

**TOWN OF SWANTON
ZONING OFFICE**

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**PUBLIC HEARING
SWANTON DEVELOPMENT REVIEW BOARD**

Thursday, November 19, 2015

The Swanton Development Review Board held a Public Hearing on Thursday, November 19, 2015 at the Swanton Town Offices, 1 Academy Street, at 7:00 P.M.

Board Members

Joel Clark

Lucie Hill

Amy Giroux

Gabriel Liegey

Yaasha Wheeler, Clerk

Darlene Marrier, Zoning Administrator

David Jescavage, Town Administrator & Acting Zoning Administrator

#515-2014 – John Chase

Richard Deso

Brad Ruderman

#534-2015 – Patricia Routhier

Patricia Routhier

Appeal of Gary Langlois/Edward Novicki

Gary Langlois

Ed Adrian, attorney

Rona Davis

Richard Heller

A. Call to Order

Mr. Clark opened the meeting at 7:04 p.m. He introduced the board members, explained the process of the meeting, and asked the board to make known any ex parte communications or conflicts of interest. There were none. He swore in the participants.

B. **Agenda Review** – None.

C. Meeting Topics

1. **#515-2014 Final Plat Approval request for John T. Chase** to create a nine (9) lot, seven-residential unit, Planned Unit Development (PUD) of an existing vacant 21 acre parcel on the West side of Route #105 (Sheldon Rd.) across from the intersection with Pond Road. R1 Agricultural/Residential District. The DRB approved this development on April 15, 2015. The applicant failed to file the approved plat within 180 days. The plat has expired. A new and different plat is proposed.

Mr. Deso and Mr. Ruderman came forward. Mr. Ruderman stated that he had run the plan by Fire Chief Tim Girard, and Mrs. Marrier affirmed that he had spoken with herself and Mrs. Giroux and affirmed that he approved the plan as presented.

2. **#534-2015 Variance Request for Patricia A. Routhier** for a proposed 10' x 12' storage shed, proposed location will not meet setback requirements of the zoning district, property is located at 12 Linda Drive in the R5 Residential District.

Mrs. Routhier came forward. She explained that the setback was supposed to be 15 feet, but that would be the middle of her very small back lot, so she preferred to have a 5-foot setback. Both of her neighbors were agreeable to this arrangement. Mr. Clark asked if 10.5 feet would be acceptable, and Mrs. Routhier explained that that would push it close to her deck. She added that no one would be able to build in the small wooded lot behind her because of the telephone lines that went through it. Mr. Clark said that the board would consider and act upon her request.

3. **Appeal of the Acting Zoning Administrator's Notice of Alleged Violation sent to Gary Langlois and Ed Novicki**, dated June 25, 2015 and sent to Gary Langlois and Ed Novicki residing at 40 Maquam Shore Road. The NOAV alleges that built a pergola (an accessory structure pursuant to Section 10.2 of the Town of Swanton Zoning Bylaws) in the Town's Shoreland Recreation District, without obtained a zoning permit for such use in accordance with Section 9.1 (B) or a variance in accordance with Section 9.4 of the Bylaws and as such is a violation of the Bylaws since a permit and variance was required to build the pergola and neither was obtained. The property owners are requesting that the DRB reverse the NOAV in this appeal.

Mr. Langlois came forward. He referred the board to his attorney's letter, which stated his position. Mr. Clark asked if Mr. Adrian and Mr. Jescavage had a response to the letter. Mr. Adrian directed the board's and Mr. Langlois' attention to various exhibits. Mr. Adrian asked if Mr. Langlois had filled out the "after the fact" building permit; he said "yes." Mr. Adrian noted that the setbacks were 250 feet from the front, 1 foot from the side, and 82 feet from the side. He asked if Mr. Langlois had filled out those dimensions, and Mr. Langlois denied the question, referring to his attorney. He also referred to his attorney when asked if he recognized a structure in a picture.

Mrs. Rona Davis and Richard Heller, residents of 42 Maquam Shore Road, were present to represent Michael Heller, Mrs. Davis' husband and a neighboring property owner to Mr. Langlois. Mrs. Davis read the letter provided by Mr. Langlois' attorney and commented that it would require more consideration than a quick reversal, given the information provided in the letter. Mr. Liegey asked how the Acting Zoning Administrator (Mr. Jescavage) got involved in this. Mr. Jescavage said that the Selectboard perceived Mr. Kilburn's friendship with Mr. Langlois as a conflict of interest, and that Mr. Kilburn had also ruled that no permit was needed, when, in fact, the Selectboard determined afterward that Mr. Langlois did need a permit. Thus they authorized Mr. Jescavage to act as Acting Zoning Administrator.

