

**SWANZEY ZONING BOARD OF ADJUSTMENT
SITE VISIT AND REGULAR MEETING MINUTES
SEPTEMBER 19, 2011**

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.

SITE VISIT

Applicant: Bruce & Nancy Descoteaux

Property owner: Bruce Descoteaux

Property location: 126 Old Homestead Hwy Tax Map 18, Lot 167

Zoning District(s): Residence District

Request: Variance from Section IV.A.3. to permit the construction of a 24' x 24' garage/accessory storage structure.

Members seated: Hutwelker, Thibault, Mitchell, Walker. Sarah Tatro, was seated for Charles Beauregard, Jr. (Note: Charles Beauregard, Jr. had been seated for Charles Beauregard, Sr. at the August 15, 2011 public hearing. Tatro was seated at the site visit, as Charles Beauregard, Jr. did not arrive until after the site visit had commenced). Town Planner Sara Carbonneau also was present.

Representing the application: Tim Sampson

Abutters present: None; Carbonneau stated that she had received no written comments or telephone calls regarding the application.

Chairman Hutwelker called the site visit/public hearing to order at 6:07. Present were William Hutwelker, Keith Thibault, Bob Mitchell, Jerry Walker, Charles Beauregard, Sr. (arriving at 6:20 p.m.); alternates Charles R. Beauregard, Jr. (arrived at 6:15), Jim Vitous and Sarah Tatro. Town Planner Carbonneau also was present. Tim Sampson represented property owners Bruce and Nancy Descoteaux, who were present at the site.

Members observed stakes positioned by the homeowners to mark a structure location that would—in the homeowners' opinion--be in closest compliance with the Ordinance. Described by Sampson as a "best effort to meet setbacks," one corner of the 24' x 24' staked area was within 2' of the existing deck on the house. Members observed the location of the existing garage, deck, property boundaries, and plantings, as well as the location of structures on adjacent lots. Members concluded the site visit at 6:22.

(Public Hearing) Variance

At 6:30, the Board reconvened the public hearing at Swanzev Town Hall. Tim Sampson continued to represent the applicants, who did not attend this portion

of the public hearing. Hutwelker seated Charles Beauregard, Jr. in place of Sarah Tatro.

Topics of discussion included alternate locations, impediments to alternate locations, scaling down the size of the proposed structure, and access to the structure. In response to questions from Board members, Sampson said that the configuration of the lot would essentially necessitate a variance no matter where the proposed garage was located. Sampson said that garages typically are 24' x 24' and, because of the volume of possessions the owners hope to store, the owners had not considered a structure of smaller size. Sampson said other locations would obstruct the homeowners' view of their yard, and/or would require relocation of underground utility lines. Members noted that a portion of the existing garage is used for general storage. Sampson reiterated the homeowners' desire to use the proposed structure for "go in once, and come out once" off-season storage of a car, motorcycle and lawnmower and other miscellaneous equipment, with no intent to install or pave a driveway or curb cut—both unlikely to be granted by the State of New Hampshire, Sampson said. The structure would be approximately 14' high at roof peak, said Sampson.

Hearing no further questions or comments, Hutwelker closed the public hearing at 6:38. Vitous observed that the property "suffers from density," leaving few choices for locating the building. Tatro said that other locations would create less of an impact on abutters in the tight neighborhood.

Mitchell and others said that the proposed encroachment would be severe and significant. Board members felt that other solutions to the property owners' storage problems were possible on the site, and could be addressed with a smaller building in a different location.

Members reviewed the criteria for granting the requested variance.

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

Members were not unanimous. Some members felt that granting the variance would be contrary to the interests of immediate abutters, as well as citizens who live on small lots elsewhere in Swanzey.

2. Would the spirit of the ordinance be observed if the variance is granted?

Observing that the proposal encroaches in two dimensions, by "significant" factors, members agreed that the spirit of the ordinance would not be observed.

3. Would granting the variance do substantial justice?

Members agreed in the negative, for the reasons expressed above.

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

Members agreed that specific evidence had not been presented, but agreed in the affirmative.

5. Do special conditions of the property distinguish it from other properties in the area?:

Members agreed that no testimony had been presented to that effect.

A. Owing to the property's distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed that almost every property in the neighborhood shares similar site limitations.

