

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
SEPTEMBER 15, 2008**

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

W. William Hutwelker, III; Keith Thibault, Bob Mitchell

Alternates Marty Geheran (left at 9:41), Bob DeRocher, Dee Geer (left the table for #2)

Town Planner Sara Carbonneau also was present.

Chairman Hutwelker called the meeting to order at 7:02 p.m. and read the agenda for the meeting. The Board addressed the following items.

MINUTES

Thibault proposed to amend page 4, Discussion of Agenda item 2, *as follows:*

~~“Thibault commended Ryan on the level of preparation of her application materials, her respect for the neighbors, and on how she has integrated the business into the community. He spoke about the Board’s responsibility to prepare a complete history of unusual applications. He noted that the Board had considered asking Ryan to apply for a new variance, but ultimately decided that the request for modification was adequate.”~~

“Thibault then consulted with town staff relative to the need for a use variance application rather than the proposed request for a modification. Thibault noted that the ZBA rarely hears requests to modify its decisions and that this was a wholly unique situation. He specifically asked the staff present whether this new proposed use would have triggered the need to request a use variance if it had been contemplated at the initial hearing. Town staff responded in the negative. It was the opinion of staff that if this new use would have been considered to be part of the original application and it would not have triggered the applicant to request a use variance. It would have been included and dealt with as part of the applicants' area variance application. As such, the board's consensus was that the modification request was adequate and appropriate. Thibault commended Ryan on the level of preparation of the application and her respect for and outreach to the neighbors.”

Motion by Thibault to table the minutes of August 18, 2008 until the end of the meeting. Second by Geer. All in favor.

Returning to the minutes at the end of the meeting, Hutwelker asked that ZBA members receive by e-mail the text of the proposed amendment, for review prior to the next meeting. Consideration and approval of the August 18, 2008 minutes will take place at the September 22, 2008 meeting.

1. PUBLIC HEARING: AREA VARIANCE APPLICATION

Applicant: Ronald and Nancy Gocht

Property owner: Ronald and Nancy Gocht

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

Zoning District(s): Rural/Agricultural; Shorelands Protection

Request: area variances from Sections XI.B.2, XI.C. and XI.C.1 to enable the applicant to expand the existing cottage.

Members seated: Hutwelker, Thibault, Mitchell.

Alternate Geheran was seated for Beauregard; Geer was seated for Gregory.

Hutwelker announced that the Gochts have requested a continuance.

Motion by Mitchell to continue the Gocht application until the October 20 meeting, without further notice. Second by Geer. All in favor.

2. PUBLIC HEARING: AREA VARIANCE APPLICATION

Applicant: Werner and Ursula Dafeldecker

Property owner: Kevin and Britta Anderson

Property location: off East Shore Road Tax Map 61, Lot 33

Zoning District(s): Rural/Agricultural; Shorelands Protection

Request: area variance from Section IV.A.3 to permit the construction of a storage shed that does not meet the required setbacks from Swanzey Lake.

Hutwelker opened the public hearing at 7:09.

Members seated: Hutwelker, Thibault, Mitchell.

Alternate Geheran was seated for Beauregard; Geer was seated for Gregory.

Representing the application: Ursula Dafeldecker and Werner Dafeldecker

Abutters present: none

DISCUSSION

U. Dafeldecker said that the Dafeldeckers had consulted with CEO Weston in 2006, prior to purchasing the 8' x 12' storage shed. Weston had informed them that a structure smaller 100 square feet does not require a building permit. At a visit to the property, Weston had agreed verbally to the general location in which the Dafeldeckers proposed to site the shed; setback requirements were not discussed at the time of his visit.

In April 2007 the Dafeldeckers purchased an easement from John and Paula Snide to use an area of approximately 75' x 100' that is adjacent to and south of the Dafeldecker parcel. Other uses assigned by the easement include driveway access, access to Swanzey Lake, and placement of fill; trees may be cut only with written consent of the grantors, and the easement area is not to

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be used for docking or launching boats. The easement requires adherence to the terms and provisions of the Shorelands Protection Act. The Dafeldeckers provided the ZBA with a copy of the easement, as well as a signed statement of acceptance of and agreement with easement terms and conditions. In August 2007 the Dafeldeckers received delivery of the shed. It was installed on concrete blocks and a bed of gravel, 12' from the shore of Swanzey Lake.

The former Snide parcel now is owned by K. and B. Anderson.

After receiving a letter of violation, on August 2, 2008 the Dafeldeckers applied to NH-DES for a waiver of the accessory structure rule, Env-Wq 1405.04. The Andersons also signed the application for a waiver.