Mr. Langlois left the meeting. Mr. Adrian came forward and went through the various exhibits.

Exhibit 1 – Notice of Alleged Violation (dated June 25, 2015) that was sent by Mr. Jescavage to Mr. Langlois, alleging that the pergola built was in violation. The time that the pergola was built was not quite known, since the former Zoning Administrator (Ronald Kilburn) had verbally said no permit was needed for the structure.

It was noted that such a structure would be considered as an accessory structure, and, in this case, would require a variance and a permit. Mr. Jescavage gave more than the normal 7 days to correct the violation (until July 23, 2015).

Exhibit 1.1 – Article 10 of the Zoning Bylaws. Mr. Jescavage read the definition of Accessory Structure, as follows: A structure which is: 1) clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the primary structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garage, garden and tool sheds, playhouses, boat houses for the storage of 3 or fewer boats, and wading or swimming pools less than 3 feet in depth with an area less than 200 square feet, which are incidental to the residential use of the premises and not operated for gain.

Mr. Adrian asked if, in Mr. Jescavage's capacity of acting zoning administrator, did he make the determination that the pergola was an accessory structure. Mr. Jescavage answered yes.

Exhibit 1.2 – Definition of Shoreland Recreation District. Mr. Adrian noted that Maquam Shore Road was identified on the zoning map as being part of the Shoreland Recreation

District, so the property in question was within that district. He asked if Mr. Jescavage had come to a determination as far as appropriate setbacks in the district. Mr. Jescavage noted that the front, side, and rear setbacks should be 50 feet, and for an accessory structure, the setback from Lake Champlain should also be 50 feet.

Exhibit 1.3 – Article 9 – This article laid out when an application is required in order to obtain a Zoning Permit. Section 9.4 laid out the criteria from when a permit was required. Mr. Jescavage said that he determined that a permit was required.

Exhibit 2 – Pictures of the pergola – Mr. Jescavage said that the pictures were a fair and accurate representation and that the setbacks were not according to the bylaws. Mr. Adrian noted that Mr. Langlois had indicated in the after the fact permit that the side setback was 1 foot from the side setback. Pursuant to the bylaws of the town, the structure would not meet the setback requirements. He further noted that this permit was denied by Mr. Ronald Kilburn, the Zoning Administrator at that time. Mr. Jescavage stated that the variance request (after the fact) was denied by the DRB and then went to the Environmental Court.

Mr. Liegey asked about the fine of \$200 a day referenced in Exhibit 1 (Mr. Jescavage's letter). Mr. Adrian said that the letter was intended to give notice of the maximum fine possible. The fine was active currently.

Mr. Adrian stated that the initial determination was made by Mr. Kilburn, based on an informal conversation which was acted upon. Later, an after the fact permit was filled out, and it was his [Mr. Adrian's] position that, by filling out the permit, the applicant waived any right to claim the previous reliance on Mr. Kilburn's opinion. According to Mr. Langlois' attorney, Mr. Langlois was able to claim "estoppel." One criteria of "estoppel" was that the governing body know of the facts, and Mr. Adrian considered that all the facts were not known because no application was made, and that the "clock was reset" when Mr. Langlois made a formal application request. Mr. Liegey stated that he felt Mr. Langlois built on Mr. Kilburn's word and he acted on good faith. Mr. Clark said that it was not the Zoning Administrator's job to interpret the rules, so it was not Mr. Kilburn's role to make the determination he made. By submitting a permit, Mr. Langlois now showed the facts and it was too close to the lot line. Mr. Clark asked, "If I don't get a permit and build something too close, but then apply for an after-the-fact permit, do I get away with it?"

Mr. Adrian stated that this was an enforcement action, with a Notice of Alleged Violation. Mr. Langlois chose not to correct the violation.

The appeal of the DRB's denial of the variance request was now in Environmental Court, and was separate from this current matter, which involved the Notice of Alleged Violation. They were two different actions. Mr. Adrian summed it up as: "One is: Should you be allowed to build the structure? And the other is: Should you be fined for building the structure?"

