SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
MAY 18, 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 (arrived at 7:06), Charles Beauregard, Bob Mitchell, Jerry Walker, and alternate Robert DeRocher. Town Planner Sara Carbonneau also 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

Board members acknowledged receipt of a copy of April 30, 2009 e-mail correspondence to Carbonneau from Russell Gocht.

Motion by Beauregard to approve the minutes of April 20, 2009. Second by Thibault. All in favor.

1. PUBLIC HEARING (AREA VARIANCE APPLICATIONS)

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.

Motion by Thibault, at the applicant's request, to continue the matter until the July 20, 2009 meeting without further notice. Second by DeRocher. All in favor.

2. PUBLIC HEARING (AREA VARIANCE APPLICATION & SPECIAL EXCEPTION)

Applicant: Bradley R. Howe

Property owner: Bradley R. Howe
Property location: 27 West Street Tax Map 57, Lot 6
Zoning District(s): Business District
Request: area variance from Section XI.B.1 and a special exception pursuant to Section V.B.2.e to permit the construction of a deck on the existing non-conforming structure. The structure is non-conforming because it does not meet required setbacks. The applicant also seeks to establish the existing house as a permitted use in the Business District.

Thibault stated that he felt it necessary to disqualify himself from the matter, due to his prior involvement in development of a project on property abutting that of the applicant. Thibault left the table and moved into the audience.

Hutwelker advised Howe that an application requires three positive votes to prevail, and offered Howe the option of requesting a continuation to the next regular meeting. Howe stated that he had no objection to having his application heard by a board of four members.

Hutwelker opened the public hearing at 7:09.

Members seated: Hutwelker, Beauregard, Walker. DeRocher was seated for Mitchell.
Representing the application: Bradley Howe
Abutters present: none

Board members acknowledged receipt of a May 15, 2009 ZBA Application Summary prepared by Carbonneau. Carbonneau stated that the addition is modest, and comes before the ZBA because the structure does not meet required setbacks.

Howe stated that he seeks to build a 13' x 13' deck on the north side of the house for seating and to allow safe passage to the back yard. For the Board's review, Howe presented plans showing the location of structures on the lot. Howe stated that his request is modest because the location of the property may ultimately result in a use other than that of residence. Howe stated that public sewer serves the property, and said that he was unsure about setback requirements in the Business district. ZBA members advised Howe that the district requires all structures be set back 75' from the front property line.

Board members agreed that the proposed deck is small, will not encroach on neighbors, and is a reasonable request.

Hutwelker closed the public hearing at 7:17.

DeRocher stated that he had inspected the residence five years ago in his capacity as the Town's Health Officer, and had found the structure to be in bad shape. DeRocher stated that the deck would be a positive addition to a property that recently has been significantly improved, and would have no negative impacts. Walker said that he could see nothing in the proposal that would have a negative impact on neighbors. Beauregard said that the deck is smaller than structures Howe has removed from the property to enhance the site.

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, stating that the proposed deck would have a smaller impact than a formerly existing structure that Howe had removed.

2. *Could the variance be granted without the proposed use being contrary to the public interest?*
   Members agreed that the proposed use in not contrary to public interest.

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? Denial would result in*

   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, due to the failure of the house to meet the district setback.

   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 an area variance?*
      Members agreed in the affirmative, due to the setback of the house.

4. *If the 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 variance do substantial justice?*
   Members agreed that granting the variance would do substantial justice.

Motion by DeRocher: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the area variance from Section XI.B.1 to permit the construction of a 13' x 13' deck addition on the existing non-conforming structure at Tax Map 57, Lot 6. Second by Beauregard. All in favor.

Hutwelker reopened the public hearing at 7:20 to consider the Special Exception applicaton. Hutwelker advised Howe that the ZBA seeks to make every applicant understand that business uses in the Business district take higher priority than residential uses; all applicants for residential uses in a Business district are advised of the possibility of someday having a business as a neighbor. Hutwelker noted that Howe had alluded to the fact that his land might have a higher use in the future.

Hutwelker closed the public hearing at 7:22.

Board members reviewed the criteria for granting the requested special exception.

1. *Is the exception allowed by the ordinance?*
   Members agreed in the affirmative, stating that single-family homes are permitted in the Business district.

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 presence of other single-family homes in the vicinity and the historic use of the parcel as a single-family residence.

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 approval would not 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, noting that public water and sewer serves the parcel, and the structure historically has been used as a residence.

Motion by Beauregard: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception pursuant to Section V.B.2.e to establish the existing house as a permitted use in the Business District. Second by DeRocher. All in favor.

Thibault returned to table at 7:25.

3. Public Hearing (Area Variance Application & Special Exception)

Applicant: John Willette and Nicole Willette
Property owner: John Willette and Nicole Willette
Property location: 87 Old Homestead Highway Tax Map 37, Lot 13
Zoning District(s): Business District
Request: area variance, as the property does not contain the required 1 acre needed in order to grant the special exception from Section V.B.2.b., and a special exception from Section V.B.2.b to permit the conversion of a structure to a multi-family dwelling (three units).

Hutwelker opened the public hearing at 7:27.
Members seated: Hutwelker, Thibault, Beauregard, Walker. DeRocher was seated for Mitchell.
Representing the application: John Willette and Nicole Willette
Abutters present: David Devoid and Richard Exel

Board members acknowledged receipt of a May 15, 2009 ZBA Application Summary prepared by Carbonneau. Carbonneau stated that a special exception is required for multifamily housing; Town Council advises the Board to consider an area variance, and not a use variance, in addition to the required special exception. The property is connected to public water and sewer, and has adequate space to meet the required three parking spaces for each proposed unit. The existing barn will remain intact.

J. Willette and N. Willette described their proposal to create two additional apartments within the 4,100 square foot structure, served by public water and sewer. The space that would become Apartment #1 has three bedrooms; new

Apartment #2 is proposed to have 2 bedrooms, and new Apartment #3 is proposed to have 1 bedroom. J. Willette stated that a fire wall already exists between proposed Apartments #1 and #2; consultations with the Town fire inspector and code enforcement officer lead him to conclude that additional required modifications will be minor. Plumbing that served the former beauty salon will be removed.

Noting that the lot of record is very nearly one acre, Board members questioned whether the applicants had retained a surveyor to determine whether the lot requires an area variance. J. Willette stated that he had not had the lot surveyed, had not discussed a lot line adjustment with neighbors, and prefers to take the matter before the ZBA.

Abutters Devoid and Exel stated that the Willettes already had improved the property, and said that they have no objections to the area variance. Hutwelker determined that Board members had no further questions regarding the area variance.

Hutwelker closed the public hearing at 7:37.

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 that they had received no evidence that granting the area variance would diminish property values.

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

   Members agreed in the affirmative, stating that numerous multi-family residences exist in the immediate area, and acknowledged the possibility that the survey line could be slightly inaccurate.

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? agrees*

   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, stating that the lot only slightly misses being one acre.

   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 an area variance?*

   Members agreed in the affirmative, stating that the only apparent feasible method -- enlarging the lot – is not reasonable. Members agreed that their conclusion might be different if the lot was a quarter acre.

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

   Members agreed in the affirmative, stating that many other multi-family residences exist in the area; the proposal is modest given what the Ordinance permits for the lot; public water and sewer serves the lot.

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

   Members agreed in the affirmative, based on the prior discussion.

Motion by Beauregard: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the area variance for the structure at Tax Map 37, Lot 13. Second by Walker. All in favor.

Hutwelker opened the public hearing at 7:43 to consider the Special Exception application.

Regarding the Application Summary, Carbonneau stated that Town Council advises the Board to consider the special exception. Carbonneau noted other similar uses in the district, the provision of public water and sewer, and the adequacy of space for parking. Although all parking could be accessed off Route 32, Carbonneau said that she supports the construction of a driveway for access to Sylvan Way to avoid potentially unsafe stacking of cars in the parking area. Carbonneau advised the ZBA that the application for multi-family housing requires site plan review by the Planning Board.

Those present discussed parking and access from Sylvan Way for Apartment #3. J. Willette stated that the parcel has 196' of frontage on Sylvan Way. ZBA members advised the applicant that a driveway permit would be required, and determined that the proposed driveway would not create a situation where headlights might shine directly into the windows of the house across on Sylvan Way.

Abutters Devoid and Exel stated that they had no further comments or questions.

