

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
DECEMBER 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

Bill Hutwelker, Bob Mitchell, Charles Beauregard; alternates Marty Geheran, Bob Smith. Town Planner Sara Carbonneau also was present.

Absent were Keith Thibault, Jennifer Gregory, and alternates Bryan Rudgets, Bob DeRocher, and Deirdre Geer. (Geheran advised the Board that he will be out of town on January 19, the date of the next regular ZBA meeting.)

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

Motion by Beauregard to approve the minutes of November 3, 2008. Second by Mitchell. Hutwelker, Beauregard, and Mitchell in favor; Geheran and Smith abstained. Motion carries.

1. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: Edward Jacob

Property owner: Edward Jacob

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

Zoning District(s): Business

Request: special exception from Section V.B.2.e. to permit one one-family dwelling on the property situated in the Business Zoning District.

Hutwelker opened the public hearing at 7:07

Members seated: Hutwelker, Beauregard, Mitchell. Geheran was seated for Thibault; Smith was seated for Gregory.

Representing the application: Jim Phippard, Brickstone Masons; Edward Jacob

Abutters present: Richard and Judith Skeels. Tenant Heather Dixon also was present.

DISCUSSION

Phippard presented the application, stating that the 2.25-acre lot with 225 feet of frontage on Westport Village Road meets the acreage and frontage requirements of the zoning district. Phippard stated that Jacobs seeks a special exception to allow occupation as a residence of the 1,800 square foot structure

on the property. Phippard stated that Jacobs's intention is to discontinue use as a residence of a second 360 square foot structure, also located on the parcel. Phippard noted that the larger structure has been occupied as a residence for several years, without proper approvals.

Phippard presented his client's responses to ZBA conditions, concluding that conditions support granting of the variance. He stated that septic designer Tom Forest's inspection of the existing septic system (a septic tank and drywell) has determined that the system is operating properly. He stated that the system will be upgraded to a full leachfield, to achieve compliance with State guidelines, and reported perc test results that indicate the site's ability to support a new septic system for a single family dwelling.

Heather Dixon, tenant of the 360 square foot structure, proposed an amendment to Jacobs's application. Stating that granting the special exception would displace her and eliminate a needed low-income housing unit, Dixon requested that the Board accept the smaller structure as a room in the larger structure.

Board members advised Dixon that amendments to an application are the purview of an applicant, and noted that their considerations are in response to the stated request of an applicant.

Town Planner Carbonneau advised the Board to address the status of the smaller structure, should the application be approved, to ensure formal documentation of discontinuation of its use as a residence. She stated that recorded notice of a ZBA decision at the Registry of Deeds would suffice. Carbonneau also advised the Board that, should the Board grant the special exception, Town regulations would require Jacobs to apply for a building permit. The structure's insulation, electrical system, septic system, etc. all would be required to meet current building codes.

Regarding the disposition of the smaller structure, Carbonneau advised the Board that the structure could no longer be used as a residence or guest room. She stated that it could be used as an office, with a required home occupation permit, or could be used for personal (non-commercial) storage.

Board members discussed the ZBA's historical lack of receptiveness to applications requesting two dwellings on a single lot. Board members discussed the historical justification of zoning the area for business use, and observed that the character of the neighborhood has changed since that designation.

Chairman Hutwelker closed the public hearing 7:32

REVIEW OF CRITERIA

Board 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 to both parts of the question.

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 in the negative.

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

Members agreed in negative.

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

Members agreed in the positive.

MOTION by Geheran: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception from Section V.B.2.e. to permit one one-family dwelling on the property situated at Tax Map 70, Lot 40 in the Business Zoning District, with the following conditions: installation of a State-approved septic system, attainment of current building code approvals, and provision of notice to the Registry of Deeds that residential use of the smaller structure is not permitted. Second by Smith. All in favor.

2. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Application for a special exception for multi-family housing (Section V.B.2.b)
Application withdrawn at the request of the applicant, Edward Jacob.

3. PUBLIC HEARING: AREA VARIANCE APPLICATION

Applicant: Gail Guyette

Property owner: Gail Guyette

Property location: off Hale Hill Road and Route 32 Tax Map 9, Lot 7

Zoning District(s): Rural/Agricultural

Request: area variances from Sections IV.A.3 and III.X. to permit the creation of three lots within a potential 3-lot subdivision.

- Proposed Lot 1 requires a variance from Section IV.A.3. as it does not meet the minimum road frontage requirement.
- Proposed Lot 2 requires a variance from Section IV.A.3. as it does not meet the minimum acreage requirement and from Section III.X. as it does not have a minimum of three acres exclusive of wetlands.
- Proposed Lot 3 requires a variance from Section III.X. as it does not have a minimum of three acres exclusive of wetlands.

Hutwelker opened the public hearing at 7:37

Members seated: Hutwelker, Beauregard, Mitchell. Geheran was seated for Thibault; Smith was seated for Gregory.

