

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING  
MAY 16, 2011**

*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., Bob Mitchell, Jerry Walker. Alternates Bryan Rudgers, Sarah Tatro, Jim Vitous. Town Planner Sara Carbonneau also was present.

**MINUTES**

**Motion** by Beauregard, Sr. to approve the minutes of the April 18, 2011 meeting. Second by Thibault. All in favor.

**1. (Public Hearing) Variance**

Applicant: Michael Piermarini

Property owner: Michael Piermarini

Property location: 841 West Swanzey Rd            Tax Map 71, Lot 14

Zoning District(s): Business

Request: Variance from Section V.B.3. to permit the construction of a shed that does not meet required setbacks.

Members seated: Thibault, Beauregard, Sr., Mitchell, Walker. Rudgers was seated for Hutwelker (who was not present for the initial public hearing on April 18, 2011).

Representing the application: Michael Piermarini

Abutters present: none

Vice Chairman Thibault re-opened the public hearing at 6:40, following the site visit that took place from 6:00 to 6:25, earlier in the evening. Members had received an April 11, 2011 application summary from Town Planner Carbonneau at the April meeting.

Members discussed limitations imposed by the location of the septic system and mature trees. Piermarini said that he had begun construction after former Code Enforcement Officer Weston had told him that he didn't think there would be a problem with approving his building permit. Carbonneau told members that the initial denial was based on Weston's understanding that a special exception would be required. It was later determined that Weston was incorrect and that the building permit should have been denied on the basis that the structure did not meet applicable setbacks.

Hearing no further comments or questions, Thibault closed the public hearing at 6:49. Mitchell said that the proposed location would satisfy setback purposes of safety and aesthetics; existing pine trees between the shed and

West Swanzey Road would help to mitigate any adverse effects, and there would be no problems with lines of sight.

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, citing the sheltered location well off West Swanzey Road, as well as natural barriers and buffers between the shed and West Swanzey Road.

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

Members agreed in the affirmative.

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 that no evidence to the contrary had been presented. Members noted that outbuildings are present on properties in the adjacent area.

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

Members agreed, listing as special conditions the location of large trees, the entrance to the adjoining apartment complex, the irregular shape of lot, and shared driveway access to the property.

A. Owing to the property's distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

AND

(ii) Is the proposed use a reasonable one?

Members agreed in the affirmative.

**Motion** by Mitchell to approve the variance from Section V.B.3. to permit the construction of a shed that does not meet required setbacks. Second by Rudgers. All in favor.

## **2. (Public Hearing) Variance & Special Exception**

Applicant: John Willette

Property owner: John & Nicole Willette

Property location: 87 Old Homestead Highway Tax Map 37, Lot 13

Zoning District(s): Business

Request: Variance and special exception from Section V.B.2.b. to permit the expansion of a structure to a four-unit multi-family dwelling. A variance is required as the property does not contain the required 1 acre.

Members seated: Hutwelker, Thibault, Beauregard, Sr., Mitchell, Walker.

Representing the application: John Willette and Nicole Willette

Abutters present: none

Hutwelker called the public hearing to order at 7:10.

## **DISCUSSION**

Members received a May 11, 2011 application summary prepared by Town Planner Carbonneau. Carbonneau reported that, in the opinion of Town counsel, the Ordinance states that multi-family dwellings are permitted in the Business district by special exception if the lot is connected to public sewer and is at least 1 acre in size. At .93 acres, Carbonneau said that the lot does not have the required acreage. Carbonneau said that the applicant had received a variance to have three dwelling units on the property in 2009. Town counsel confirmed at that time that a variance was required as the lot was less than 1 acre. Carbonneau said that she had received feedback from the Code Enforcement Officer, who expressed no concern.

J. Willette said that the proposal would not alter the footprint of the existing structure. Members reviewed drawings of the proposed fourth unit, to be located in the existing barn. Willette said that the structure is continuous, with fire walls between apartments. Willette showed the parking for the fourth unit, and stated that each unit had designated space (8 spaces at present, 11 total spaces should approvals for the fourth unit be granted). Willette said that exterior lighting would be present at the front and rear entrances. Carbonneau advised members that the proposal requires Planning Board site plan approval, a revised driveway permit, a building permit, approval from the North Swanzey Water & Fire Precinct and a sewer connection.

Hearing no further comments or questions, Hutwelker closed the public hearing at 7:21. 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.

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

Members agreed in the affirmative, expressing the opinion that the fourth unit creates only a marginally more intense usage of the property than others in the area. Members expressed the opinion that the lot is only marginally smaller than the required one acre.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, for the reasons given above.

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

Members agreed that they had heard no evidence to the contrary, and noted that the original footprint of the structure would remain unchanged.

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

Members agreed in the affirmative, expressing the opinion that it is likely that the buildings that make up the existing structure formerly were separate, but have been connected over the years to make a single large building.

A. Owing to the property's distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed, citing the unchanged footprint and slightly undersized lot size.

AND

(ii) Is the proposed use a reasonable one?

Members agreed in the affirmative.

**Motion** by Thibault to grant the variance to permit the conversion of a structure to a four-unit multi-family dwelling on a lot that does not contain the required 1 acre. Second by Mitchell. All in favor.

The Board then addressed the request for special exception. Hearing no further comments or questions, Hutwelker closed the public hearing at 7:27. 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 specific 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 that much residential use of the Business district exists in the vicinity, and noted that the existing use already is multi-family.

