

**SWANZEY PLANNING BOARD MINUTES
NOVEMBER 6, 2008**

[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 regular meeting of the Swanzey Planning Board was called to order at 7:00 p.m. by Acting Chair Scott Self. Members present: Scott Self, June Fuerderer, Charles Beauregard, Sr., Steve Russell, Selectmen's Representative Bruce Tatro and alternate Jeanne Thieme. Thieme was seated for Glenn Page. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read, noting that the application submitted by Dominic Smith has been withdrawn, and the following matters were addressed:

Regional Impact: Board members considered whether any items on the agenda could "reasonably be construed as having the potential for regional impact." Motion by Fuerderer that no items on the agenda could reasonably be construed as having the potential for regional impact. Seconded by Beauregard. Vote: All in favor.

A. PUBLIC HEARINGS –

1. Site Plan Review Application – Howard F. Smith, Jr. wishes to utilize the existing garage on the premises for a tire sales and installation shop, together with providing state inspections. The property is situated at 608 West Swanzey Road and shown at Tax Map 57, Lot 2 situated in the Business Zoning District. The property is owned by William F. Mullen. Smith appeared before the Board. No abutters were present. Public hearing opened.

Smith provided the Board with a revised site plan. Smith proposed 3 40' box trailers to be located on the easterly side of the garage building for tire storage. Smith also proposed 2 20' roll-off trailers to be also located on the easterly side of the garage for "junk" tire storage.

Board members discussed the location of a dumpster for "regular" trash. Smith stated that he would put the dumpster near the 2 20' roll-off trailers.

Board members discussed the northerly driveway. Smith indicated that he had met with Rene Fish subsequent to the October 16, 2008

meeting. It appears that adequate site distance from the northerly driveway can be obtained. Board members noted that any approval would be contingent upon approval by NH-DOT.

The revised plan shows the location of customer and employee parking. In addition, the existing trees lines were shown.

It was noted that the structure labeled as a “garage” on the plan will be utilized by the current property owner (Mullen).

Board members questioned whether the 10 foot separation distance between the building and the tire storage was adequate. Fire Inspector Ron Fontaine stated that the 10 foot separation distance was adequate.

Smith stated that repairs such as oil changes would not be done on the premises. Smith stated that the primary use is tire sales and installation, as well as state inspections. However, Smith noted that they may repair brakes, if needed, to pass state inspection.

Smith stated that the proposed business would not typically work on trucks, due to size limitations of the building.

Motion by Russell to grant the site plan review application subject to receipt of driveway permit approval from NH-DOT, District IV and review and approval by the Code Enforcement Officer and the Fire Inspector. Seconded by Fuerderer. Vote: All in favor.

2. Home Occupation Application – Joan Hagar wishes to utilize the property situated at 80B Winch Hill Road for a secretarial services business. The property is situated in the Rural/Agricultural Zoning District, shown at Tax Map 62, Lot 12. No customers will come to the premises. The property is owned by Donald Haney. Joan Hagar appeared before the Board. No abutters were present. Public hearing opened.

Hagar provided the Board with a floor layout, as well as photographs of the location where she wishes to conduct her business. Hagar stated that the business address utilizes a drop box in Keene and that no customers would be coming to the site. Hagar is the sole employee.

Carbonneau noted that permission has been obtained from the property owner for Hagar to conduct a home occupation on the premises. Public hearing closed.

Motion by Beauregard to grant the home occupation application subject to review and approval by the Code Enforcement Officer and the Fire Inspector. Seconded by Russell. Vote: All in favor.

B. DISCUSSIONS/OTHER BUSINESS –

1. Parking Layout and Sign Modification for Thomas Transportation; Tax Map 18, Lot 134 – property located at 93 Monadnock Highway. Also, discussion regarding use of temporary sign on trailer with scrolling text.

Jim Phippard from Brickstone Masons appeared before the Board on behalf of Thomas Transportation.

Board members reviewed the revised parking layout plans. Phippard summarized the changes, noting that the spaces have been changed to 9 foot wide spaces, thereby reducing the total number of parking spaces. However, Phippard stated that the total number of spaces well exceeds the number of spaces required pursuant to the zoning ordinance. The current plan provides for 78 spaces, whereas only 24 spaces are required. Phippard noted that when the addition to the structure is built, 9 additional spaces will be deleted. Phippard stated that the closest parking space to the building is approximately 22 feet.

Phippard also reviewed the change to the sign face. Carbonneau noted that the square footage of the sign has not changed – only the sign face has.

Phippard stated that Thomas Transportation also wishes to utilize a temporary sign located on a trailer. Phippard stated that the sign is owned by a construction company that wishes to store it on Thomas Transportation's property, when not in use. The sign is 12 feet long and 8 feet high and has scrolling text. Phippard stated that the sign when in use will occupy a parking space near the driveway entrance.

