

**SWANZEY ZONING BOARD OF ADJUSTMENT
OCTOBER 20, 2008 MEETING MINUTES**

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

Keith Thibault, Charles Beauregard, Jennifer Gregory, Bob Mitchell. Alternates Deirdre Geer, Bryan Rudgers, Bob DeRocher. Town Planner Sara Carbonneau also was present.

Vice Chairman Thibault called the meeting to order at 7:00 p.m. and read the agenda for the meeting. The Board addressed the following items.

MINUTES

Proposed amendment to the minutes of August 18, 2008:

Thibault amended page 4, Discussion of Agenda item 2, to replace ~~“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.”~~ with “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 Rudgers to approve the minutes of the August 18, 2008 regular Swanzey Zoning Board of Adjustment October 20, 2008 meeting minutes
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meeting, as amended. Second by Geer. All in favor.

Motion by DeRocher to approve the minutes of the September 15, 2008 regular meeting. Second by Mitchell. All in favor.

Proposed additions to the minutes of September 22, 2008

Page 7, paragraph 6:

With respect to the request to operate a farm on the premise, which may include the raising and sale of livestock and produce, R. McClure stated that he did not wish to conduct a farm on the premises other than the existing raising and sale of Christmas trees. The McClures voluntarily withdrew those portions of their application pertaining to livestock and educational uses. Based upon testimony provided, the ZBA determined that the raising and sale of Christmas trees has been on-going for over 25 years and felt that it was a grandfathered used.

Page 6, paragraph 4: R. Scaramelli, speaking on behalf of his wife Joan Kibbe (who holds the title to the Kibbe property) said that the ZBA faced the hazard of spot zoning, with potential effects on neighbors and successor owners, and creating a policy issue for the Town.

Page 6, paragraph 7, 8:

Richard Scaramelli who, with his wife Joan Kibbe, has resided next to the McClure property for 40 years, provided background on the Residential District, which was established in the mid to late 1970s by Town vote. The 500' deep district is located on either side of maintained stretches of Town road. Scaramelli said that his family and Jim and Betsy McClure did not oppose creation of the district, and said that the district had existed without contest since its creation.

Speaking on behalf of himself and Joan Kibbe, Scaramelli stated the following: Use of the farm during Jim and Betsy McClure's tenure . . .

Motion by Gregory to approve the minutes of the September 22, 2008 special meeting, as amended. Second by Mitchell. Thibault, Gregory, Mitchell, Geer in favor; Beauregard (who left the meeting early), Rudgers and DeRocher (both of whom did not attend the meeting) abstaining. Motion passes.

Motion by DeRocher to approve the minutes of the October 4, 2008 site visits. Second by Mitchell. DeRocher, Thibault, Mitchell, Gregory, Geer, Rudgers in favor; Beauregard (who did not attend the site visits) abstained. Motion carries.

1. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: William Fenton

Property owner: Willard H. Thompson and Molly D. Thompson

Property location: off Massey Hill Road Tax Map 3, Lot 42

Zoning District(s): Business

Request: a special exception from Section V.B.2.a. to permit a portion of the

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premises to be utilized for an automobile dealership (specifically, additional parking for the Toyota/Volvo dealership).

Thibault opened the public hearing at 7:07.

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

Representing the application: David Bergeron (Brickstone Masons) and Bill Fenton

Abutters present: residents of Massey Hill Road, including Briana Chavez, Dale Freihofer, and Richard Randall.

DISCUSSION

Bergeron presented plans proposed for the site and boundary line adjustment. The 1.66-acre property has frontage on Massey Hill Road. The Thompsons access their house from a driveway off Massey Hill Road; the rear of the parcel is wooded, and abuts Fenton's Toyota/Volvo automobile dealership.

By adjusting the boundary line of the Thompson parcel to add its .66 acre rear portion to the dealership property, and retaining the house on the 1-acre balance of the lot, Fenton proposes to use the wooded rear portion of the Thompson property to add extra parking for the Toyota/Volvo dealership.