Mr. Liegey said that he felt Mr. Langlois built the pergola in good faith, based on the information provided to him, and that after the fact, neighbors decided they did not like it. Mr. Adrian responded that, in his opinion, town officials should act in good faith and, in this case, Mr. Kilburn had some conflict of interest because of his personal relationship with the applicant. The good faith that Mr. Langlois acted in had to be balanced by the need to enforce the bylaws for the good of the town. "What we're asking the board to do is to make the best out of a bad situation."

Mrs. Davis said that she would like to address the mention of "good faith." She said that Mr. Langlois and Mr. Novicki asked them (herself and her husband) about building the pergola, prior to construction of the structure, and at that time, she had expressed her disapproval of the project. She felt that building the pergola was not in good faith, because she and her husband had said they did not want the structure built, and Mr. Langlois and Mr. Novicki were aware of that. She further stated that, as she recalled, Mr. Kilburn did not know what a pergola was and did not view the property. "Mr. Langlois knew that we weren't happy about it and once he thought he didn't need our permission, he felt that 'we don't need to care about you.'"

Mr. Clark noted that Mr. Kilburn's motive was not known, but the board would decide whether or not to enforce the violation.

4. Minutes

a) DRB October 22, 2015

Mrs. Hill made a motion, seconded by Mr. Liegey, to approve the minutes as written. Motion carried.

5. Any Other Necessary Business

Mrs. Marrier presented the Mylar for Scott and Jori Dean, with the requested corrections. Mr. Clark signed the Mylar.

Mr. Clark mentioned that the Teresa Legrove case should also be discussed (perhaps in deliberative session). Kelly Gosselin had appealed the DRB's denial of her request for adaptive reuse of her historic barn, and Environmental Court had requested a reason for the denial.

The next meeting would be on December 17, 2015. Mrs. Marrier stated that she would not be present, and the Gordon Winters/Maquam Holdings LLC request was the only item on the agenda for now.

6. Deliberative Session

Mr. Liegey made a motion, seconded by Mrs. Giroux, to go into deliberative session at 8:07 p.m. Motion carried.

Mr. Liegey made a motion, seconded by Mrs. Giroux, to exit deliberative session at 8:40 p.m.

MOTION: Mrs. Hill made a motion, seconded by Mr. Liegey, to APPROVE **#515-2014 Final Plat Approval request for John T. Chase** to create a nine (9) lot, seven-residential unit, Planned Unit Development (PUD) of an existing vacant 21 acre parcel on the West side of Route #105 (Sheldon Rd.) across from the intersection with Pond Road. R1 Agricultural/Residential District. Approval was made with the changes as presented. Motion carried unanimously.

MOTION: Mrs. Giroux made a motion, seconded by Mr. Liegey, to APPROVE **#534-2015 Variance Request for Patricia A. Routhier** for a proposed 10' x 12' storage shed, proposed location will not meet setback requirements of the zoning district, property is located at 12 Linda Drive in the R5 Residential District. Approval was made for the shed to be placed at 5 feet from the rear property line. Motion carried unanimously.

MOTION: Mrs. Hill made a motion, seconded by Mr. Liegey, to APPROVE **Appeal of the Acting Zoning Administrator's Notice of Alleged Violation sent to Gary Langlois and Ed Novicki**, dated June 25, 2015 and sent to Gary Langlois and Ed Novicki residing at 40 Maquam Shore Road. The NOAV alleges that built a pergola (an accessory structure pursuant to Section 10.2 of the Town of Swanton Zoning Bylaws) in the Town's Shoreland Recreation District, without obtained a zoning permit for such use in accordance with Section 9.1 (B) or a variance in accordance with Section 9.4 of the Bylaws and as such is a violation of the Bylaws since a permit and variance was required to build the pergola and neither was obtained. The property owners requested that the DRB reverse the NOAV in this appeal. Mr. Liegey voted aye, and Mrs. Hill, Mrs. Giroux, and Mr. Clark voted nay. The motion to approve was denied.

MOTION: Mr. Clark made a motion, seconded by Mr. Liegey, to approve Mrs. Teresa Legrove's appeal, with the condition that the septic must meet state standards. Motion carried unanimously.

Mr. Clark stated that the board was in agreement to provide a letter to Kelly Gosselin, explaining the reasons why the board denied her request.

Mr. Liegey made a motion, seconded by Mrs. Hill to adjourn at 8:45 p.m. Motion carried.

Respectfully Submitted,

Yaasha Wheeler, DRB Clerk

Joel Clark

Gabriel M. Liegey, Jr.

Lucie Hill

Amy Giroux

Spencer Labarge