Board members discussed whether they considered a scrolling sign to be a "moving" sign (which is prohibited by the ordinance). Board members determined that a scrolling sign is not a "moving" sign.

It was noted that this is proposed as a temporary sign and, as such, can only be utilized for time periods as set forth in Section III.S.10.g. Board members instructed Carbonneau to provide Thomas Transportation with a copy of the sign ordinance.

Tatro stated that it was his desire that the sign would not be lighted all night. Self stated that for temporary signs, there are no zoning regulations that would permit such a limitation.

Motion by Russell to grant modification to the original site plan review approval to include the modified parking plan and to modify the original sign permit application to include the revised text. Seconded by Beauregard. Vote: All in favor. Carbonneau noted that permits for temporary signs are not required by the zoning ordinance (see Section III.10.).

2. Fast Friends Request for Modification to Site Plan Approval Granted on October 16, 2008. Jim Phippard was present on behalf of Fast Friends. Board members received a copy of correspondence from David Bergeron dated November 5, 2008. Condition #2 of the Board's October 16th approval required receipt of a sewer discharge permit. Due to modifications to the site plan (specifically eliminating the sewer manhole on the service line in Matthews Road), a sewer discharge permit is not required.

Phippard stated that it has been determined that an alteration of terrain permit is now required. This was as a result of changes to the alteration of permit requirements that went into effect on November 1st. Phippard stated that Fast Friend is now in the process of submitting an alteration of terrain permit application.

Phippard noted that the applicant would like to commence work on the site while the application for alteration of terrain permit is pending. The letter stated that the application “will agree to keep the site disturbance below the 100,000 s.f. threshold so as to not violate the Alteration of Terrain requirements.” In addition, the applicant stated that it understands that they will be proceeding at its own risk, pending the issuance of the alteration of terrain permit.

Motion by Russell to modify the approval granted on October 16, 2008 as follows: Delete condition #2 as set forth in the Board’s approval granted on October 16th; modify the approval granted on October 16th to include that approval is subject to receipt of an alteration of terrain permit; and to permit the applicant to obtain a building permit prior to receipt of its alteration of terrain permit as long as the impact remains under 100,000 s.f. until the permit is received. Seconded by Thieme. Vote: All in favor.

3. Discussion regarding driveway permit application submitted by Frank Underwood for a curb cut on Route 12 north of Map 19, Lot 66. Board members received a copy of a letter dated October 20, 2008 from NH-DOT (Rene Fish) stating that Frank Underwood has applied for a driveway permit and soliciting feedback. Board members also received a copy of Carbonneau’s letter dated October 27, 2008 to NH-DOT requesting additional time to provide feedback. Frank Underwood was present for the discussion.

Underwood stated that Carbonneau had made a mistake in her letter to the State, specifically giving the impression that the Underwood heirs do not own any property to the north of Map 19, Lot 66. Carbonneau stated that the letter simply states that the current tax maps do not reflect any parcel owned by the Underwood heirs north of Map 19, Lot 66. Carbonneau stated that once the boundary line adjustment plat is recorded at the Registry of Deeds and once a copy of the recorded plat has been provided to the Town, the Town will update its tax maps and assessing cards to reflect that a strip of land to the north of Map 19, Lot 66 is owned by the Underwood heirs. Carbonneau stated that she would provide clarification to NH-DOT regarding this matter.

Carbonneau stated that the issue before the Board this evening is whether it has any feedback regarding the driveway permit application submitted to the State by Underwood. Underwood stated that he has no development plans for the properties to be served by a driveway, but

simply wishes to “protect and preserve” his rights to a curb cut in that particular location.

Carbonneau reminded the Board that the Town has driveway regulations which state that driveways must be at least 10 feet from property lines and that the driveway must have a minimum access width of at least 15 feet. Carbonneau noted that the 30 foot strip over which Underwood seeks a driveway permit from the State would not have adequate width. Underwood stated that a waiver could always be sought from the Town.

Underwood stated that he is not seeking permission to construct a driveway at the present time, but is simply attempting to preserve his rights to a curb cut on Route 12.

Self stated that Underwood should record the boundary line adjustment plat and tender a copy to the Town, so that the Town’s tax maps and assessing cards can be updated appropriately. Self also summarized that it was his opinion that it was up to the State to determine whether or not to issue a curb cut, noting that in the event that Underwood wishes to construct a driveway that an application for a driveway permit would need to be submitted to the Town. Board members concurred.

