

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
JANUARY 21, 2008**

[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 January 21, 2008 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, Charles Beauregard, Sr. (arriving at 7:05 p.m.) and alternates Bob Smith and Bryan Rudgers (arriving at 7:15 p.m.). Smith was seated for William Hutwelker. 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 December 17, 2007 – Motion by Mitchell to approve the minutes from December 17, 2007 as submitted. Seconded by Smith. Vote: All in favor.

2. (Public Hearing) Area Variance Application – Marie Anne Commass requests an area variance from Section XI.B.2. to permit the expansion of a non-conforming structure; and an area variance from Section IV.B.3. as the proposed construction encroaches upon the required setback. The property is situated at 40 Lake Shore Road, shown at Tax Map 18, Lot 116 situated in the Residence Zoning District. Marie Commass and Frank Pelkey (builder) appeared before the Board. No abutters were present. Public hearing opened.

Carbonneau passed around photographs of the subject property, together with photographs of abutting properties.

Commass stated that she would like demolish the existing shed/garage and replace it with an addition to her home and a carport. The existing structure is approximately 441 square feet; the proposed new structure (including the carport) is approximately 448 square feet.

Carbonneau noted that the existing structure was non-conforming, as the deck is only 8 feet from the property line. Carbonneau also stated that it appears that the proposed addition will also encroach on the required setback if the front property line is deemed to be along the side of the house where the driveway enters. Pelkey noted that the proposed

addition will be set back a few feet further away from the road than the existing structure.

[Rudgers arrived at 7:15 p.m.]

Commass stated that she had heard of no objection to the proposal from any of her neighbors and indicated that one of her neighbors was willing to come this evening to support the proposal. Public hearing closed.

Mitchell stated that he felt that the proposal would be an improvement to the property. In addition, there would not be any greater encroachment upon the setback; in fact, there would be less of an encroachment upon the setback.

Gregory stated that there are many instances in this area of Town where citizens need a variance in order to construct a reasonable addition onto their property.

Board members reviewed the criteria for granting an area variance from Section XI.B.2. and from IV.B.3. It was determined that the applicant met all of the criteria. It was specifically noted that the demolition of the existing shed/garage and the construction of the addition/carport actually rendered the structure more conforming. Board members noted that there was no other reasonable location on the property upon which to construct the proposed addition.

Motion by Mitchell to grant the variances from Section XI.B.2. and IV.B.3. based upon the applicant meeting all of the required criteria for granting an area variance; specifically noting that the proposed construction would result in an improved structure that would render the structure more conforming with respect to the front setback requirements. Seconded by Smith. Vote: All in favor.

3. (Public Hearing) Appeal from an Administrative Decision –

Richard Whittemore challenges a determination rendered on December 4, 2007 by Swanzey Code Enforcement Officer Weston denying a Building Permit Application for a new one-family dwelling to be located on property situated at 259 Watson Road. The property is shown at Tax Map 85, Lot 11 situated in the Rural/Agricultural Zoning District. [The Board was assisted at the table by Town Administrator Elizabeth Fox on this matter, as Town Planner resides on Watson Road in Winchester, but is not a direct abutter.] Attorney Andrew Sullivan appeared before the Board on behalf of the Applicant. Also present were Richard Whittemore and his brother, Robert Rome. Whittemore indicated that Rome was also authorized to speak on his behalf. Abutting property owners Tom and Jean Minnich were also present. Public hearing opened.

Sullivan stated that Whittemore wishes to build a new home on his property and that the property does not have any road frontage whatsoever. Sullivan stated that the property is accessed via a deeded right of way over property owned by the Bushes (Map 85, Lot 13). Board members were provided a map showing typical access to the property

from Route 10, as well as the tax map showing the property. It was noted that to access the property, one would need to travel to Coombs Bridge Road in Winchester, eventually traveling on a Class VI road in Winchester and a Class VI road in Swanzey to a private 18 foot wide right of way over property owned by the Bushes. Whittemore stated that the Class VI portion of the road is maintained by the abutters; noting that Mike Faulkner maintains a portion of the road in Winchester and that Whittemore and Bush maintain the road past Faulkner's driveway.

Sullivan noted that Whittemore currently resides on the property in a "rustic cabin." A copy of the assessing card was available to Board members. Thibault noted that the assessed value of the "cabin" structure is \$4,300.00 and is characterized on the assessing card as a "hunting camp." The card also notes that the owner "camps out all year." It was noted on the assessing card that the structure does not have water. There was a notation on the assessing card that an easement was "granted for poles," with Sullivan confirming that electricity is provided to the property.

The new structure will be built to all applicable building codes. Sullivan stated that Whittemore has "safely" resided on the property in excess of 25 years. Sullivan stated that there would be absolutely no changes to the property or the access or the Class VI road other than the building of a new home; further stating that the proposed construction would not have any negative impact on the Town. In fact, Sullivan felt that the Town would benefit as it would generate additional taxes. Sullivan provided letters from abutting property owners Doyle, Warner & Minniches expressing their support of the application. T. Minnich was present and stated that Whittemore has always been a good neighbor and that they support his application.

