

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
FEBRUARY 13, 2006**

[Note: 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.]

The February 13, 2006 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:10 p.m. by Chair William Hutwelker. Members present: William Hutwelker, Charles Beauregard, Sr. (arriving at 7:15 p.m.), Bob Mitchell and alternates Bob DeRocher and Jenn Gregory (arriving at 7:25 p.m.). DeRocher was seated for Elizabeth Nieckoski; Gregory was seated for Keith Thibault. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following matters were addressed:

1. Minutes from January 9, 2006 – Motion by Mitchell to approve the minutes as submitted. Seconded by DeRocher. Voting in favor were Mitchell, DeRocher and Hutwelker. (Beauregard and Gregory were not present when the minutes were considered.)

2. Public Hearing (Area Variance Application). H. Neil Berkson, Esq., agent on behalf of Edward F. Thomas and Sharron A. Thomas, requests an area variance from Section III.E. and III.M. to allow the construction and operation of the headquarters of Thomas Transportation Services, Inc. with access to Route 10 over a pre-existing deeded right of way. The property is located off Route 10 and shown at Tax Map 38, Lot 18 situated in the Business Zoning District. Neil Berkson and Ed Thomas appeared before the Board. Abutting property owners Jeff and Eric Lawrence were present. Also present were Sharron Thomas, real estate broker Bruce Treat and Attorney Michael Bentley on behalf of Lawrence Realty, LLC. Seated were: Hutwelker, DeRocher, Mitchell and Beauregard. Gregory was seated when she arrived at 7:25 p.m. with the agreement of Berkson and E. Thomas. Public hearing opened.

Berkson reviewed the plans before the Board. Berkson stated that the applicant has a right of way onto Route 10 over property owned by Lawrence Realty, LLC. The property does not have any owned road frontage. The applicant wishes to construct an 8000 s.f. building to house Thomas Transportation Services. In order to access the property there is a right of way approximately 214.3 feet long over property owned

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by Lawrence Realty, LLC. Berkson stated that the right of way to the property owned by Thomas is included in the deed to Lawrence Realty, LLC recorded at Vol. 1699, Page 325 of the Cheshire County Registry of Deeds. Berkson noted that use of the right of way to access the property to serve the potential development of the Thomas' parcel is in keeping with the grant of the easement.

Berkson stated that most of the services offered by Thomas Transportation are conducted off site. However, there are preliminary plans to offer a "park and ride" service. If this occurs, the full build out would generate a maximum of 100 vehicle trips per day.

Berkson provided the Board with a letter from NH-DOT District IV dated February 8, 2006 stating that a driveway permit would be issued for the proposed development assuming that the Applicant meets all NH-DOT requirements.

Berkson stated that the property is located in the Commercial/Industrial Zoning District and that the use proposed is permitted within the District. Bentley stated he felt that a use variance was required, as the lot does not meet the minimum requirements for lots in the Commercial/Industrial Zoning District as set forth in Section VI, 1.a. and 1.b., nor did it meet the requirements of Section III.E. or III.M. Bentley stated that if the lots did not meet the requirements of the zoning ordinance then the lots could not be used for the purposes permitted in the District. Bentley provided a letter to the Board dated February 13, 2006 detailing his position.

Berkson submitted a letter from Susan Tierney, a NH Certified General Appraiser, stating that "if the setbacks are adhered to and buffers or fencing are in place between the subject and the residential uses as required," it was her "professional opinion that the proposed office/garage will not cause diminution of value to the abutting properties."

Bentley provided the Board with a letter from John Newcombe of Monadnock Appraisal Company dated February 10, 2006 stating that the proposed use "could have a negative impact on the value and marketability of the Lawrence property, due to the effective loss of frontage, increase in traffic and potential increase in real estate taxes resulting from the improvement of this strip of land."

Bentley also stated that the Thomas had knowledge of the fact that the property had no frontage on a town-maintained road at the time of the purchase, as evidenced by a letter from Bruce Treat to Lawrence Realty, LLC dated July 14, 2005.

Hutwelker inquired if this is the same Susan Tierney who works at his and his wife's health club. Berkson did not know. Berkson stated

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that even if she were, the fact that Hutwelker did not know who she was would indicate that there is no conflict.

Berkson reviewed the Thomas' responses to the criteria for granting a variance as contained in the variance application. Berkson also noted that the applicants attempted to purchase frontage from other adjacent property owners, but was unable to do so.

Hutwelker stated that he would like to continue this matter to the Board's March meeting in order to digest the information presented this evening and to also obtain an opinion from Town counsel regarding legal issues raised. Motion by Mitchell to continue the public hearing on this matter to March 20, 2006 without further notice. Seconded by DeRocher. Vote: All in favor.

3. Public Hearing (Special Exception Application). Toby DeBattiste requests a special exception from Section V.B.2.a. to permit the operation of a business consisting of automobile sales on property situated at 935 West Swanzey Road. The property is shown at Tax Map 87, Lot 3, situated in the Business Zoning District. No one appeared before the Board on behalf of the Applicant. Motion by Beauregard to continue this matter to March 20, 2006 at 7:00 p.m. without further notice. Seconded by Gregory. Vote: All in favor except Hutwelker, who was opposed to the continuance. Board members noted that the Applicant should be advised that the site plan as submitted is not adequate.

4. Public Hearing (Special Exception Application). Mian Swanzey Realty, LLC requests a special exception from Section V.B.2.a. to permit the construction of a gasoline station and a vehicle wash facility on property situated at 163 Monadnock Highway. The property is shown at Tax Map 19, Lot 68, situated in the Business Zoning District. Nasir Mian and Rob Hitchcock (from SVE Associates) appeared before the Board. Abutting property owners Eleanor Goodrich and Glenn Page were present. Seated were: Hutwelker, Beauregard, Mitchell, DeRocher (for Elizabeth Nieckoski) and Gregory (for Keith Thibault). Public hearing opened.

Mian reviewed the plans before the Board. It was noted that while the project requires a special exception for the gasoline station and the vehicle wash facility, the project also includes a convenience store and a hotel (which are permitted uses in the district). Mian stated that the gasoline station includes 3 fuel pumps, a propane filling facility and 2 underground storage tanks.

Abutting property owner Eleanor Goodrich provided the Board with a one-page document stating her concerns and raising questions

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regarding the project, noting that she is “strongly opposed” to the project. Goodrich noted that while she was aware that her property is located in the Business Zoning District, she stated that she thought that the businesses in the area were limited to home occupations. Hutwelker noted that while there are some home occupations in the area, the business use of the properties is not limited to home occupations. Goodrich also stated that she felt that the proposed use would diminish her property values. Mian stated that he was going to bring a real estate appraiser with him this evening, but was unable to do so due to the inclement weather. Mian stated that the appraiser would testify that there would be no diminution in surrounding property values.

Page stated that he is not technically an abutter, as his wife owns the property that abuts the Mian parcel. Page stated that it was his understanding that the Mians wish to extend public sewer to the property. Page noted any commercial development of this property would, in his opinion, increase surrounding property values.

Hutwelker inquired about the provisions for water and sewer on the property. Mian noted that there are no firm plans yet. Hutwelker reminded Mian that agreements for the provision of water and sewer must be in place in order for the ZBA to grant the special exception.

Mian stated that he has spoken with NH-DOT District IV regarding the driveway access. Mian stated that he will obtain a statement from NH-DOT District IV that they would approve the driveway curb cut “in concept.”

Motion by Beaugard to continue the public hearing without further notice until Saturday, March 11, 2006 at 9:00 a.m. at which time a site visit will take place. After the site visit concludes, the public hearing will then be continued to the Board’s next meeting to be held on Monday, March 20, 2006 at 7:00 p.m. at the Town Hall. Motion seconded by Gregory. Vote: All in favor.

5. Public Hearing (Area Variance Application). Michael and Ruth Horwitz request an area variance from Section IV.A.3. to permit the construct of a sunroom that does not meet required setbacks. The property is located at 8 Matthews Road, shown at Tax Map 40, Lot 18 situated in the Rural/Agricultural Zoning District. Michael and Ruth Horwitz appeared before the Board. No abutters were present. Seated were: Hutwelker, Beaugard, Mitchell, DeRocher (for Elizabeth Nieckoski) and Gregory (for Keith Thibault). Public hearing opened.

M. Horwitz stated that they would like to construct a sunroom off the rear of the house, toward the railtrail. This would be a 3-season room. Horwitz noted that one corner of the proposed sunroom would be

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13 feet from the property line. However, he was not sure as to the distance on the northerly corner.

Bruce Bohannon was present and stated that he had spoken with Bob Spoerl of the Trail Bureau regarding this request. Bohannon stated that the State had no objections to the granting of the variance as long as the sunroom was entirely on the applicant's property.

Gregory stated that she wants the applicant to provide more detailed plans regarding the location of the proposed sunroom and the setbacks from the property lines.

Motion by Beauregard to continue the public hearing without further notice to March 20, 2006 at 7:00 p.m. in order for the applicant to provide a more detailed plan. Seconded by DeRocher. Vote: All in favor.

6. Discussion. Michael Bentley, Esq., attorney on behalf of Larry Koch, wishes to discuss the conditions of approval imposed by the Board on January 9, 2006 in conjunction with a letter received from NH DOT, District IV dated January 26, 2006.

Board members confirmed that they had received a copy of the January 26, 2006 letter from DOT, District IV. Hutwelker stated that the letter does not state that there is insufficient right of way width in which to construct a right turn lane, nor does the letter state that a right turn lane would be unsafe. Hutwelker stated that the conditions of approval set forth on January 9, 2006, including the requirement for a right turn lane, remain in place. Board members concurred.

Motion by Mitchell to adjourn. Seconded by Beauregard. Vote: All in favor. Meeting adjourned at 9:45 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner