

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
JANUARY 18, 2010**

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, Chair; Keith Thibault, Vice Chair; Charles Beauregard, Sr., Bob Mitchell. Alternates John Arnone, Bob Smith, Brian Rudgers (arrived at 7:13). 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 Thibault to approve the minutes of November 16, 2009 meeting. Second by Beauregard. Beauregard, Thibault, Hutwelker, Mitchell in favor; Arnone, Smith abstaining. Motion passes.

Members postponed consideration of minutes of the December 10, 2009 meeting until the February 8, 2010 meeting.

1. VOTE ON ALTERNATE MEMBER VACANCY for one position that expires at Town meeting 2010 and one position that expires at Town Meeting 2011. Charles Beauregard, Jr. expressed his interest in the position that expires in 2011, describing prior experience and his desire to help the Town grow.

Motion by Bob Smith to nominate Beauregard, Jr. to fill the position that expires at Town meeting 2011. Second by Mitchell. All in favor.

2. (PUBLIC HEARING) SPECIAL EXCEPTION APPLICATION

Applicant: Christian Life Fellowship Church

Property owner: Christian Life Fellowship Church

Property location: 211 Whitcomb Road Tax Map 33, Lot 1-2

Zoning District(s): Rural/Agricultural District

Request: Special exception pursuant to Section IV.A.2.m. to construct an accessory building consisting of 1,600 s.f. to be used as a multi-purpose room associated with an existing church.

Members seated: Hutwelker, Thibault, Mitchell. Arnone was seated for Walker, and Smith was seated for Charles Beauregard, Sr., who recused himself.

Representing the application: Dr. David Berman, Senior Pastor. Numerous members of the congregation were present.

Abutters present: None

Hutwelker called the public hearing to order at 7:08.

DISCUSSION

Members received a January 11, 2010 application summary from Town Planner Carbonneau. Carbonneau reported Police Chief Busick's comment that the re-located access road must remain passable for emergency vehicles. Carbonneau stated that no other department heads had expressed concerns regarding the proposal, and noted that the property had been granted a special exception on January 29, 1999 for use as a church.

Carbonneau advised the Board that the pitch of existing and proposed roofs could cause significant volumes of snow to fall into the area between the existing and proposed structures, potentially blocking emergency access from the proposed structure.

Berman presented an overview of the proposal for the 1,600 s.f. building proposed to be constructed parallel to and 10' away from the existing building. The structure would be used as a multi-purpose room for Bible studies, vacation Bible school, dance team rehearsals, etc. Access to the proposed structure would be through a front door on the gable end of the structure. The open-concept room would have no interior walls, or kitchen or bathroom facilities. Berman stated that consideration of expanding the existing structure by constructing an addition off the rear of the structure had been abandoned because it would trigger regulations that require installation of a sprinkler system – an unaffordable option for the applicant. Berman stated that bathroom facilities were not required because facilities would be available nearby, in the existing building.

Berman stated that consideration had been given to snow accumulation between the existing and proposed structures; however, changing the roof line of the proposed structure would not be aesthetically pleasing. Berman stated that he anticipated purchasing a snow removal unit to remove snow following every storm. He said that he would be willing to increase the distance between the existing and proposed buildings to 15 feet, so long as adequate space would remain to re-locate the road without impinging on infrastructure. Berman stated that increasing the distance between buildings to 15 feet likely would eliminate problems caused by snow accumulation.

Hutwelker determined that there were no further questions, and closed the public hearing at 7:20. After preliminary consideration of the criteria, ***motion*** by Thibault to re-open the public hearing. Second by Mitchell. All in favor. Hutwelker re-opened the public hearing at 7:28.

Members and Berman discussed whether a 15 foot separation between the existing and proposed buildings would resolve potential problems created by snow dumping off the two roofs into the space between buildings, thereby making unnecessary the applicant's purchase of snow removal equipment. Berman stated that the side doors in the proposed structure would always be cleared. He proposed altering the design of the proposed structure to re-locate the exit doors to a location where little snow would accumulate, on the end of the structure. Hearing no further questions, Hutwelker closed the public hearing at 7:30.

