

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES  
JULY 21, 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**

William Hutwelker, Keith Thibault, Robert Mitchell, Jennifer Gregory.  
Alternates Bryan Rudgers, Deirdre Geer, Martin Geheran.  
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 Rudgers to approve the minutes of June 16, 2008. Second by Thibault. Geheran abstained. All in favor. Minutes approved.

**1. LETTER DATED JULY 15 FROM MARY AND WILLIAM RYAN**

Property owners: Mary and William Ryan

Property location: 129 Westport Village Road      Tax Map 88, Lot 1

Zoning District(s): Residence

Request: modification to area variance from Section III.U.6 (approved March 19, 2007).

Representing the property owners: Mary Ryan

Seated were Hutwelker, Thibault, Gregory, and Mitchell. Rudgers was seated for Beauregard, Sr. Geheran stepped away from the table because, while not an abutter, he chooses to recuse himself from applications regarding properties in his neighborhood.

Mary Ryan explained that she seeks ZBA approval to modify the hours of operation of her home occupation, Chrysalis Farm Studio and Gallery. She would like to conduct classes in arts and crafts for adults from 7:00 p.m. to 9:00 p.m., Monday through Friday. Ryan needs a class size of five students to meet budget. Parking is adequate because the proposed classes will not overlap with open gallery hours. The home occupation is operating as represented in the original application; proposed classes would supplement gallery sales. Changing economic conditions have prompted the need for this shift in the emphasis of the business.

When it granted the area variance for the home occupation to occupy more than 300 square feet, the ZBA limited the business's hours of operation.

Carbonneau reported that the Town has received no comments or complaints from residents of the neighborhood since the business began. The small size of the gallery would naturally limit the size of classes.

Ryan asked whether offering classes during regular business hours would require ZBA approval as well as Planning Board approval. Carbonneau's opinion was that only Planning Board approval would be necessary, because art classes typically are offered in conjunction with art galleries. Hutwelker felt that offering instruction differs from the original intent of the application, and would be an accessory use. Thibault felt that classes affect patterns of traffic on and off the site, and the gallery is atypical because its Internet sales reduce the volume of traffic it generates. Both Hutwelker and Thibault agreed that classes would be an expansion of a use.

The Ryans also will need to apply to the Planning Board for a modification of their home occupation. The Planning Board will require the ZBA's assurance that the change in hours will result in no undue adverse impact on the neighborhood.

Board members discussed whether the requested evening hours warrant a public hearing, and concluded that it is appropriate to notify abutters of the proposed change. The Board also concluded that the ZBA would need to discuss the modification of the use -- to include instructional classes -- within the context of the public hearing on the modification to the hours of operation.

**Motion** by Gregory to hold a public hearing regarding modification of an existing area variance. Second by Mitchell. All in favor.

## **2. LETTER DATED JUNE 18, 2008 FROM THOMAS AND KATHLEEN LILLY**

Property owners: Thomas and Kathleen Lilly

Property location: 24 Centerview Drive Tax Map 35, Lot 41

Zoning District(s): Residence

Request: re-hearing regarding area variance from Section IV.B.3, denied on May 19, 2008

Representing the applicant: Carbonneau stated that Thomas and Kathleen Lilly were advised that they could attend the public meeting. Mr. Lilly was aware that the Board would be discussing the request in a public meeting rather than a public hearing. He did not want to be present.

Seated were Hutwelker, Thibault, Gregory, and Geheran. Rudgers was seated for Charles Beauregard, Sr. and Geheran was seated for Mitchell. Mitchell stepped away from the table because, while not an abutter, he chooses to recuse himself from applications regarding properties in his neighborhood.

Carbonneau told the ZBA that Town Counsel Fernald has advised the ZBA to treat the Lilly letter as a request for re-hearing. Carbonneau recommended the Board focus its discussion on the conditions under which a re-hearing should be granted -- when a Board feels it has received new evidence, or when it feels it has acted in error.

Thomas and Kathleen Lilly have written to ask the ZBA to visit the site where they wish to construct a garage. They feel that no other location exists for

the garage on their property, and feel that the proposed location would be the most aesthetically pleasing for themselves as well as for their neighbors.

At the May 19, 2008 public hearing, Hutwelker had suggested that the ZBA visit the site. Members had discussed his suggestion, and had concluded that a site walk was unnecessary because the applicants' materials provided sufficient information on which to base the decision.

Board members determined that the applicants have provided no new evidence. They affirmed their earlier determination that they could find no limitations of the land to support the applicants' argument, which they believe was essentially founded on issues of aesthetics.

**Motion** by Geheran to deny the request for re-hearing, on the basis that no new information has been presented, nor has the Board acted in error. Second by Rudgers. All in favor.

#### **OTHER MATTERS**

To follow up on a concern voiced by Mitchell at a prior meeting, Carbonneau reported that HB1405 goes into effect on August 10, 2008. The new law creates regulations pertaining to placement and design of outdoor wood furnaces.

Code Enforcement Officer Weston now requires building permits for outdoor furnaces, and new furnaces must meet EPA requirements. Board members agreed to revisit the issue after the new State law has been in effect for a year. The Town may choose to enact more stringent regulations at this future date.

#### **ADJOURMENT**

Motion by Thibault to adjourn. Second by Gregory. All in favor. Meeting adjourned at 7:42.

Submitted by

Victoria Reck Barlow  
Recording Secretary