4. Continued discussion regarding proposed zoning amendments.

Jim Phippard was present to discuss the potential rezoning of the portion of Tax Map 19, Lot 97-5 currently situated in the Residence District to be rezoned to Industrial Park District. Phippard stated that all of Map 19, Lot 97-5 is currently owned by 234 Old Homestead Highway and is located within the tax increment financing district. Phippard stated that the portion of the parcel that is located within the Residence District consists of approximately 6 acres of land. Phippard noted that approximately 2 out of the 6 acres of land is “usable.” Phippard stated that the remaining 4 acres is primarily forested wetlands. Board members considered the proximity of abutting property owners and the location of their homes. Phippard noted that if the property was rezoned to Industrial Park, any commercial development would be subject to site plan review, with the thought at appropriate buffers would be required. Board members felt that this should be brought to public hearing in December.

Board members reviewed 2009 Proposed Zoning Amendments Version 3 provided by Carbonneau and attached to these minutes as follows, within the inclusion of the residence to industrial park discussion regarding Map 19, 97-5 as above:

Board members concurred that Items 1, 2, 3, 4 and 5 should go to public hearing.

Board members concurred that Item 6 should be modified. Board members felt that Section III.A.1., III.A.2. and III.A.3. could be deleted. However, they wished to keep Section III.A.4. as they felt it needed to be

clearly spelled out that two separate single family dwellings could not be located on a single lot. Carbonneau felt that the existing Section III.A.4. was not clear and stated that she would seek the advice of counsel.

Board members felt that Item 7 regarding Home Occupations may need to be modified or not pursued. The example was raised if a plumber was conducting a home occupation, should he be permitted to store supplies in an outbuilding. The proposed Item 7 would not permit outbuildings to be used. Board members expressed concern about the proposal.

Board members concurred that Item 8 should go to public hearing. Carbonneau will check with counsel to determine if the “Failure to Comply” section is necessary.

When Item 9 (not numbered on Version 3 – but is seeking modification to Section XI.B.) was discussed it was noted that XI.B.1. needed to be re-worked to clearly state the intent that a non-conforming structure can also be voluntarily torn down and rebuilt within the same or lesser footprint and cubic contents. Carbonneau will re-work for review at the next meeting.

5. Minutes from October 16, 2008 – Motion by Beauregard to approve the minutes from October 16, 2008 as submitted. Seconded by Fuerderer. Vote: All in favor.

Motion by Beauregard to adjourn. Seconded by Fuerderer. Vote: All in favor. Meeting adjourned at 9:00 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner

2009 Zoning Amendments (Version 3)

1. Amend Section II.A. to include as follows: Amend the zoning map of the Town of Swanzey dated September 1, 1947, as amended, to show the portions of the properties currently shown as Tax Map 19, Lots 97, 97-2, 98, 99, 100, 101 and 102 that are currently located in the Business Zoning District as being in the Industrial Park District

2. Amend Section V.B.1.a. (uses permitted in the Business District) to include the following:

Function halls

and **add** the following definition to Section XIII (Definitions)

“Function Hall: A building or part thereof used primarily for conducting activities such as suppers, banquets, receptions, meetings and other functions attended by large groups of people for a single event and may or may not include kitchen facilities.”

3. Amend Section V.B.1.a. (uses permitted in the Business District) to include the following:

Indoor auctions.

4. Delete Section VIII Shorelands Protection District in its entirety and **replace it with the following:**

“A. SHORELAND PROTECTION DISTRICT

The Shoreland Protection District is hereby established as an overlay district which is superimposed over the conventional existing zoning. The uses permitted in the underlying districts shall be allowed only if they meet the minimum standards promulgated by the State of New Hampshire Comprehensive Shoreland Protection Act, RSA 483-B (as amended). Pursuant to authority granted by RSA 674:14, this Shoreland Protection District is adopted by the Town of Swanzey to further protect the public waters of the Town.

B. TOWN OF SWANZEY SHORELAND PROTECTION DISTRICT

includes all those lands defined as “Protected shoreland” in RSA 483-B, XV and as may be amended. As of July 1, 2008 the New Hampshire Department of Environmental Services “Consolidated List of Water Bodies Subject to RSA 483-B, the Comprehensive Shoreland Protection Act” included the following:

Ashuelot River;
South Branch of the Ashuelot River;
Ash Swamp Brook
Martin Brook;
Ashuelot River Dam (45 acres) (**per State/DES, this needs to be deleted**);
California Brook (15 acres) (**per State/DES, this is being evaluated... apparently was a culvert that dammed water, eventually creating a wetland**);
Swanzy Lake (117 acres);
Upper Wilson Pond (10 acres); and
Wilson Pond (80.4 acres).