Carbonneau said that time had elapsed between the installation of the shed and the enforcement action, because the assessor and the Town were unclear as to exactly where the shed was located and who owned the shed. Weston's medical leave caused further delays. When Weston returned to the parcel to measure, he determined that the shed did not meet appropriate setbacks.

U. Dafeldecker said that their lot is too small to hold the shed. Trees and large boulders limit options on the easement land. A boulder made it impossible to situate the shed further from the shore.

The shed is used to store a lawnmower, recreational toys and equipment, as well as homeowners' tools. Other than that which is contained in the lawnmower, gasoline and oil are not stored in the shed, and the lawnmower is emptied at season's end.

Board members discussed whether the situation would be more appropriately addressed by an application for equitable waiver of dimensional requirements.

Carbonneau provided the Board with copies of an application for an equitable waiver, and advised the Board that applying for an equitable waiver is always an option in a situation such as this. Carbonneau added that, while the applicant does have the option of submitting a request for equitable waiver, that does not necessarily mean that the request will be granted. Although Town staff provides assistance, applicants have to make the final determination as to which process suits their individual situation. She said that applicants are responsible for measuring dimensions and abiding by setbacks.

Carbonneau said that enforcement action had taken place before ten years had elapsed, so that criterion for granting an equitable waiver clearly had not been met. She added that the Board would need to review the remainder of the criteria for granting an equitable waiver, if such an application was submitted. Carbonneau cautioned the Board to consider all criteria required for granting an equitable waiver, before encouraging the Dafeldeckers to go that route. She said that, based on her knowledge of "legitimate mistakes" in case law (a typical example: measuring from the wrong boundary-marking pin) the applicants may have difficulty demonstrating that the violation was "not an outcome of ignorance of the law or bad faith but the result of a legitimate mistake." She advised the Board to limit review to the submitted application for an area variance, which pertains only to the 75' x 100' easement area.

Board members felt that the information provided by the applicant supports an application for an equitable waiver, and felt that an equitable waiver presents a “lower bar.”

Hutwelker said that it is possible to apply for an equitable waiver if an application for an area variance is denied, and also possible to apply for an area variance if an equitable waiver is denied.

Members discussed how best to proceed, and agreed with Carbonneau that should the Dafeldeckers submit an application for equitable waiver, a new public hearing would have to be noticed. The Dafeldeckers will be unavailable for the October meeting. Hutwelker advised the Dafeldeckers to consider whether they wish to continue with the current application for an area variance, or submit an application for an equitable waiver.

Motion by Geheran to continue the public hearing until the Zoning Board of Adjustment’s regular meeting to be held in June, 2009. Second by Mitchell. All in favor.

3. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: Edward Jacob

Property owner:

Property location: 195 Westport Village Road Tax Map 70, Lot 40

Zoning District(s): Business

Request: special exception from Section V.B.2.b. to permit the property to be utilized for multi-family residential use – specifically, a residential condominium consisting of three single family dwellings.

Hutwelker opened the public hearing at 8:07.

Members seated: Thibault, Beauregard, Mitchell

Geer moved to the audience. DeRocher was seated for Beauregard, and Geheran for Gregory. Geheran advised the Board that he and an abutter are friends, but he felt that he could be unbiased. Neither Board members nor the applicant or his representative objected to Geheran being seated.

Representing the application: Jim Phippard, Brickstone Masons

Abutters present: Armand Bedard, Richard and Judith Skeels, Pam O’Connor

DISCUSSION

Phippard presented a plan indicating the 2.25-acre subject area within the context of a three-lot subdivision, approved in 2003. The entire parcel is located within the Business District. Tax Map 70, Lot 40 (Lot 1 on the subdivision plan) has 225 feet of frontage on Westport Village Road.

On Parcel 1 is a preexisting nonconforming structure that predates the zoning ordinance -- a 360 square foot, 1-bedroom cottage, that has been occupied by its current tenant since 2007. A second dwelling unit on Parcel 1 is a two-story, 1-bedroom “barn” of approximately 1,800 square feet. Jacob purchased the property in 2000. He converted the barn from storage use to residential use in 2001, without applying for or obtaining necessary permits.

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The barn has been occupied as a residence since 2001. Carbonneau provided the Board with a written history of the parcel's ownership, use, and development from 1981 to the present.