REVIEW OF CRITERIA

Board members reviewed the criteria for granting the requested special exception.

1. Is the exception allowed by the ordinance?

Members agreed in the affirmative.

2. Are specified conditions present under which the exception may be granted?

a. Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?

Members agreed in the affirmative to both parts of the question, stating that the proposed use is essentially an expansion of an existing use.

b. Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?

Members agreed that no evidence had presented that an approval would reduce property values or otherwise harm the neighborhood.

c. Will there be a nuisance or serious hazard to vehicles or pedestrians?

Members agreed that the access road adequately addresses any potential nuisance or hazard.

d. Will adequate and appropriate facilities be provided for the operation of the proposed use?

Members agreed that plumbing in the existing building is adequate to meet the needs of the proposed building, and agreed that the applicant had presented adequate and appropriate plans for snow removal and reconfiguring the access road.

Motion by Arnone to approve the special exception pursuant to Section IV.A.2.m. to construct an accessory building consisting of 1,600 s.f. to be used as a multi-purpose room associated with an existing church, with the following conditions: 1) The re-routed access road is to be approved by the Swanzey Police Chief as safe and passable by emergency vehicles, and 2) emergency egress will be located on the rear of the building rather than between the existing and proposed buildings. Second by Smith. All in favor.

3. (PUBLIC HEARING) APPEAL OF ADMINISTRATIVE DECISION

Applicant: Mary Beth & John Coughlin, Jr.

Property owner: Mary Beth & John Coughlin, Jr.

Property location: 50 Sawyers Crossing Road Tax Map 41, Lot 1

Zoning District(s): Residence District

Request: Challenge of a determination rendered on November 10, 2009 by Code Enforcement Officer James Weston that the applicants are operating a business "of raising, breeding, selling alpacas, and selling the fleece of alpacas, which is not allowed in the Residential Zone."

Continued to Monday, March 15, 2010 at 7:00 p.m. at the request of the applicant.

4. (PUBLIC HEARING) AREA VARIANCE APPLICATION

Applicant: Paul Haynes

Property owner: Paul Haynes

Property location: 20 Spring Street Tax Map 57, Lot 55

Zoning District(s): Residence District

Swanzey Zoning Board of Adjustment minutes – January 18, 2010

Request: Area variance from Section IV.B.3 to permit the construction of a carport that does not meet required setbacks.

Hutwelker opened the public hearing at 7:42.

Members seated: Hutwelker, Thibault, Beauregard, Mitchell. Rudgers was seated for Walker.

Representing the application: Paul Haynes

Abutters present: Barbara Skuly

DISCUSSION

Members received a January 11, 2010 application summary from Town Planner Carbonneau, who noted that the property is connected to public sewer and is served by a private well. Carbonneau stated that she had received no comments from department heads. Carbonneau said that because the application was submitted prior to January 1, 2010, the application could be reviewed in accordance with the pre-January 1, 2010 area variance criteria (*Boccia*).

Haynes stated that he sought approval to install the 10' x 20' unattached manufactured carport in the area where he customarily parks his car. Mitchell observed that the proposed location, 12' from the side boundary, was further from the boundary than the neighbor's garage. He stated that the proposed use was not new – Haynes would continue to park in the same location – and the use is customary and common in the neighborhood. Skuly stated that she had no objections to the proposal, and agreed that there appears to be no other practicable place to put a garage.

Determining that there were no further questions, Hutwelker closed the public hearing at 8:50.

REVIEW OF CRITERIA

Board members reviewed the criteria for granting the requested area variance. agreed it is an area variance.

1. Could the area variance be granted without diminishing surrounding property values?

Members agreed in the affirmative.

2. Could the variance be granted without the proposed use being contrary to the public interest?

Members agreed that the use already exists.

3. Owing to special conditions, would the denial of the variance result in unnecessary hardship to the land owner, according to the Boccia test for determining unnecessary hardship?

a. Is an area variance needed to enable the applicant's proposed use of the property given the special conditions of the property?

