

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES  
OCTOBER 4, 2008 SITE VISITS**

*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, Keith Thibault, Bob Mitchell, Jennifer Gregory.  
Alternates Deirdre Geer, Marty Geheran (arrived at 9:05), Bryan Rudgers  
(arrived at 9:00), Bob DeRocher.

Town Planner Sara Carbonneau also was present.

**PUBLIC HEARING: AREA VARIANCE APPLICATION**

Applicant: Melissa and John Diven, Jr.

Property owner: Melissa and John Diven, Jr.

Property location: 20 Rust Way Tax Map 18, Lot 57

Zoning District(s): Residence

Request: area variance from Section IV.B.3 and XI.B.2. to permit the construction of an addition to a garage that does not meet required setbacks. The existing building is a non-conforming structure.

Hutwelker continued the public hearing at 8:00 a.m.

Members seated: Hutwelker, Thibault, Mitchell, Gregory. Alternate Geer was seated for Beauregard.

Representing the application: John Diven, Jr.

Abutters present: none

**DISCUSSION**

By measurement, Board members determined that 9'4" is the distance from a stake set at the front outside corner of the proposed garage to the stockade fence at the property boundary.

Members determined that 12' is the distance from the approximate rear property line (where the land begins to steeply drop off) to a stake set at the rear wall of the proposed garage.

Carbonneau said that, at one time, the setback in the neighborhood had been 10'. Diven said that the house was constructed in 1957, and the garage was built in 1974.

Diven identified the location of the septic system, which is between the house and garage.

Hutwelker closed the public hearing at 8:15.

**REVIEW OF CRITERIA**

Board members agreed that the proposal would require an area variance, not a use variance. Members reviewed the criteria for granting the requested area variance.

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

Members agreed in the affirmative, observing other garages in the neighborhood.

2. Could the area variance be granted without the proposed use being contrary to the public interest?

Members agreed in the affirmative. Mitchell expressed reservations about possibly setting a neighborhood precedent by permitting construction in close proximity to a lot line.

3. Owing to special conditions, would the denial of the area variance result in unnecessary hardship to the land owner, according to the Boccia test?

a. Is an area variance needed to enable the applicant's proposed use of the property given the special conditions of the property?

Members agreed in the affirmative, noting the location of the septic system, house, and existing garage, as well as the topography of the lot.

b. Is the benefit sought by the applicant one that cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than by an area variance?

Members agreed in the affirmative.

4. If the area variance is granted, would the spirit of the ordinance be observed?

Members agreed that the spirit of the ordinance would be observed.

5. Would granting the area variance do substantial justice?

Members agreed that granting the area variance would do substantial justice.

**MOTION** by Gregory: Having found that the application meets all five criteria, and acknowledging lack of objection from the closest abutter (R. Sabolevski), motion to approve the area variance from Section IV.B.3 and XI.B.2. to permit the construction of an addition to a garage (a non-conforming structure) that does not meet required setbacks. The approval is conditional upon the removal of the existing wooden storage shed. Second by Thibault. All in favor.

## **2. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION**

Applicant: Edward Jacob

Property owner: same

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 continued the public hearing at 9:00 a.m.

Members seated: Hutwelker, Thibault, Mitchell. Alternate Geheran was seated for Gregory, and DeRocher was seated for Beauregard.

Representing the application: E. Jacob

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

#### DISCUSSION

Jacob identified the location of his property lines, and the general location of rights-of-ways.

A. Bedard showed Board members the general location of a contested right-of-way, upon which Jacob has parked registered antique trucks and a portable shed. (Bedard expressed no current objection to this encroachment upon the right of way, but asked for acknowledgement of the encroachment.) Bedard provided Carbonneau with legal descriptions of his rights-of-way.

R. Skeels identified the location of the 50' wide access strip portion of the Skeels property that crosses the Jacob parcel.

As part of an agreement between the Jacob and Wright Construction, for Wright Construction to provide access to properties during construction of the Slate covered bridge, Wright Construction connected the existing driveways to create what is essentially a loop.

ZBA members estimated the likely location of the third residence, proposed for construction as being in the field area. J. Skeels said that the proposed third building would be visible from the Skeels kitchen and bedroom. Hutwelker advised Skeels to supply professionally prepared evidence of any adverse impact.

Jacob said that his "intention is not to go ahead with a full-fledged condominium project," saying that he "just wants to fix the problem."

Hutwelker explained that the ZBA was charged with reviewing the proposed plan that, as a condominium, must include locations of existing and planned structures, common areas, limited areas, and a condominium declaration. Thibault said that the ZBA would not be able to evaluate the plan without complete documentation, and reminded Jacob that the creation of a condominium is a State-regulated process. Carbonneau said that an approval of the condominium proposal should also include a deadline for its execution. Explaining that a ZBA denial would require Jacob to return with a significantly different plan, Hutwelker said that the ZBA could continue this matter, thereby giving Jacob time to prepare additional required documentation. Several times Jacobs said that he was considering withdrawing the application. Hutwelker strongly advised him not to do so, but rather to take advantage of the option of continuing the public hearing until November 3.

Hutwelker said that the purpose of the site visit was to facilitate Jacob's development of his application, and said that the ZBA was trying to work on Jacob's behalf. He acknowledged Jacob's access to professional help (Brickstone Masons).

At 2.25 acres, the parcel is large enough to subdivide, but lacks adequate road frontage. In the Business district, conversion of the barn to a residential use requires a special exception. Carbonneau listed options: the proposed special exception for a 3-single-family-dwelling residential condominium; an

area variance (to permit the lack required road frontage, the lack of required distance between existing structures, the shared septic system, and encroachment into set backs) to permit subdivision of the property; or a use variance to permit two residential structures on the same lot. Other options included demolishing one of the structures, or (with a special exception) connecting the “barn” and cottage. It was noted that Jacob would need to obtain a special exception if he decided to demolish the cottage and utilize the “barn” as a residence.

Acknowledging that Town enforcement actions are not germane to ZBA review, Hutwelker questioned the effect on tenants of ZBA denial or Jacob’s withdrawal of the application. Responding to questions from Board members, Carbonneau said that it issuing an eviction notice is not within the Town’s authority. She said that the current use was illegal, and that the Town has sent Jacob a notice of violation, advising him to begin rectifying the situation. If Jacob withdrew his Special Exception Application, the Board of Selectmen would have to address the situation. If Selectmen take the matter to Superior Court, potential fines start accruing from the date of notice of violation.

Stating that he was “not going to build anything,” Jacob left the site visit at 9:50 a.m.

**Motion** by Thibault to continue the public hearing to a special meeting scheduled for November 3, 2008 at 7:00 p.m. Second by Geheran. All in favor.

**ADJOURNMENT**

Motion by Mitchell to adjourn. Second by Beauregard. All in favor. The site visits adjourned at 9:50 a.m.

Submitted by

Victoria Reck Barlow  
Recording Secretary