Representing the application: Gail Guyette

Abutters present: Jeanne and Mike Thieme, Dick and Lori McIlvene

DISCUSSION

Guyette presented her proposed subdivision of the now-conforming 13.5-acre parcel with frontage on Route 32 and driveway access to a house situated off Hale Hill Road. The subdivision proposes to create three non-conforming parcels:

- Lot 1, which includes the existing residence, would be non-conforming because the proposed subdivision would separate the lot from its

currently existing required road frontage. Guyette said that Lot 1 would contain 3 acres of dry land. She explained that a 1973-74 subdivision (requiring a variance) had eliminated Hale Hill Road frontage from the proposed Lot 1.

- Lot 2 would be non-conforming because the 2.4-acre proposed lot would be smaller than the Rural/Agricultural District's required 3 acres, and because the lot would not meet District requirements for number of dry acres. Subtracting areas designated as wetlands, approximately 2.2 acres of dry land would remain on the proposed lot.
- Lot 3 would be non-conforming because the 3-acre proposed lot contains approximately .25 acres of areas designated as wetlands. Subtracting wetlands would yield approximately 2.75 acres of dry land on the proposed lot. Guyette said that she believed that the driveway access to this lot would most likely be from Hale Hill Road.

Town Planner Carbonneau advised that Board that Guyette's site plan indicates a wetland area on the proposed Lot 2 and Lot 3. Carbonneau said that the wetland had not been depicted on Guyette's previously (2006) submitted and withdrawn application for subdivision. As part of consideration of the previous application, ZBA members conducted a site walk of the parcel in October, 2006. (ZBA members Hutwelker and Mitchell were present at the 2006 site walk.) Guyette drew the Board's attention to the existence of another wetland in the vicinity of the intersection of Hale Hill Road and Route 32.

Carbonneau advised ZBA members that stated intentions to divide land for the benefit of family members should not enter into Board considerations. She said that a 1974 subdivision of the original parcel required variances to create non-conforming lots that the then-applicant represented to be intended for family members; only one of the lots remain in family ownership.

Guyette and Board members discussed alternative subdivisions of the land. Some Board members expressed a preference that Guyette – with the professional assistance of a licensed surveyor and wetlands scientist -- redesign the subdivision to avoid creation of non-conforming lots. Guyette stated that she was not opposed to making Lot 2 and Lot 3 conform to District regulations. Carbonneau said that driveway access to the proposed Lot 3 would likely require a State permit for a wetlands crossing if the driveway was from Hale Hill Road. Carbonneau said that the 13.5-acre parcel likely could be divided into two lots without triggering the requirement for a variance, and rather simply require approval from the Planning Board.

Abutter J. Thieme stated that, as a neighbor, she supports Guyette. As a member of the Swanzey's Open Space Committee, involved in assessing risks to ecologically sensitive areas, Thieme stated that she felt compelled to draw the ZBA's attention to the "regionally significant wildlife habitat" status of the Martin Brook area in the NH *Wildlife Action Plan*. Thieme stated her opinion that the land likely would be more appropriate for a two-lot subdivision rather than a three-lot subdivision. She stated that the brook has moved significantly during the years she has lived on Hale Hill Road.

Guyette and ZBA members discussed conducting a site walk on January 3.

ZBA members discussed the limitations of inspecting the parcel in January: ground conditions likely would compromise professional delineation and flagging of wetlands, and weather that might require cancellation of the site visit. Board members concluded that they could reach a decision on the basis of provided materials.

Guyette stated that each proposed lot contains adequate room for construction of a single family home and installation of a well and septic system. Board members noted discrepancies between site information depicted on 2006 subdivision plans and the materials presented as part of the current application.

To help Board members evaluate whether necessary infrastructure can be provided to the proposed lots, Carbonneau encouraged Guyette to collect all relevant information onto one plan: wetlands information and delineation, driveway curb cut locations (with letters from the State indicating approval of the locations), test pit locations, and potential locations of houses and wells in order to determine whether septic system leach fields can be located 125' from designated wetlands. Board members added that a shared driveway and assessment of site distances also might be required. Carbonneau reminded Guyette that restructuring the subdivision to make Lot 2 and Lot 3 conforming would require new notice of the meeting.

Guyette agreed to provide the additional material, and asked that her application be continued until February 9, 2009.

Motion by Beauregard to continue the matter until the February 9, 2009 regular meeting of the ZBA. Second by Smith. All in favor.

3. 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 and 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 situated on the property.

In a December 5, 2008 e-mail message from Russell Gocht, the Gochts have asked for a continuation to the January 19, 2009 meeting.

Motion by Michell to continue the application until the January 19, 2009 meeting of the ZBA. Second by Smith. All in favor.

ADJOURNMENT

Motion by Beauregard to adjourn. Second by Smith. All in favor. The meeting adjourned at 9:21.

Submitted by

Victoria Reck Barlow

Recording Secretary

Swanzy Zoning Board of Adjustment minutes – December 15, 2008

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