AND

(ii) Is the proposed use a reasonable one?

Members agreed that the lot has no distinguishing special conditions and the proposed use is unreasonable. A storage facility is reasonable, members agreed, but not in the proposed location. A garage already exists, members agreed. For the reasons given above, members agreed that a variance is not necessary to enable a reasonable use of property.

Based on the reasons already stated, ***motion*** by Beauregard, Jr. to deny the variance from Section IV.A.3. to permit the construction of a 24' x 24' garage/accessory storage structure. Second by Mitchell. All in favor.

Hutwelker advised Sampson that the applicants have 30 days to request a re-hearing.

Hutwelker called for a five-minute break.

REGULAR MEETING

ATTENDANCE

William Hutwelker, Chair; Keith Thibault, Vice Chair; Charles Beauregard, Sr. Bob Mitchell, Jerry Walker. Alternates Sarah Tatro, Charles R. Beauregard, Jr., Jim Vitous. Town Planner Sara Carbonneau also was present, as was Code Enforcement Officer Chet Greenwood.

MINUTES

Motion by Beauregard, Jr. to approve the minutes of the August 15, 2011 meeting. Second by Walker. All but Beauregard, Sr. (who abstained due to his absence on August 15) in favor; motion passes.

REGULAR MEETING

1. (Public Hearing) Variance

Applicant: Thomas Bouffard

Property owner: Thomas Bouffard

Property location: 81 Wilson Pond Rd Tax Map 19, Lot 27

Zoning District(s): Residence District and Shoreland Protection District

Request: Variance from Section VIII.C. and XI.B.1 to permit the expansion of a non-conforming structure (expansion of an existing deck) situated within the Shoreland Protection District.

Members seated: Hutwelker, Thibault, Beauregard, Sr., Mitchell, Walker.

Representing the application: Thomas Bouffard, project builder Tim [?]

Abutters present: Richard Dell'Erba, Neal Boyd, Beverly Boyd, June Messer, Karen [?], and John Abbott, Jr., as well as approximately 15 others who did not address the Board or identify themselves.

Hutwelker opened the public hearing at 7:03.

Members received a copy of the application summary. Carbonneau reviewed meeting notice posting dates and locations, and stated that heads of Town

departments had provided no feedback regarding the application. The summary included an 8/25/2011 letter from CEO Greenwood advising Bouffard that his deck construction project was in violation of the Ordinance. Carbonneau said that the property, located on the western shore of Wilson Pond, is served by public water and public sewer.

Greenwood outlined the sequence of events leading to his letter of violation, stating that he responded to a complaint to find the deck under construction. Greenwood said that the closest point of the deck is 50' from the high water mark, having been built within the 125' setback without permits. Greenwood stated that he had asked Bouffard to proceed only with the part of the project that was pre-existing and to make sure that the remaining areas were safe. Greenwood returned on August 24 to find the entire project approximately 95% complete. Bouffard stated that the continuation of work was the result of a misunderstanding, and not an inclination to show contempt or to be deceptive; he said that he didn't realize a zoning permit also was necessary. Greenwood provided Board members with photos he had taken of the property.

Abutting property owner Richard Dell'Erba stated that he felt that the applicant should not have been allowed to continue construction after being told to stop. Dell'Erba stated that the construction of the deck and walkway without building permits in place had the potential of reducing his property value. Dell'Erba also stated that there appear to be violations of the State's shoreland protection act (RSA 483-B) and the property looks like a "junkyard." Abutters Neal Boyd and June Messer disagreed with Dell'Erba's characterization of the premises, stating that the improvements to the structure and the property look "nice." Dell'Erba requested that the Board conduct a site visit. Dell'Erba stated that the expanded deck and walkway "almost doubles" what previously existed.

Bouffard presented a series of photos to Board members, and stated that initial renovations (replacing areas beneath the windows facing the water) were at the request of his insurance company. Bouffard stated that he made the decision to replace the windows with a sliding door, but that this was not required by the insurance company. Bouffard further stated that once the sliding door was installed, it became apparent that the deck and the walkway would need modifications. Bouffard's builder stated that the former deck and walkway were uneven and rickety; the new deck is built from composite materials to Town standards and is an enhancement to the property. Abutters N. Boyd, B. Boyd, Messer and Abbott, Jr. stated that the construction has enhanced the neighborhood and raised their property values. [Karen] stated that Bouffard would eventually require a wheelchair, and the deck would become necessary for his continued use of the residence.