Forest Designs has reviewed the well, and the existing and proposed septic systems, and deems all to be adequate. Forest dug up and inspected the existing dry well, which has successfully served the cottage for many years. Photographs of the system construction in 1992 are available. The well was drilled for the cottage before 2003. Forest recommends updating the system to current standards, which call for a conventional septic tank and small leach field. The proposed condominium ownership of infrastructure would allow the two existing residences to share the septic system and well. Phippard said that the plans identify a site for a new drilled well, with the required 75' setback contained within the lot; the plans show that it is possible to meet setback requirements for on-site septic systems. As a condition of approval, Phippard recommended that on-site systems be updated to current standards.

Referencing photographs of the setting, Phippard said that existing and proposed structures are well screened. He said that the new house would affect the Skeels's view of the pine trees. He said that the third dwelling would not create excessive noise, and would generate 7-10 vehicle trips per day. The existing gravel drive serving the "barn" and the cottage is 16 feet wide, with a relatively flat grade. The northerly part of the driveway would be shared. Based on personal observation at various times of day, Phippard reported low levels of traffic on the immediate portion of Westport Village Road. The additional structure would not result in excessive runoff into the Ashuelot River.

Bedard described rights of way that he seeks to retain. Phippard said that Jacobs does not propose to use rights of way owned by Bedard or the Skeeles as an access.

Abutter Pam O'Connor asked, and Phippard responded to, general questions about the nature of condominium ownership.

R. Skeels raised concerns regarding the proposal's effect on market value of the Skeels's property. He felt that the requested increase in density would erode the single-family nature of the existing neighborhood. J. Skeels said that the lot in question only has adequate frontage for a single house, and said that their views and privacy would be affected by construction of the proposed third structure. She asked whether she could make a more compelling case by retaining an appraiser to prepare a certified appraisal. Hutwelker said that the ZBA considers all testimony in their deliberations, and places importance on considerations of property values.

Carbonneau said that lots in the business district require 125' of frontage.

Thibault asked Phippard why he had not proposed a further subdivision. Phippard said that Jacobs sought to avoid creating oddly shaped lots.

Phippard said that condominium ownership enables better design; clustering results in reduced environmental effects and economies of shared infrastructure. Condominium ownership will allow Jacobs to separate the structures to sell them independently. Phippard said that Jacobs requests a

special exception for multi-family use because this use (with three or more residence units) is allowed in the business district as a special exception. Phippard said that the residential uses predominate in the Westport Village business district. If approved, the proposal would correct zoning compliance issues, making possible bank refinancing.

Due to its small size, Mitchell expressed concern about approving the cottage as part of the multi-family application. Phippard suggested that, as a condition of approval, the cottage be expanded to increase its floor area to the 415 square feet required by Town regulations.

In response to Board members' concerns regarding the conversion of the barn to residential use without permit, Phippard stated that licensed contractors would provide certification that all work has been performed to code.

Carbonneau said that, should the ZBA grant the special exception and the Planning Board approve the site plan, the applicant will have one year to complete the site plan. She asked how the Board could be assured that the result will not be a continuation of the non-conforming use.

Phippard said that taking no action within that year's time would cause loss of the permit. Jacobs's intended construction of the new septic system and enlarging the cottage would, in his opinion, vest the permit, and that no further action would be required. Phippard and Jacobs stated that Jacobs may never build the third structure proposed for the open field.

Carbonneau said that the ZBA needs more detailed plans on which to base any decisions. The plans need to show the number of housing units, the size of the structure to be built, etc. She said that the Planning Board is charged with determining what level of completion constitutes vesting of a project.

DeRocher recommended requiring a deadline to address existing problems, such as bringing the septic system up to State specifications. He said that he has inspected the existing system, which was well designed, and currently appears to be functioning satisfactorily. He said that the soil conditions are as represented, and there is adequate room on the lot for the new system. Phippard requested that Planning Board approval "start the clock" to measure time available before any set deadline.

Board members concluded that they needed clarification about existing rights of way, and wanted to grant abutters time to gather information regarding potential impacts on their property values. In response to a question about how current residents of the Jacobs property might be affected by the ZBA continuing the hearing, Carbonneau said that the Selectmen have the option of going forward with an enforcement action regardless of this applicant's status with the ZBA.

Motion by Thibault to continue the public hearing to October 4, for a 9:00 a.m. site walk, and to November 3 for a special meeting to discuss the application. Second by Mitchell. All in favor.

ADJOURMENT

Motion by DeRocher to adjourn. Second by Mitchell. All in favor. Meeting adjourned at 9:44.

Submitted by

Victoria Reck Barlow
Recording Secretary