

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES  
AUGUST 14, 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.]**

**1. Site Visit/Public Hearing (Variance Application).** The Swanzey Zoning Board of Adjustment's site visit/public hearing was called to order at 5:40 p.m. on August 14, 2006 at property owned by David Roy, situated at 49 Spring Street, shown at Tax Map 57, Lot 72 situated in the Residence and Business Zoning District.

Members present: Bill Hutwelker, Charles Beauregard, Sr., Bob Mitchell, Marty Geheran, Keith Thibault, Bob DeRocher and Jenn Gregory. Also present were: Town Planner Sara Carbonneau, Code Enforcement Officer Jim Weston, Attorney Silas Little, David Roy and interested citizen Barbara Skuly. Thibault served as chair for this matter.

Board members, Roy and Little received a copy of a memo from Town Planner Sara Carbonneau regarding her conversation earlier in the day with Mrs. Reed. The Board viewed Spring Street, businesses located along the street, as well as the site in question. The location of the old and new driveways, the portable saw mill and the area for log and board storage were viewed. Residences of Skuly, Reed, Davis and Fuller were pointed out. Roy started the engine for the saw, but did not saw any logs. Roy stated that processing of wood has occurred on the property since 1976, when his father purchased the property. Roy stated that he, his father and his son operate the saw mill as "more of a hobby." However, he did state that he does earn money from the mill. Site visit adjourned at 6:10 p.m. and reconvened at Town Hall at 6:20 p.m.

Seated for the public hearing were: Thibault (Chair), Mitchell, Beauregard, Gregory and Geheran (for Hutwelker). Also present were: David Roy, Barbara Skuly, Gail Davis, Mark Desilets, Attorney Silas Little, Town Planner Carbonneau and CEO Weston.

Skuly stated that the neighborhood is primarily residential in nature, although there are some businesses located on the street that were grandfathered, as well as at least one that was recently permitted. Skuly stated that approximately 20 to 25 years ago, the residents of Spring Street petitioned the Town to extend the residence district in order to retain the residential nature of the area. According to Skuly,

this zoning amendment was adopted by the Town. In reference to the businesses/home occupations that have been approved recently, she stated that she felt that these approvals were not appropriate due to the desire to keep the neighborhood residential in nature. Skuly stated that the businesses increase the traffic on Spring Street and noted that vehicles sizes associated with the businesses have also increased.

Attorney Little, representing Gail Davis and Mark Desilets, stated that a recent NH Supreme Court Case (Garrison v. Henniker) has applicability in this matter. Little stated that a main point in this case is that the hardship criterion turns on the uniqueness of the property – “a special condition of the land which distinguishes it from other land in the same area.” Little stated that he felt that this property was no different than any other property divided by a zoning district boundary and that the ordinance addresses the use of properties divided by a zoning district boundary.

In addition, Little stated that the business use on the property was more suited to the Commercial/Industrial District. Little stated that the business use, as presently being conducted, was not a permitted use on the premises nor was it a use that was in keeping with the purpose of the Business District as set forth in Section II of the ordinance.

Geheran stated that the use of the saw mill could be considered a manufacturing facility, which would be permitted in the business district with a special exception.

Roy stated that he felt that there were other uses in the business district, notably Port-o-lite, that was similar to his use but on a much larger scale.

Board members stated that they would like the opportunity to read the Garrison v. Henniker case and continue this matter. Geheran stated that he would not be available at the September 18<sup>th</sup> meeting. It was noted that DeRocher could be seated in place of Geheran as he attended the site visit and has been present at the public hearings. Motion by Beauregard to continue this matter to 7:00 p.m. at the September 18, 2006 meeting of the Board without further notice. Seconded by Geheran. Vote: All in favor.

**2. Public Hearing (Variance Application).** Kenneth & Joyce St. Lawrence request a variance from Section V.B. to permit an existing building situated on property located at 51 Pine Street to be used as a residence. There currently is an existing residential use of the property. The property is shown at Tax Map 57, Lot 128 situated in the Business Zoning District. Carbonneau informed the Board that the application has been withdrawn at the applicant’s request.

**3. Approval of Minutes from July 26, 2006.** Motion by Beauregard to approve the minutes from July 26, 2006 as submitted. Seconded by Gregory. Vote: All in favor.

**4. Approval of Minutes from July 31, 2006.** Motion by Beauregard to approve the minutes from July 31, 2006 as submitted. Seconded by Thibault. Vote: All in favor.

**5. Public Hearing (Area Variance Application).** Richard P. Drew requests an area variance from Section IV.A.3. to permit a boundary line adjustment to property shown at Tax Map 30, Lot 23, reducing Tax Map 30, Lot 23 from 2.9 acres to 1.9 acres. The property is located off Lewis Road, situated in the Rural/Agricultural Zoning District. The property is owned by Carolyn A. Stone. Seated were: Hutwelker, Thibault, Beauregard, Mitchell and Gregory. Richard Drew (licensed land surveyor), Carolyn Stone and abutting property owner George Griffin were also present. Public hearing opened.

Board members reviewed the plan. It was noted that the intent of the variance is to be able to enter into a boundary line adjustment between Tax Map 30, Lot 23 and Tax Map 30, Lot 25 (owned by Griffin). A variance is needed as both lots are currently non-conforming as to acreage. In addition, Griffin's lot does not have frontage on a Town-maintained road.

Board members noted that if the variance was granted and the boundary line adjustment completed, the lots along Lewis Road, including the lot owned by Mark Pride and shown at Tax Map 30, Lot 26) would be all approximately the same size. In addition, Board members felt that by adjoining the property to Griffin's lot would result in Stone's property being located to the west of Lewis Road (and would include Lewis Road) and would increase the size of Griffin's property.

Griffin stated that he would like to be able to enter into a boundary line adjustment with Stone as the additional property would provide a buffer in the event that the property behind Griffin and Stone is developed. Public hearing closed.

The criteria for granting an area variance was reviewed. Board members felt that there would be no diminution of property values should the variance be granted; they felt that granting the variance would not be contrary to the public interest, as the lots would be closer in size to each other and that Stone's lot would not be located on both sides of Lewis Road; there is no other reasonable method to allow a boundary line adjustment to occur without granting the variance; granting the variance would be in keeping with the spirit of the ordinance, as the resulting boundary line adjustment would provide a buffer for Griffin's property and help maintain the rural character; and no injustice would be done by granting the variance. Motion by Thibault to grant the variance application based on the responses to the criteria, subject to the condition that the Boundary Line Adjustment plat is approved by the Planning Board and does not result in the creation of any additional lots. Seconded by Mitchell. Vote: All in favor.

**6. Arthur & Ellen Brnger – Request for Rehearing.** Arthur and Ellen Brnger request a rehearing on their request for an area variance application which was denied by the ZBA on July 15, 2006. The Board reviewed the request dated August 10, 2006 paragraph by paragraph. Beauregard noted that he had ample opportunity to view Brngers' property and was briefed by Board members, Town Planner Carbonneau and the applicants upon his arrival at the site. Motion by Beauregard to deny the request for rehearing as the Board did not feel that any mistake was made nor did it feel that any new information was provided. Seconded by Mitchell. Vote: All in favor.

Motion by Beauregard to adjourn. Seconded by Gregory. Vote: All in favor. Meeting adjourned at 7:45 p.m.

Submitted by,

Sara H. Carbonneau  
Town Planner