Lilly inquired as to the protection and preservation of the wetland areas on the property. Hitchcock stated that they will need to obtain permits for wetlands crossings on the site. Hitchcock noted that Town regulations also regulate uses in wetlands areas, as well as set forth a more stringent requirement (as compared to the State) for leach field setbacks.

G. Lilly stated that she felt that some comments made by the Board members indicated that they had "already made up their minds about this matter." Thibault noted that the Board has already held over 5 hours of public hearing regarding this matter and that he suspected,

by this time, that some board members may have an idea as to whether the criteria for special exception would be met. Public hearing closed.

The Board reviewed the criteria for granting the special exception. Board members discussed the ownership of the open space. It was noted that the open space could not be utilized for future development, as it was a condition of the special exception imposed in the Zoning Ordinance. Upon request by the ZBA, Hanna provided the Board with language regarding the ownership of the open space as follows:

“The homeowners’ association shall own the open space as shown on the plan and shall maintain the property for conservation purposes unless the open space is conveyed by fee simple to a bona fide 501(c)(3) conservation organization, or such an organization acquires a conservation easement on such open space.”

Board members felt that the proposed use was similar to other uses in the area and was an appropriate location for such a use. Geheran noted that other subdivisions have occurred on Talbot Hill and that there is currently active building occurring on Talbot Hill above the location of the proposed subdivision.

Board members did not feel that granting the special exception would reduce the value of any property within the district, otherwise be injurious, obnoxious, or offensive to the neighborhood, stating that they felt that the proposed subdivision would complement the existing neighborhood.

Board members did not feel that there would be a nuisance or serious hazard to vehicles or pedestrians as a result of granting the special exception. Gregory noted that she has some concerns regarding the intersection of Route 32 and Talbot Hill, but felt that these concerns were pre-existing and were not exacerbated by the proposed development. Gregory stated that 1 accident in 5 years at the intersection did not rise to the level of being a nuisance or serious hazard.

Board members felt that adequate and appropriate facilities will be provided for the proper operation of the proposed use, specifically citing the test pit data and drainage information.

Motion by Geheran to grant the special exception application based on the review of the criteria, subject to the following conditions:

1. A homeowners association shall be established in order to maintain the drainage devices;
2. The homeowners’ association shall own the open space as shown on the plan and shall maintain the property for conservation purposes unless the open space is conveyed by fee simple to a bona fide 501(c)(3) conservation organization, or such an organization acquires a conservation easement on such open space; and
3. The homeowners’ association shall be responsible for any additional functions as represented by the applicant during the public hearing.

Seconded by DeRocher. Vote: All in favor.

Motion by Geheran to adjourn. Seconded by Gregory. Vote: All in favor.
Meeting adjourned at 9:30 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner