SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
SEPTEMBER 21, 2009

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, Charlie Beauregard, Jerry Walker, Bob Mitchell, and alternate Bob DeRocher. Town Planner Sara Carbonneau also was present.

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

MINUTES

Motion by Beauregard to approve the minutes of August 25, 2009 meeting. Second by Walker. All in favor.

1. PUBLIC HEARING (AREA VARIANCE APPLICATION)

Applicant: Paul Breckell
Property owner: Paul J. Breckell and Judith A. Breckell
Property location: 260 Marcy Hill Road Tax Map 20, Lot 94
Zoning District(s): Residence District
Request: Area variance from Section IV.B.3. to permit the construction of a carport that does not meet required setbacks.

Hutwelker opened the public hearing at 7:06.
Members seated: Hutwelker, Thibault, Beauregard, Mitchell and Walker.
Representing the application: Paul Breckell
Abutters present: none

DISCUSSION

Board members received a September 17, 2009 ZBA Application Summary prepared by Carbonneau. Carbonneau stated that the carport is proposed to be set back 12' from property line; the zoning district setback requirement is 20 feet. Carbonneau said that she has received no comments regarding the proposal from neighbors or from department heads. Responding to questions from ZBA members, Carbonneau stated that the zoning ordinance treats carports as permanent garages.

Breckell said that his objective is to have covered parking adjacent to the house door. At its nearest, he said that the corner of the house is 36' from the property line. A wooded gully functions as a buffer between his house and that of his neighbor. He said that his neighbor's house is set at an angle, and is approximately 30' from this property line. Breckell said that sheds on his parcel have not caused concern to the neighbor.

Breckell said that he was unclear as to whether the roof of the 24' x 24' proposed carport would be attached to the roof of the house; the carport roofline would be similar in orientation and pitch to the roofline of the house. He said that he doesn't know whether the sheds would remain after construction of the carport. In response to Board

members' questions, Breckell stated that there is no other place to reasonably locate the carport, especially since it is proposed to be sited at the end of the driveway. He said that there are no other similar garages in the area.

Board members determined that, because the application sketch of the proposed carport is not drawn to scale, it is not possible to determine whether adequate space exists for construction of the proposed structure as well as the requested relief from setback requirements. Board members asked Breckell to consider re-drawing the sketch with accurate dimensions, to determine whether the carport will be attached to the house, and to submit photographs to document the buffer on the property line along with the view of the adjacent house. Breckell agreed to supply the requested information.

Motion by Thibault to continue the hearing to the October 19, 2009 meeting without further notice. Second by Beauregard. All in favor.

2. PUBLIC HEARING (AREA VARIANCE APPLICATION)

Applicant: John C. Gerken
Property owner: John C. Gerken and Sheila M. Gerken
Property location: 59 Rabbit Hollow Road Tax Map 62, Lot 2
Zoning District(s): Rural/Agricultural District
Request: Area variance from Section VII.E.1 to permit the installation of a replacement septic system that does not meet required setbacks from wetlands.

Hutwelker opened the public hearing at 7:31.
Members seated: Hutwelker, Thibault, Beauregard, Mitchell and Walker.
Representing the application: John Gerken; septic designer Dale Friehofer
Abutters present: none

DISCUSSION

Board members acknowledged receipt of a September 17, 2009 ZBA Application Summary prepared by Carbonneau. Carbonneau presented the summary, noting that that Map 62 Lot 2 consists of approximately .45 acres, and appears to be served by a well located on Map 29 Lot 7, located on the east side of Rabbit Hollow Road and also owned by John and Sheila Gerken. A 3-bedroom manufactured housing unit is present on Map 62 Lot 2, and a 3-bedroom house is present on Map 29 Lot 7. Both lots have independent septic systems; Town files lack records of the systems.

Carbonneau said that Town records indicate that a decision to label the parcel as two lots appears to have taken place in the early 1980s. The decision may have been influenced by the longstanding (dating back to the 1970s, or longer) presence of two residences on the parcel, and by the splitting of the lot by Town tax map pagination. However, all deeds refer to a single property description. She said that she has asked the Board of Selectmen to render a decision.

Because no deeds indicate that the lots are separate, Carbonneau advised ZBA members to consider both sides of Rabbit Hollow Road as a potential site for the proposed septic system. (Precedent exists in the area surrounding Swanzey Lake, where several houses are served by septic systems located on property held in the same ownership across the road.) She advised the Board to consult with the applicant's septic designer to determine whether mitigating factors recommend against locating the system on the east side of Rabbit Hollow Road.

Gerken said that the existing system is undersized and "delicate," requiring water use reduction strategies as well as pumping once or twice a year to keep from backing up into the house. He said that he seeks to meet current regulations by increasing the size of the tank and leachfield. Because the septic system on the east side of the road is

up to code and functioning well, and because of likely increased expense, Gerken said that he did not consider connecting both homes to a shared system.

Gerken stated that "some time ago," and with no explanation, the Town made the distinction between the two parcels and began issuing separate tax bills.

Friehofer stated that he had not yet obtained State approval of the proposed systems, and said that his preference is the system labeled as "Plan B." He stated that the design attempts to locate the 3' mound of the 12' x 30' leach field as unobtrusively as possible. He stated that no location exists on the west side of Rabbit Hollow Road that would make it possible to meet the 125' setback from wetlands. The existing system also is within 125' of wetlands.

Friehofer stated that, from a functional standpoint, neither side of the road is preferable: soils and terrain are similar, and a pump would be required in both instances. Locating the system on the east side of Rabbit Hollow Road would require a road-crossing permit from the Board of Selectmen.

DeRocher stated that, in his opinion, each residence should have an independent septic system to help avoid future legal problems.

Hutwelker determined that there were no further questions, and closed the public hearing at 8:16.

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 variance.

1. *Could the area 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* Boccia *test for determining unnecessary hardship?*

   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.

   b. *Could the benefit sought by the applicant be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance?*
      Members agreed that the benefit sought could not be achieved by another reasonably feasible method: the proposed location is the only available site on the west side of the road; locating the system across the road would add to the cost, invoke the need for an additional permit, and could create future legal problems; it would not be reasonable to require a joint system. The property already supports two systems, and the proposed system would replace a system that is close to failure.

4. *If the variance is granted, would the spirit of the ordinance be observed?*
   Members agreed in the affirmative, noting that replacing a nearly failed system is better for the environment.

5. *Would granting the variance do substantial justice?*
   Members agreed in the affirmative.

Motion by Mitchell to approve the area variance from Section VII.E.1 to permit the

installation of a replacement septic system that does not meet required setbacks from wetlands. Second by Beauregard. All in favor.

DeRocher recommended that the septic design include a second septic tank/pump chamber.

3. PUBLIC HEARING (SPECIAL EXCEPTION APPLICATION)

Applicant: Bentley Cutler
Property owner: Bentley S. N. Cutler and Brenda A. Cutler
Property location: 178 Forest Avenue Tax Map 74, Lot 7
Zoning District(s): Residence District
Request: Special exception from Section III-AA to permit the construction of an accessory dwelling unit in the residence.

Hutwelker stepped down from the position of chair, not due to a conflict of interest. Thibault assumed the chair, and opened the public hearing at 8:26.
Members seated: Thibault, Beauregard, Mitchell, and Walker. DeRocher was seated for Hutwelker.
Representing the application: Bentley Cutler
Abutters present: none

DISCUSSION

Board members acknowledged receipt of a September 17, 2009 ZBA Application Summary prepared by Carbonneau. Carbonneau stated that the structure contains 3 bedrooms (incorrectly listed as 4 bedrooms on the assessing card) and is served by a septic system approved for 4 bedrooms on October 17, 1979. Carbonneau said that the proposed accessory dwelling unit (ADU) – the Town's first such application -- would have 560 s.f. of living area, and said that the proposal meets the requirements of Section III-AA.8. Carbonneau advised the Board that, because it must be possible to reincorporate an ADU into the home after the property owner moves out, ADUs are not considered to be apartments for the purposes of septic loading.

Cutler stated that the ADU would not change exterior appearance of the house. He said that it would be occupied by his parents for a portion of the year, and likely also would be a rental unit.

ZBA members reviewed Section III-AA, and determined that the application satisfies all requirements. A 2007 septic system evaluation from Quality System Design indicates that the system as installed and currently serving a 3-bedroom house is functioning with no problems.

Thibault determined that there were no further questions, and closed the public hearing at 8:47.

REVIEW OF CRITERIA

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, due to the existence of a multitude of housing in the district. Members agreed that the proposed location for the ADU appears to be appropriate.

   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 is no evidence that approval would reduce property values or otherwise harm the neighborhood.

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

Members agreed that there would be no nuisance or hazard.

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

Members agreed, citing adequacy of the septic system, entrances, and parking.

Motion by Beauregard to approve the special exception from Section III-AA to permit the construction of an accessory dwelling unit in the residence. Second by DeRocher. All in favor.

4. VOTE ON ALTERNATE MEMBER VACANCY for a position that expires at Town Meeting 2011. Carbonneau stated that the Board has received no nominees for the position previously held by Geer. Carbonneau stated that an alternate vacancy also has been posted for the upcoming vacancy that will result from DeRocher's resignation, effective September 30, 2009.

5. OTHER BUSINESS AS MAY BE REQUIRED

Board members acknowledged with gratitude DeRocher's 28 years of service as an alternate member of the ZBA. Hutwelker presented a certification of appreciation.

ADJOURMENT

Motion by Thibault to adjourn. Second by Beauregard. All in favor. The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Victoria Reck Barlow,
Recording Secretary