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 there would be no such reduction of property values or other deleterious effects.

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

Members agreed that there would be no nuisance or hazard to vehicles or pedestrians.

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

Members agreed that the proposed parking is sufficient.

**Motion** by Thibault to approve the special exception from Section V.B.2.b. to permit the conversion of a structure to a four-unit multi-family dwelling. Second by Mitchell. All in favor.

### **3. (Public Hearing) Variance**

Applicant: Stephen Earle Getty

Property owner: Stephen Earle Getty

Property location: 11 Davis Avenue      Tax Map 33, Lot 61

Zoning District(s): Residence

Request: Variance from Section XI.B.1 to permit the reconstruction and expansion of a non-conforming structure.

Members seated: Hutwelker, Thibault, Beauregard, Sr., Mitchell, Walker.

Representing the application: Stephen Earle Getty

Abutters present: Jerome Weinrieb and Rose Weinrieb

Hutwelker called the public hearing to order at 7:29.

## DISCUSSION

Members received a May 11, 2011 application summary prepared by Town Planner Carbonneau. Carbonneau stated that the carport had received a variance in 1994 to encroach upon setbacks. Carbonneau said that the 1974 building permit application for the garage states that the garage would be built 5 feet from the property line; however, the ZBA minutes state that the garage was to be 10 feet from any property line, and the site plan shows the garage to be located 8' from property line. Carbonneau said that the carport is to be removed, and the garage to be reconfigured.

Getty said that he would like to replace the existing garage with a single car garage of the same width (22') but of greater length (28') to create more storage space and to make it possible to enter the house from the garage. The new garage would be no closer to the fence, Getty said. Getty said that he wanted the garage to match the appearance of the house.

Hearing no further comments or questions, Hutwelker closed the public hearing at 7:42. 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 that the proposal would be an improvement of a non-compliant situation, mitigating the existing encroachment to a minor extent.

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

Members agreed in the affirmative, for the above reasons.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, based on their opinion that the replacement garage would have an approved appearance.

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

Members agreed that they had heard no evidence to the contrary.

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

Members agreed that special conditions include the corner lot (leaving no other location for the garage) and the improvement of an existing situation.

A. *Owing to the property's distinguishing special conditions,*

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed that the proposal would improve an existing situation.

AND

(ii) Is the proposed use a reasonable one?

Members agreed that the proposed use is reasonable.

**Motion** by Beauregard, Sr. to grant the variance from Section XI.B.1 to permit the reconstruction and expansion of a non-conforming structure. Second by Thibault. All in favor.

#### **4. (Public Hearing) Variance**

Applicant: Mian Swanzey Realty, LLC

Property owner: Mian Swanzey Realty, LLC

Property location: 163 Monadnock Highway Tax Map 19, Lot 68

Zoning District(s): Business

Request: Variance from Section III.S.4. to permit the construction of a sign that does not meet required setbacks.

Members seated: Beauregard, Sr., Mitchell, Walker. Rudgers was seated for Hutwelker (recused due to a potential conflict of interest); Vitous was seated for Thibault (recused due to a potential conflict of interest). Mitchell assumed the chair.

Representing the application: Nasir Mian was not present.

Abutters present: approximately eight unidentified citizens

#### **DISCUSSION**

Carbonneau told Board members that she had heard nothing to indicate that Mian would be absent. Carbonneau said that the application was incomplete because fees have not been paid. Board members agreed that they were not comfortable discussing an incomplete application, or discussing an application in the absence of the applicant. Carbonneau recommended that Board members require payment of outstanding fees and new fees to notice abutters should Mian choose to re-activate the application.

**Motion** by Beauregard, Sr. to decline action based on incompleteness of the application, with the requirement of payment of outstanding fees and new fees to notice abutters should the application be re-activated. Second by Walker. All in favor.

Thibault and Hutwelker returned to the table.

#### **4. Discussion of payment of fees and incomplete applications** (when incompleteness is due to unpaid fees)

Expressing regret for inconvenience caused to abutters who had come to take part in the Mian public hearing, members discussed the process used by the Planning Office to notice and bill for noticing public hearings.

#### **5. Discussion of time limits on variances and special exceptions**

Members agreed that changes in neighborhoods over time can affect the likelihood of successful variance or special exception applications, and agreed that a time limit on approvals would be appropriate. Members discussed similar limits in various municipalities. Members agreed to recommend to the Planning Board an amendment to the Ordinance that would establish a 2 year time limit to act on a special exception or a variance, with a possible 1-year extension for good cause. Carbonneau will provide the Board with sample amendment language that also addresses the idea of “substantial progress” or “substantially acted upon” at the June meeting.

#### **6. Discussion regarding potential personal liability for action taken as a board member**

Hutwelker reported that Town counsel has advised him that, so long as Board members act without personal bias, they (and the interests of the Town) are protected by Town counsel. Members agreed that the Board's rules of procedure are excellent protection—that members should continue to be careful in their approach, fair to applicants, and keep an open mind. Carbonneau advised members that courts understand that ZBA members are citizens of the community, and not professionals. Members agreed that they are comfortable with their process.

**ADJOURNMENT**

**Motion** by Walker to adjourn. Second by Mitchell. All in favor. The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Victoria Reck Barlow  
Recording Secretary