The proposal calls for re-configuring the existing parking plan in the rear of the Toyota/Volvo dealership to create approximately 25 parking spaces, and to create approximately 60 parking spaces at the rear of the Thompson parcel. The parking spaces would be used for storage of inventory, and not for display purposes. Access to these new parking spaces would be through the Fenton dealership via existing curb cuts on Route 12. No access to the dealership from Massey Hill Road would be created.

Bergeron said that the plan proposes to retain an existing chain link fence and trees that separate the dealership parking area from the property of Dale and Gloria Freihofer. The plan calls for installing a 6' stockade fence to separate the proposed new parking area use of the rear the Thompson lot from the one-acre house lot that is proposed to remain after boundary line adjustment. Bergeron said that trees will be cleared from the .66 acres, and said that no wetlands are present on the property. There would be a distance of 120' from the house to the proposed adjusted boundary line.

Bergeron said that an infiltration system will accommodate, on-site, any increases in runoff.

ZBA members reviewed a letter submitted on 10/20/08 by Dale Freihofer, Sr. and Gloria Freihofer, and asked Bergeron to respond to it. Bergeron noted that all the residences on Massey Hill Road are in the Business zoning district. He said that the proposal will generate no new traffic on Massey Hill Road. He said that the Freihofer's home will not be surrounded on three sides by the car dealership because the existing house will be retained on the 1-acre front portion of the lot; a minor portion of the .66 acre proposed for parking abuts the Freihofer parcel. Bergeron said that all drainage will remain on site. For these reasons, he said that the value of the Freihofer's property would not be diminished. Bergeron added that, because businesses are permitted in the

Business district, any of the houses on Massey Hill Road could be converted to business use permitted in the district without a special exception from the ZBA.

Briana Chavez said that she was concerned about potential expansion of dealership activities to the front of the Thompson lot, which is directly in line with the front of her home. (She resides in the structure situated on Dale and Gloria Freihofer's property.) She said that activity at the dealership generates noise, and said that she is concerned about lighting. Bergeron said that any future expansion of use would require ZBA approval, and said that the Planning Board would address lighting during its review of the site plan.

Dale Freihofer (owner of property situated across Massey Hill Road from the Thompson's property) asked about fencing, and reported early-morning noise generated by servicing the dumpster at the Toyota/Volvo dealership. Fenton said that there is no current plan to install a stockade fence on the western boundary of the proposed parking area, adjacent to the Romano property. If a need for fencing becomes apparent after clearing for the proposed parking area, he said that the issue would be addressed, and encouraged abutters to bring similar issues and concerns to the Planning Board's review of the site plan. Fenton said that the proposed parking area would be used exclusively for parking, and promised to address the hours of dumpster servicing.

Richard Randall expressed concern about lighting. Bergeron said that plans typically call for using "cut-off" or "shoebox" fixtures to push light forward and down, so that it does not shine on abutting properties.

DeRocher asked whether taller trees could be retained to help with buffering between the residential and business use. Fenton promised to talk with neighbors to address their concerns before submitting a site plan to the Planning Board.

Thibault closed the public hearing at 7:31.

Thibault noted that the application raises issues about what happens when people live in an area zoned for business use. He said that these issues are what cause the ZBA to exercise painstaking caution when responding to proposals to create residences in a Business district.

Gregory said that the residential use of the Thompson parcel triggers the Planning Board's application of item #4 on page 27 of the Zoning Ordinance:

"A non-residential use established after the adoption of this subparagraph on a lot in the Business District shall be set back fifty (50) feet from any abutting residential dwelling and shall be screened from the abutting residential dwelling by a fence, hedge, berm, vegetative planting or other screening material, the size and type of screening to be determined by the Planning Board during the Site Plan Review process required of all new businesses proposed in the Town of Swanzey."

During site plan review, Gregory asked that Planning Board members be made aware of concerns raised by abutters regarding noise, lighting, and views. She asked that the Planning Board request appropriate screening, and consider protecting the natural buffers created by existing trees.

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 to both parts of the question.

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 proper operation of the proposed use?

Members agreed in the positive.

Motion by Mitchell: 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.a. to permit a portion of the premises at Tax Map 3, Lot 42 to be utilized for an automobile dealership (specifically, additional parking for the Toyota/Volvo dealership). Second by Beauregard. All in favor.

2. PUBLIC HEARING: USE VARIANCE APPLICATION

Applicant: William Prescott

Property owner: William G. and Sheryl Ann Prescott

Property location: off Old Chesterfield Road (a Class VI road) Tax Map 83, Lot 7

Zoning District(s): Rural/Agricultural

Request: use variance from Section IV.A.1. to permit the construction of a hunting camp

Thibault opened the public hearing at 7:45.

Members seated: Keith Thibault, Charles Beauregard, Jennifer Gregory, Bob Mitchell, Bob DuRocher seated for Hutwelker.

Representing the application: William Prescott

Abutters present: Michael Ford and Dana Youtsey

DISCUSSION

Prescott presented his son's high school senior project proposal to build a 24' x 24' structure on 46 acres owned by the Prescotts on a Class VI road. Prescott said that the proposed structure would be built to code, and would have no electrical service and no plumbing. Conditions of the Class VI road prevent access by a septic pumping truck. A wood stove would supply heat; the proposed masonry chimney would be constructed on an appropriate footing. A 20' wide driveway would provide access to the structure. Prescott proposes to create a 50' wide clearing around the structure. Prescott said that the structure

would function as a recreational and hunting camp, and said that this use would be consistent with the rural nature of the location.

Prescott said he has owned the parcel since 2003, and conducted some logging in 2004. His family uses the land for hunting, snowmobiling, and riding ATVs. He anticipates the structure being occupied by a maximum of four to five people at a time, in approximately 3-day-long visits, year-round on weekends and vacations.

ZBA members cautioned Prescott that Town services like fire and police protection are not available at the location. Prescott said that he understood that safety would be his responsibility. Members noted that several years ago the Town of Chesterfield designated the Chesterfield portion of Old Chesterfield Road as a Class A or Class B trail, eliminating its use by motor vehicles for through traffic.

ZBA members discussed ways to prevent the structure from becoming occupied inappropriately, or becoming a permanent residence. Carbonneau provided Board members with a copy of an Agreement, Release and Covenant Running with the Land, dated June 13, 2003, that was entered into by the Board of Selectmen and the owners of a nearby parcel then seeking a variance for a similar hunting camp. The Agreement spells out terms and conditions for the existence of the hunting camp, and absolves the Town of responsibilities. The agreement was recorded at the Registry of Deeds. ZBA members agreed that a similar agreement, also filed at the Registry of Deeds, would address their issues of concern.

Thibault closed the public hearing at 8:13.

Mitchell said that the historical model provided appreciated guidance for the Board's approach to the application. Thibault commended Carbonneau for creating and maintaining a highly serviceable record of ZBA decisions.

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

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

Members agreed in the affirmative.

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

Members agreed in the affirmative.

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

- a. A zoning restriction as applied to the property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment;

Members agreed in the affirmative.

- b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property;

Members agreed in the affirmative. Mitchell noted that the lack of provision for hunting camps in the Rural/Agricultural district may be a

deficiency in the Zoning Ordinance.

- c. The variance would not injure the public or private rights of others.

Members agreed in the affirmative.

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

Members agreed in the affirmative, observing that the spirit of the ordinance is to provide for uses of land in their most appropriate locations.

5. *Would granting the variance do substantial justice?*

Members agreed in the affirmative.

MOTION by Gregory: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the use variance from Section IV.A.1. to permit the construction of a hunting camp, subject to the applicant drafting and submitting to the Board of Selectmen a document containing the same restrictions as contained in the June 13, 2003 Agreement, Release and Covenant Running with the Land prepared for Tax Map 83, Lot 3; and subject to the Selectmen's approval of the Agreement and the recording of the Agreement at the Registry of Deeds. Second by Beauregard. 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; 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

Motion by DeRocher to continue the application until the November 17, 2008 meeting of the ZBA. Second by Geer. All in favor.

FOR INFORMATION

Carbonneau reminded Board members that a special ZBA meeting has been scheduled for November 3, 2008 to consider the Edward Jacob application for a 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.

ADJOURNMENT

Motion by Beauregard to adjourn. Second by Geer. All in favor. Meeting adjourned at 8:34.

Submitted by

Victoria Reck Barlow

Recording Secretary