

**SWANZEY ZONING BOARD OF ADJUSTMENT SPECIAL MEETING
NOVEMBER 3, 2008**

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, Bob Mitchell, Jennifer Gregory, Charles Beauregard (left at 8:00)

Alternates Marty Geheran, Bob DeRocher, Deirdre Geer
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 Gregory to approve the minutes of October 20, 2008. Second by Geer. All in favor.

1. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: Edward Jacob

Property owner:

Property location: 195 Westport Village Road Tax Map 70, Lot 40

Zoning District(s): Business

Request: special exception from Section V.B.2.b. to permit the property to be utilized for multi-family residential use – specifically, a residential condominium consisting of three single family dwellings.

In an October 29, 2008 letter from Brickstone Masons, Inc., the applicant has asked for a continuation until the December 15 meeting.

Motion by Mitchell to continue the public hearing until December 15. Second by DeRocher. All in favor.

2. MOTION FOR REHEARING AND/OR CLARIFICATION

Applicant: Robert McClure

Property owner: Katherine Maher, et al.

Property location: 10 Aldrich Road Tax Map 23, Lots 5 and 13

Zoning District(s): Residence and Rural/Agricultural

9/22/08 Request: use variance from Section IV.B. to permit the operation of a business consisting of the breeding and sale of dogs. The applicant also seeks approval to operate a farm on the premises, which may include the raising and on-site sale of livestock and produce. The applicant anticipates the farm being open as an “educational source for youth groups.”

Robert McClure requested a rehearing of the decision of the Zoning Board of Adjustment rendered on September 22, 2008:

9/22/08 *Motion* by Gregory: Having found that the application fails to meet all five criteria, motion to deny the use variance from Section IV.B. to permit the operation of a business consisting of the breeding and sale of dogs. Second by Mitchell. All in favor.

Seated were Hutwelker, Thibault, Mitchell, Gregory, and Beauregard. Due to a possible conflict of interest, Geer left the table and sat in the audience. Robert McClure and Diana McClure were present.

Hutwelker explained that the Board was not conducting a public hearing, but might consult the McClures for clarification.

Board members reviewed an October 21, 2008 motion for rehearing prepared by attorney G. Jeremy Hockensmith.

Members concluded that it would not be necessary to address a clarification, agreeing that the September 22, 2008 minutes accurately reflect the matter that was before the Board, and the Board’s considerations.

Hutwelker noted that, before he had opened the September 22 public hearing, he had offered the applicant the opportunity to continue the hearing until a future date, and the applicant had chosen to have his application heard.

Board members considered each item contained in the motion for rehearing to determine whether the motion presented new facts, omissions, or evidence of errors on the part of the Zoning Board of Adjustment. Members agreed that, although the original application requested a use variance to operate a farm in the Residential District, at the September 22 public hearing the applicant had withdrawn from consideration by the Board the request for approval of all farm uses except raising Christmas trees for sale (determined through questioning to be the only continuous agricultural use), thereby making it improper for the Board to consider other agricultural uses until the applicant submits a new application to request a special exception for such uses.

Members agreed that the motion failed to identify new evidence or identify errors.

Motion by Mitchell to deny the motion for rehearing, based on the absence of new evidence not previously considered, and based on the absence of error in the procedure of Zoning Board of Adjustment. Second by Gregory. All in favor.

3. DISCUSSION OF PROPOSED ZONING AMENDMENTS

Town Planner Carbonneau presented an overview of changes to the NH Comprehensive Shoreland Protection Act (RSA 483-B), which has been in place since about 1991-92 and was substantially revised in 2008. Carbonneau said that the Act now requires a State shoreland permit for many construction, excavation or filling activities within a protected shoreland. New waterbodies in Swanzey have been added to the consolidated list of waterbodies subject to RSA 483-B. Carbonneau provided Board members with the NH-DES quarterly newsletter, and recommended the NH-DES website for additional information.

Carbonneau said that because ZBA or Planning Board considerations go beyond water quality issues, which is the sole purview of the Shoreland Protection Act, the Town can deny an application that received a State shoreland permit. Carbonneau said that the statute explicitly states that towns are entitled to enact more stringent standards.

Board members considered appropriate Town setbacks, which may be more restrictive than DES requirements. Carbonneau said that the Planning Board is considering a future amendment to the Zoning Ordinance that would protect the water quality of Swanzey Lake by regulating uses on the slopes surrounding Swanzey Lake. Carbonneau said that Planning Board has expressed no interest in amending the Zoning Ordinance's requirement that septic systems have a 125' setback from all wetlands. Carbonneau said that the Planning Board has recommended an increase (from the current 50') to 125' for the required setback from protected rivers.

In response to a question from Hutwelker regarding timing of approvals, Carbonneau said that there is no protocol – simply that both State and Town permits may be required. In situations where an applicant requests Town approval of an application before submitting an application to NH-DES, Carbonneau recommended the ZBA condition any approvals “subject to approval by NH-DES” so that applicants are fully aware of the requirement for a shoreland permit.

Mitchell noted new State restrictions on uses and activities within the 50' waterfront buffer. Carbonneau said that the Act now restricts impermeable surface coverage to 20% (up to 30% in some situations) of the protected shoreland.

Carbonneau reviewed additional proposed zoning amendments currently under consideration by the Planning Board. The list includes a change to the zoning map and the addition of new uses in the Business District, as well as changes involving the sections of the Ordinance that pertain to home occupations, accessory dwelling units, and non-conforming buildings/structures. Carbonneau encouraged ZBA members to attend the Planning Board's public hearing on December 4, 2008.

4. OTHER MATTERS

Thibault reported a new trend in Keene -- using the condominium approach to commercial/mixed use development. Thibault said that condominium ownership makes it possible to avoid subdivision of land to have multiple uses

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on a lot, and may be well suited for oddly shaped lots that are served by public utilities. Typically, Thibault said, the only common area is a shared driveway, which may trigger the need for a variance. Thibault said that commercial condominiums, like residential condominiums, must be State registered, but said that State rules have not yet been adopted.

ADJOURNMENT

Motion by Mitchell to adjourn. Second by Geer. All in favor. Meeting adjourned at 8:30.

Submitted by

Victoria Reck Barlow
Recording Secretary