C. PRIMARY BUILDING LINE/SETBACK: No primary structure as defined by RSA 483-B, shall be built, placed or erected within one hundred twenty-five feet from the reference line as defined by RSA 483-B:4,XVII as may be amended.”

And **delete** existing Section II.A.6. and replace with:

“6. Shoreland Protection District. The Shoreland Protection District is hereby established as an overlay district which is superimposed over the conventional existing zoning. The uses permitted in the underlying districts shall be allowed only if they meet the minimum standards promulgated by the State of New Hampshire Comprehensive Shoreland Protection Act, RSA 483-B (as amended). Pursuant to authority granted by RSA 674:14, this Shoreland Protection District is adopted by the Town of Swanzy to further protect the public waters of the Town.

5. Delete Section III.P. in its entirety.

6. Delete Section III.A. in its entirety.

7. Amend Section III.U.6. Home Occupations to read as follows:

“6. It does not result in the use of any area equal to more than 10 percent of the total gross floor area of the dwelling unit up to a maximum of 300 square feet.”

8. Amend Section III. To include new section III.AA. Accessory Dwelling Unit

“III.AA. ACCESSORY DWELLING UNIT ORDINANCE

Purpose

For the purpose of providing expanded housing opportunities and flexibility in household arrangements to accommodate family members or non-related people of a permitted, owner occupied, one family dwelling, while maintaining aesthetics and residential use compatible with homes in the neighborhood. Accessory Dwelling Units (ADU) shall be permitted by Special Exception granted by the Zoning Board of Adjustment in the Residence, Rural/Agricultural, and Village Business Districts.

Requirements/Limitations

1. ADUs shall be secondary and accessory to a one family dwelling unit.
2. In granting a Special Exception, the Board of Adjustment must find that the ADU is developed in a manner which does not alter the character or appearance of the principal dwelling unit as a one family residence.
3. Only one ADU shall be allowed per lot.
4. An ADU shall only be permitted in a principal dwelling unit in which the owner of record of the dwelling personally resides: except for bona fide temporary absences.
5. Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.
6. Attached ADUs shall be designed to allow for possible reincorporating into the principal dwelling unit.
7. At least one (1) common, interior access between the principal dwelling structure and the ADU shall be maintained. A second means of egress from the ADU shall be provided.
8. The gross living area of an ADU shall not be less than 300 square feet or be greater than 25% of the total floor area of the principal dwelling and ADU.
9. A building permit for an ADU must be approved and issued prior to its construction. An ADU shall have an interconnected fire alarm system and shall meet all life safety and building codes.
10. Adequate off-street parking shall be provided to serve the combine needs of the principal dwelling unit and the ADU, minimum three (3) parking spaces to serve both the one family dwelling and the ADU.
11. Adequate provision must exist or be made for motor vehicle ingress or egress and turning of vehicles within the site.
12. The existing or proposed septic system must be certified by a licensed septic designer or engineer as adequate to support the ADU and principal dwelling unit in accordance with New Hampshire RSA 485-A:38.

Accessory Dwelling Unit Certificate of Occupancy

If a property containing an approved ADU is conveyed and the new owner wishes to maintain the accessory unit, the new owner shall apply for a Certificate of Occupancy for the ADU. The purpose of this section is to ensure that one of the two dwelling units is owner-occupied.

Procedural Requirements

An application for Special Exception approval under the auspices of this Section shall require that all plans submitted with any application for an ADU building permit denote, describe and/or identify the intended ADU area within the principal dwelling unit as such.

Failure to Comply

If the owner fails to comply with the requirements of this section, the use of the ADU shall be terminated within 6 months of the date of notice from the Board of Selectmen or designee. The owner shall be subject to penalty under RSA 676:17 for each day the ADU fails to comply with the requirement of this section after March 10, 2009.

Enforcement Authority

The Board of Selectmen or their designee shall be the final authority on compliance and enforcement issues of this article.”

Delete Section XI.B. Non-conforming Building/Non-conforming Structure in its entirety and replace with the following:

“B. Non-conforming Building/Non-conforming Structure: A non-conforming building or non-conforming structure may be continued indefinitely and may be repaired or remodeled subject to the following limitations:

1. Restoration, reconstruction, alteration and/or replacement of nonconforming buildings/structures are allowed, provided that the cubic contents and the footprint of the original building/structure stays the same; any nonconforming buildings/structures that have been destroyed in whole or in part of fire or other natural disaster may be replaced within one year of the damage in the same footprint and with the same cubic contents.

2. The relocation on a lot of a structure that does not comply with the setback provisions is allowed provided the new location complies with the setback provisions.

3. A nonconforming structure may be expanded provided that the expansion does not encroach any more into the nonconforming direction than the existing structure. Expansion in a conforming direction is permitted.”