Members agreed that proposed location historically has been used for parking, and no other practicable location exists.

b. Could the benefit sought by the applicant be achieved by some other method

reasonably feasible for the applicant to pursue, other than an area variance?

Members agreed that the method is reasonable.

4. *If the variance is granted, would the spirit of the ordinance be observed?*

Members agreed in the affirmative.

5. *Would granting the variance do substantial justice?*

Members agreed that granting the variance would do substantial justice for the applicant and the neighborhood.

Motion by Thibault to approve the area variance from Section IV.B.3 to permit the construction of a carport that does not meet required setbacks. Second by Mitchell. All in favor.

5. (PUBLIC HEARING) AREA VARIANCE APPLICATION

Applicant: Linda Ames (Ostriker)

Property owner: Jon and Linda Ames Ostriker

Property location: 37 Centerview Drive Tax Map 35, Lot 33

Zoning District(s): Residence District

Request: Area variance from Section III.U.6. to permit expansion of a currently permitted home occupation, seeking to utilize up to 1,107 s.f. where only 300 s.f. is permitted.

Hutwelker opened the public hearing at 8:52.

Members seated: Hutwelker, Thibault, Beauregard. Rudgers was seated for Walker, and Smith was seated for Mitchell (recusing himself, as a resident of the applicants' neighborhood).

Representing the application: Jon and Linda Ames Ostriker

Abutters present: Joe Pellerin, Marjorie Pellerin, Stephen Pappas

DISCUSSION

Members received a January 11, 2010 application summary from Town Planner Carbonneau, who noted that a private well and private septic system serve the property. Carbonneau also noted that the home occupation for the Internet-only antique clothing business was approved on May 7, 2009. Carbonneau said that no department heads had indicated any concern over the proposal to expand the space occupied by the business from 298 s.f. to 1,107 s.f.

J. Ostriker presented the material contained in the application, stating that the primary objective is to be prepared with ample heated, temperature-controlled space for inventory storage to allow responsiveness when items come onto the market during the current period of historically unusual opportunity. J. Ostriker stated that the previously-approved 298 s.f. "active" use area (dedicated to office functions, processing of inventory and the like) is adequate in size and would remain unchanged. J. Ostriker said that keeping items away from heating elements will address concerns of safety; the owners' constant physical presence affords security. He said that the business's insurer may inspect the inventory at any time while the policy is in force, further motivating attention to security and best storage practices.

Because the business is Internet-only, J. Ostriker said that the increased storage space would not yield increased foot traffic: no customers ever come to the property. Ames explained that shipping takes place off the premises as well, either by hand delivery or by use of shipping services or the post office. Members determined that the business would continue to have no employees, determined that the expanded storage area would not change how the business functions, and determined that the proposed storage area in the lower level of the home can be accessed by a bulkhead.

J. Pellerin concurred that the home occupation has been unobtrusive, to the point of being invisible. M. Pellerin stated that the Ostrikers have improved the property, and said that she and her husband “had no idea” what their neighbors were doing in the house.

At Hutwelker’s request, Carbonneau distributed to Board members minutes of the May 7, 2009 Planning Board meeting detailing the original home occupation approval.

In response to discussion of the requested increase in square footage, Carbonneau advised the Board that the ordinance describes home occupations based on the type of use, rather than on square footage. She reminded Board members that home occupations are businesses; Carbonneau stated that the applicants state that the nature of their inventory makes their home the best place to maintain the inventory.

Members reviewed the definition of “home occupation” contained in the ordinance. Thibault stated that the property is primarily used as a residence, and said that the proposed use does not change the residential character of the neighborhood. Thibault speculated that drafters of the ordinance could not have contemplated commerce generated through Internet sales.

Members discussed possible alternatives. J. Ostriker stated that cold storage is not an option for fragile textiles, and the nearest temperature-controlled storage is in metropolitan areas. Ames added that cold storage facilities are not adequately secure.

Determining that there were no further questions, Hutwelker closed the public hearing at 9:04. After preliminary discussion, ***motion*** by Rudgers to re-open the public hearing. Second by Thibault. All in favor. Hutwelker re-opened the public hearing at 9:07. Members discussed potential conditions with the applicants, and determined that these issues had already been addressed by the terms of the application. Hearing no further questions, Hutwelker closed the public hearing at 9:30.