Code Enforcement Officer Jim Weston stated that if the applicant is able to build on the property that it would be safer than the existing structure. In addition, Weston stated that it was his opinion that a state septic design could be issued. Weston noted that while he was required by his position to deny the building permit application, he had no objection to the applicant building a home on the property. Weston stated that he felt that the Town had to take on some responsibility for allowing Whittemore to continue living on the property illegally and, as a result, should allow him to build a more suitable home. Sullivan also noted that Weston had signed off on an electrical permit for the property a few years ago.

The required driveway permit was discussed. Carbonneau stated that the Town's driveway permit regulations require, in part, frontage on a Town maintained road.

Sullivan stated that abutting property owners Doug and Lori Bush have a substantial home on their property and that there was no reason why Whittemore should not be afforded the same luxury. Fox stated that neither Whittemore nor the Bushes ever obtained permits for the

construction on their respective properties. Fox also noted that due to the remoteness of these properties, changes could and had occurred thereon without the knowledge of the Town.

Board members were provided a letter from Fire Chief Robert Symonds expressing his opposition to the application, noting that it is almost a 30 minute ride from the West Swanzey Fire Station to the subject premises. Emergency Management Director Bruce Bohannon was present and stated that due to the location of the property, any notification in the event of an emergency at the nuclear power plant in Vernon, Vermont would be done by the Town of Winchester. Sullivan stated that a deed restriction could be included notifying future property owners to this fact.

In addition to the aforementioned deed restriction, Sullivan also stated that additional conditions of approval could also include a restriction against further subdivision and the requirement that Whittemore sign a waive of liability running in favor of the Town.

Thibault inquired if RSA 674:41,II was applicable, as it was his opinion that the circumstances of this case do require “the building, structure or part thereof to be related to existing or proposed streets.” Sullivan responded that he thought that the phrase in RSA 674:41,II (“when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets”) was a “metaphysical” question, as he felt that everything somehow relates to streets. Sullivan stated that he felt the more appropriate question to be “what is the impact on the road.” Sullivan stated that in this particular case, he felt that there was no negative impact on the road.

Carbonneau reminded the Board members that the “Lady Slipper Lane” decision rendered earlier in 2007 dealt with the 674:41 statute. Thibault stated that it was his recollection that the Board decided in that particular case that the proposed construction of a dwelling unit was related to the existing or proposed streets; thus rendering the provisions of RSA 674:41,II inapplicable.

With respect to the criteria set forth in RSA 674:41,II Sullivan stated that should the ZBA grant the exception pursuant to the statute that all of the conditions would be met; notably, that it would “not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based” and that it will “not cause hardship to future purchasers or undue financial impact on the municipality.”

Beauregard raised the concern as to the impact on the Town if the property is transferred, raising the issue of transportation for school aged children. Thibault also stated that he had concerns regarding the safety of first responders accessing the property, as it had been previously noted that Whittemore’s cabin is over one-half mile from the Town line.

Beauregard also stated that he was concerned about the potential impact if the Board grants the appeal. Beauregard stated that this may

set a precedent and open the door for “woodlots” to be developed. Mitchell and Thibault echoed Beauregard’s sentiments. Sullivan stated that he did not feel that the Board needed to be concerned about this possibility, as he felt that there may be very few property owners in the same situation as the Applicant.

Sullivan stated that Weston did not make a mistake or error in denying the building permit application. However, Sullivan added that the applicant was entitled to appeal this decision pursuant to RSA 674:41.

Motion by Gregory to continue the public hearing on the Appeal from an Administrative Decision without further notice to Monday, February 11, 2008 at 7:00 p.m., in order to obtain a legal opinion in the meantime from Town Counsel (the legal opinion requested relates specifically to the Board’s role and responsibility pursuant to RSA 674:41 and whether Whittemore’s longstanding use of the property is a factor that can and should be considered by the Board). Seconded by Mitchell. Vote: Gregory, Beauregard and Mitchell in favor. Opposed: Smith and Thibault. Motion carries.

Carbonneau questioned whether the Board wanted to schedule a site visit prior to the February 11th meeting. The Board decided that it did not need to conduct a formal site visit. However, Whittemore agreed that if Board members wanted to view the property individually, they had his permission.

Motion by Mitchell to continue the public hearings on the variance applications without further notice to Monday, February 11, 2008 at 7:00 p.m. Seconded by Beauregard. Vote: All in favor.

4. OTHER BUSINESS AS MAY BE REQUIRED – Carbonneau informed the Board that a workshop regarding changes to Shorelands Protection and Wetlands regulations will be held on March 6, 2008 in Concord. Any one interested in attending should contact her a.s.a.p.

Motion by Beauregard to adjourn. Seconded by Gregory. Vote: All in favor. Meeting adjourned at 9:25 p.m.

Submitted by,

Sara H. Carbonneau for Items 1 & 2 herein
Town Planner

Submitted by,

Elizabeth A. Fox for Item 3 and 4 herein
Town Administrator