



**BOARD OF APPEALS**

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**Minutes**  
**February 8, 2011**

**7:02 P.M.**

**Present:** Christopher Neeven, Chair, James Killion, Vice Chair, Fred Watt, Erik VanBuskirk, Robert Jensen, and Harold Mitchell

**7:04pm**

**Public Hearing**

**Variance #10-17 and**

**Variance #10-18**

**7 & 9 Old Snake Pond Road**

**Michael and Brian McCarthy**

Attorney Kevin Kirrane, representing both parties, requested that they be presented together before the Board. There was no objection. Mr. Neeven read the Public Hearing Notices into the record. He also read the following comment letters into the record:

Jeff Rose, Asst. Superintendent, Sandwich Water District, dated January 12, 2011  
John J. Burke, Fire Inspector, Sandwich Fire Department, dated January 4, 2011

Atty. Kirrane told the Board that this was a lot merger issue. By today's standards these lots are undersized and non-conforming. These two separate lots meet three of the four criteria established under the grandfather clause. On record, they were commonly held by a trust set up by their grandmother in December of 1998 which is the operative date under Section 2550 of the local by-laws. Both lots are a little larger than 20,000 sq. ft, have over 50' of frontage, and were deeded to the brothers from the grandmother's trust in 2004.

Mr. Kirrane then gave a history of the ownership of the two lots which have been in the family since 1973. For estate purposes, the boys' grandmother deeded the two lots into an irrevocable trust. The trust was supposed to hold the lots until one brother reached the age of 25. At that time one lot would be deeded to him and the trust would continue for one lot but not the other. Brian McCarthy turned 25 before 1998 at which time the trustee should have released the lot to him. Mr. Kirrane told the Board he feels that because this was not done, it is what distinguishes this variance request from other scenarios where someone seeks to avoid the lot merger issue. Both lots continue to be billed separately by the Town and are taxed as buildable lots. These lots are similar in size to other lots in this neighborhood.

In asking for the variance, Mr. Kirrane stated the hardship as it relates to these two lots. The size and frontage of both of these lots are two dimensional issues that fail to meet current requirements. He also told the Board that relief can be granted without detriment to the neighborhood or derogation from the by-laws.

Mr. Jensen commented that the lots look to be pretty much the same size as others in the neighborhood. Mr. Watt asked if the lots have always been taxed under separate names. Atty. Kirrane said that at one time they were held in a common name, but in 1986 the Ida McGinn Trust held the two lots in separate names. Mr. Watt noted that this date was well before 1998.

Mr. Neeven asked when the last time was that these lots would have been legally buildable without a variance. Mr. Jensen found that in 1984 the lot size changed from 20,000 sq ft. to 40,000 sq. ft.

Mr. Killion said that this is basically an issue of one trust with two beneficiaries. Mr. Watt stated that the Board could find separate ownership of the lots based on the beneficial ownership. If that were the Board's finding, there would not be a need to grant a variance. Mr. Killion said that other variance applications have come in, and it usually comes down to some nuance of ownership. Atty. Kirrane asked that if the Board found that there was no need to grant a variance based on ownership that it provide the applicants with some type of written statement for reference if a building permit were applied for.

Mr. Neeven asked if there was any public comment. Lynn Cormay, 11 Old Snake Pond Road, addressed the Board. She is opposed to the granting of variances for these two properties for a number of reasons. Ms. Cormay stated that the two lots remained in the same ownership until 2004. She also said that the zoning by-laws were put into place to minimize the number of new septic systems and to mitigate wastewater issues that have and will arise.

She distributed maps and pictures for reference. Ms. Cormay informed the Board that Snake Pond and Weeks Pond reached level highs this past year. Most of the 1.6 acre parcel owned by the McCarthy family at 2 Old Snake Pond Road was flooded, including the septic system. It was not until fall that the new septic system could be installed because of the water level on the property. MS. Cormay is concerned that since the elevation is the same for the property at 2 old Snake Pond Road, 7 Old Snake Pond Road, and a small triangular piece of land owned by the Town of Sandwich, a new septic system at #7 Old Snake Pond Road could not be supported. The Board explained to her that this would fall under the jurisdiction of the Board of Health. She also told the Board that the aqueduct on the Town owned piece of property has been blocked since last spring.

Ms. Cormay also told the Board that she has a letter from an attorney stating that these parcels are one lot. This was based on title searches and Massachusetts General Laws that were in effect on January 1, 1999. The Board told her to submit those letters in support of her presentation. She said the information was in her car. She would bring them in tonight and make copies. She believes that the common good should not be relinquished for profit.

Mr. Killion moved that the Board close the Public Hearing on the Variance # 10-17 and Variance #10-18, 7 & 9 Old Snake Pond Road. Mr. Watt seconded. The vote was unanimous.

**7:40pm**

**Public Hearing**

**Special Permit #10-16**

**76 & 80 Tupper Road**

**89 Route 6A, LLC**

Mr. Neeven read the Public Hearing Notice into the record. He also read the following comment letters into the record:

David DeConto, Natural Resources Officer, Sandwich Conservation Commission, dated January 11, 2011

Jeff Rose, Asst. Superintendent, Sandwich Water District, dated January 12, 2011

John J. Burke, Fire Inspector, Sandwich Fire Department, dated January 4, 2011

Attorney Peter Daigle, representing the applicant, gave a brief history of the project. The Board granted a Special Permit to the applicant back in 2008. Atty. Daigle told the Board that exactly the same application was being submitted to them.

Robert Jensen recalled that there had been traffic concerns at the time of the last submission. Mr. Neeven noted that the application had been approved by the Board.

Mr. Neeven asked if there were any public comments. Barbara Shaner, 91 Tupper Road, spoke in favor of the project; her only concern was the potential for accidents in the area.

Mr. Killion asked if the applicant planned to start construction soon to which Mr. Daigle replied in the affirmative. Thomas Masaschi, the applicant, said that the renter is out of the building and the financing is in place to begin construction.

Mr. Killion moved that the Board close the Public Hearing for Special Permit #10-16, 76 & 80 Tupper Road. Mr. Jensen seconded. The vote was unanimous.

**7:46pm**

**Public Hearing**

**Special Permit #10-19**

**53 Route 130**

**Camp Good News**

Mr. Neeven read the Public Hearing Notice into the record. Mr. Neeven read the following comment letter into the record:

John J. Burke, Fire Prevention Officer, Sandwich Fire Department, letter dated January 7, 2011

Mr. Chuck Devita, head of maintenance, represented the applicant. He explained that until 1984 the building was used as a guest house. At that time, Camp Good News began sharing the building with Cape Cod Pediatrics. As that is no longer the case, the Camp would like to go back to using the building as a guest house for parents and alumni. Mr. Devita explained that all the work would be maintenance in nature, such as painting, and would be only be done on the interior. It will stay as a six bedroom guest house serving only a cold breakfast.

Mr. Killion asked if this was in a residential zone; Mr. Devita said yes. He also stated that there would be an identifying sign on the building. Mr. Mitchell inquired if there were any plans of the existing building. Mr. Devita had submitted a site plan and several pictures of the existing

building, but not a current plan of just the building. Mr. Jensen asked if there were any proposed changes to the footprint. Mr. Spiro, Building Inspector, said no. After some discussion it was noted that Note #6 under the R1 and R2 zoning districts would allow "other service".

There was no comment from the public.

Mr. Jensen moved that the Board close the Public Hearing for Special Permit #10-19, 53 Route 130, Camp Good News. Mr. VanBuskirk seconded. The vote was unanimous.

### **Board Discussion**

Mr. Neeven read a request from Atty. Jonathan Fitch to continue the discussion of Forestdale Village to the meeting on February 22, 2011. The Board agreed.

Office support staff would like to add a requirement to the applications that all plans be submitted electronically in addition to the necessary hard copies. The Board is in favor of this and directed the support staff to implement this procedure.

Mr. Watt motioned to adjourn. Mr. VanBuskirk seconded. The vote was unanimous.

The meeting adjourned at 8:10pm.

Respectfully submitted,  
Marilyn K. Bassett