REVIEW OF CRITERIA

Board members reviewed the criteria for granting the requested area variance.

1. *Could the area variance be granted without diminishing surrounding property values?*

Members agreed that the Internet-based home occupation creates no noticeable traffic, and agreed that the expansion is for storage only. Members noted that neighbors had been unaware of the presence of the business, and had expressed no concerns about their property values. Members agreed that the proposal would not change the residential character of the neighborhood.

2. Could the variance be granted without the proposed use being contrary to the public interest?

Members agreed in the affirmative, noting that the business has generated no problems thus far, and the active part of the business would not change by increasing inventory storage space.

3. Owing to special conditions, would the denial of the variance result in unnecessary hardship to the land owner, according to the Boccia test for determining unnecessary hardship?

Members agreed in the affirmative, noting that appropriate commercial storage space does not exist within a reasonable radius.

a. Is an area variance needed to enable the applicant's proposed use of the property given the special conditions of the property?

Members agreed that, at 2,800 s.f., the home is large enough to store the business inventory and still function primarily as a residence. Members agreed that the house provides a controlled storage environment for textiles.

b. Could the benefit sought by the applicant be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance?

Citing previous reasons, members agreed that no other method is reasonably feasible.

4. If the variance is granted, would the spirit of the ordinance be observed?

Most members agreed that granting the ordinance would observe the spirit of the ordinance, given the large size of house and the applicants' intention to not increase the active part of the business. Members noted that the home occupation is tied to the Ostrikers, and not to the property. Hutwelker did not agree that the spirit of the ordinance would be observed, stating that a request for a 40% increase in space indicates that the business has outgrown its location. He stated that the spirit of the ordinance is to maintain home occupations as incidental uses.

6. Would granting the variance do substantial justice?

Members agreed that granting the variance would do substantial justice, because denying the application would create a loss to the applicant, and approving the application would not create a situation that is noticeable, or would otherwise have a negative impact on the public.

Motion by Rudgers to approve the area variance from Section III.U.6. to permit expansion of a currently permitted home occupation, seeking to utilize up to 1,107 s.f. where only 300 s.f. is permitted. Second by Beauregard. Thibault, Beauregard, Rudgers, Mitchell in favor. Hutwelker opposed. Motion passes.

6. REQUEST FOR REHEARING

Applicant: David and Janet Roy

Property owner: David and Janet Roy

Property location: 49 Spring Street Tax Map 57, Lot 72

Zoning District(s): Residence District

Request: Re-hearing regarding the matter considered by the ZBA on December 10, 2009.

Members seated: Hutwelker, Thibault, Beauregard, Mitchell. Rudgers was seated for Walker.

Hutwelker advised those present that the matter at hand was not a public hearing, and said that Board members would review the matter to determine whether the Board had made an error and wanted to re-hear, or whether new information has come to light that shows that the Board acted in error. Carbonneau said that the motion for re-hearing had been filed in a timely manner.

Board members stated that they had read the January 5, 2010 motion for rehearing submitted to the ZBA by David and Janet Roy. Board members agreed that they could find no error, nor evidence of new information, nor errors in deliberation or consideration of the decision.

Motion by Thibault to deny the request for re-hearing. Second by Mitchell. All in favor.

7. OTHER BUSINESS AS MAY BE REQUIRED

Water supply in West Swanzey Board members discussed availability of water in the village, noting that the system was not designed for fire suppression. Carbonneau advised members to determine whether applicants have an adequate and appropriate water supply in each particular case, and stated that the Fire Department must be involved in evaluating applications relative to fire suppression. Carbonneau encouraged Board members to express individual concerns to the Planning Board.

Revised criteria for variances Board members discussed legislation that went into effect on January 1, 2010 that has eliminated the distinction between area and use variances.

ADJOURMENT

Motion by Beauregard to adjourn. Second by Smith. All in favor. The meeting adjourned at 9:58 p.m.

Respectfully submitted,

Victoria Reck Barlow,
Recording Secretary