Bouffard and his builder both noted that the property slopes down towards Wilson Pond. Bouffard noted that all the improvements he had done to the property have always taken into account the need to control runoff and erosion, stating that he does not even pull the weeds/grass from his gravel driveway.

Board members asked which parts of the structure previously existed: The "wooden ramps/cement slab" on the north side of the property and on the shoreland (west) side of the property are not shown on the assessing card, but are shown to exist on the plan submitted with the application. Messer stated

that the "wooden ramps"/walkway have been in existence for as long as she has owned her property.

After polling Board members, Hutwelker determined that there was no need for a site walk.

Hearing no further questions or comments, Hutwelker closed the public hearing at 8:20. Members reviewed the criteria for granting the requested variance.

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

Members discussed the question at length, agreeing that the ZBA always has scrutinized applications for construction proposed for shoreland areas. Members noted that the deck expansion increases the building's encroachment into the Town's 125' setback; however, members agreed that the construction does not appear to contribute to additional runoff. Ultimately, most members concluded that the proposed use would be contrary to public interest.

2. Would the spirit of the ordinance be observed if the variance is granted?

Members discussed the question at length. Some felt that the spirit of the ordinance supports improved access and renovation of an existing structure. However, most members felt that the ordinance does not support construction in the 125' setback.

3. Would granting the variance do substantial justice?

Members agreed that the Ordinance clearly does not support construction within the 125' setback, and agreed that the ZBA has historically not granted encroachments into the setback towards any body of the water. To do so in this case, members felt, would be a substantial injustice. Furthermore, members agreed that a lack of ramping for two proposed stairways undermines arguments of accessibility issues.

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

Some members felt that testimony supported a positive effect on property values.

5. Do special conditions of the property distinguish it from other properties in the area?:

Members discussed this question at length, and agreed that the property is somewhat distinguished by its slope and relatively large size. However, members agreed that the property's distinguishing special conditions are not sufficient to differentiate this property. A. *Owing to the property's distinguishing special conditions,*

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members felt that the property's distinguishing special conditions are insufficient to differentiate the property.

AND

(ii) Is the proposed use a reasonable one?

Members were divided, noting that the deck does permit wheelchair access.

B: Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property, for the following reasons:

Board members discussed this question at length, and were unable to reach consensus.

Motion by Thibault to deny the variance from Section VIII.C. and XI.B.1 to permit the expansion of a non-conforming structure (expansion of an existing deck) situated within the Shoreland Protection District. Second by Mitchell. Mitchell, Hutwelker, and Thibault in favor; Walker and Beauregard, Sr. opposed. Motion passes; variance denied.

2. Other matters as may be required.

Rules of procedure revisions Carbonneau presented a revised draft of the Board's rules of procedure. Carbonneau said that the revisions clarify matters related to requests for re-hearings, clarify the role of alternates, and call for the Chair to summarize the facts and claims of each case. Carbonneau said that she would like to also set forth a procedure to cover a Board member's request to re-hear a case pursuant to 74 Cox Street v. City of Nashua. **Motion** by Beauregard, Jr. to bring the draft to public hearing. Second by Beauregard, Sr. All in favor.

Route 12-Swanzey Factory Road-Lake Street intersection reconstruction

Carbonneau said that a public hearing would be held at 7:00 p.m. on Tuesday, October 11 at the Monadnock Regional High School cafeteria to consider the roundabout being proposed for the intersection.

Municipal Law Lecture series

Carbonneau encouraged members to attend a two Wednesday sessions to be held from 7:00 p.m. to 9 p.m. at Antioch/New England Graduate School in Keene on September 21 and September 28. The topic on September 28 is preemption of local regulation. On September 28 the topic will be developments in the law.

Planning Board discussion of time limits on variances and special exceptions

Carbonneau said that the Planning Board will consider time limits at its October 13 meeting, and encouraged ZBA members to attend to discuss this or other causes of interest.

ADJOURNMENT

Motion by Beauregard, Sr. to adjourn. Second by Mitchell. All in favor. The meeting adjourned at 9:35 p.m.

Respectfully submitted,

Victoria Reck Barlow
Recording Secretary