Hutwelker closed the public hearing 7:49.

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, having considered site distance, adequacy of parking and the presence of other multi-family housing in the area.

e. *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, having received no testimony of opposition to the proposal.

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

Members agreed in negative, supporting the plan to direct some of the traffic to the proposed driveway on Sylvan Way.

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

Members agreed in the positive, noting the presence of public water and sewer.

Motion by Beauregard: 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.b to permit the conversion of a structure at Tax Map 37, Lot 13 to a multi-family dwelling (three units). Second by DeRocher. All in favor.

4. Other Business as may be Required

E-mail correspondence from Russell Gocht to Town Planner Carbonneau
Carbonneau and Board members noted that receipt of the correspondence had been acknowledged in conjunction with consideration of minutes. Board members stated that they were confused by the content of the e-mail message.

Modifications to Rules of Procedure Carbonneau and members of the ZBA reviewed and discussed the rationale of proposed modifications, proposed text, and related recommendations by Town Attorney Beth Fernald. The group agreed to make the Rules gender-neutral.

OFFICERS Carbonneau said that Fernald supports the Town's historical practice of including alternates in elections of officers, as well as encouraging the active participation of alternates in discussions of matters before the Board. Board members agreed that to do otherwise is to deny the Board the benefit of alternates' interest, knowledge, and insight, and might give the public an impression of Board elitism.

Text added to Item 4. specifies the procedure for appointments and filling vacancies, and clarifies that there is no need for a waiting period. Carbonneau said that members must be registered Swanzey voters.

CLERK This change clarifies Board practice of having minutes taken by an employee of the Town.

MEETINGS
Ex parte communication: This new section gives direction to Board members, and steers applicants to bring questions to the Town Planner.

Item 5, order of business: Members discussed Board practice not to commence a new public hearing after 9:00 (even though the current rules state 10:00 p.m.), if it appeared likely that the hearing would require lengthy testimony, and to aim for a 10:00 curfew. Board members wished to codify the 9:00 deadline for public hearing commencement.

APPLICATIONS
Item 1.a. clarifies that the Town Planner must receive applications prior to a ZBA meeting, an approach that helps applicants pull together materials necessary to facilitate their presentation to the Board. Board members discussed including language that would allow a designee to accept materials, at the discretion of the Town Planner, if the Planner were unavailable due to illness, vacation, or unforeseen circumstance. The group concluded that this option might be critical for matters that involve litigation.

Item 1.b. clarifies how thirty days shall be counted.

Item 3.f. Those present agreed that anyone who wants to ask a question, rather than only parties to the case, must ask their question through the Chair.

New Item following 3.f and before 3.k. Those present recommended amending application forms to include the language of this item regarding implicit consent to a site visit.

Item 3.k. ZBA members agreed to delete this item, relating to the compelling the attendance of witnesses, due to its confusing nature and questionable purpose. Carbonneau said she will consult with Fernald for more information regarding the historic rationale for this item.

Item 4. Carbonneau said that increasing the targeted date for decisions from 14 days to 35 days gives the Board the opportunity to continue the matter at a following meeting, if members require more time. The group agreed that the phrase "shall strive to" would cover situations in which a decision could not be made in 35 days after the close of public hearing.

Item 5. The group agreed that the phrase "statutory requirements" best covers the legal timeframe for making records available.

Item 6. The group agreed that joint meetings shall be held, rather than may be held.

HB 446 Carbonneau advised Board members that pending legislation likely will do away with the distinction between area variances and use variances. The group discussed implications of this change.

ZBA Application Summary Board members expressed appreciation of the concept and content of Carbonneau's summaries.

Route 12 update Carbonneau reported that construction of sewer lines to the Page Homestead senior housing project is in process; water lines will next be constructed. She said that Hidden Springs Mall will also be connected to public sewer.

Upcoming events Carbonneau alerted Board members to Memorial Day observances on May 25, premiere of the film *Swanzey Rural Character* on May 30, and the annual birthday party for the oxen Buck and Ike on May 31.

ADJOURMENT

Motion by Beauregard to adjourn. Second by DeRocher. All in favor. The meeting adjourned 9:08 p.m.

Submitted by

Victoria Reck Barlow, Recording Secretary