

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
MARCH 19, 2007**

[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 Zoning Board of Adjustment was called to order at 7:00 p.m. by Chair Bill Hutwelker. Members present: Bill Hutwelker, Bob Mitchell, Jenn Gregory, Keith Thibault, Charles Beauregard, Sr., and alternate Bob DeRocher. Alternates Marty Geheran and Bob Smith, appointed later in the meeting, were also seated at the table after their appointment. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following items were addressed:

1. Appointment of Alternate Members. Carbonneau stated that Marty Geheran's name has been submitted for consideration as an alternate member; term to expire at Town Meeting 2010. Motion by Thibault to appoint Geheran as an alternate member of the ZBA, with his term to expire at Town Meeting 2010. Seconded by Beauregard. Vote: All in favor.

Carbonneau stated that Bob Smith's name has been submitted for consideration as an alternate member; term to expire at Town Meeting 2008. Motion by Beauregard to appoint Smith as an alternate member of the ZBA, with his term to expire at Town Meeting 2008. Seconded by Gregory. Vote: All in favor.

Voting on officers was deferred to the end of the meeting.

2. Public Hearing (Area Variance Application) – Thomas C. Underwood requests an area variance from Section III.E. and III.M. to construct a house on a parcel that does not have frontage on a town maintained road. The applicant proposes to utilize a right of way over property owned by Torstein Piencka situated at 93 Mt. Huggins Drive. Underwood's property is located off Mt. Huggins Drive and James Road and shown at Tax Map 17, Lot 4. Both properties are situated in the Rural/Agricultural Zoning District. Hutwelker stated that the applicant has requested a continuance to May 21, 2007 at 7:00 p.m. Motion by

Beauregard to continue this matter without further notice to May 21, 2007 at 7:00 p.m. Seconded by Thibault. Vote: All in favor.

3. Public Hearing (Special Exception Application) – RDH Property Management requests a special exception from Section V.B.2.c. to permit the conversion of the existing structure on property situated at 704 West Swanzey Road to a two-family dwelling. The property is shown at Tax Map 72, Lot 85, situated in the Business Zoning District. Denny Amer and Dawn Amer appeared before the Board. No abutters were present. Hutwelker explained to the applicant that only 4 out of the 5 members who were seated at the last meeting are present tonight. Hutwelker also noted that the affirmative vote of at least three members is needed for the application to prevail. Amer stated that he wished to go forward this evening. Seated were: Mitchell, Hutwelker, Gregory and Geheran. Public hearing re-opened.

Amer stated that they no longer wish to utilize the 2nd driveway on West Street (the one closest to Route 10) due to its proximity to the intersection. In the alternative, Amer stated that they wish to expand the driveway further east on West Street to accommodate the two rental units. DPW Director Dunham provided the Board with a memorandum stating that he has no issues with Amer modifying the most easterly driveway to accommodate the two rental units. Amer noted that they will need to install a door to the rear of the building for the new residential unit.

Board members questioned whether vehicles utilizing the driveway for the residential units would be able to turn around on site, limiting the necessity of backing out onto West Street. Amer stated that there was ample room to turn around on the property.

Amer noted that the units are connected to the West Swanzey Water Company and the public sewer system. Public hearing closed.

The criteria for granting a special exception were reviewed. It was found that the proposed use is similar to other such uses in the district; granting the variance would not reduce property values – it was suggested that property values may increase due to the proposed improvements to the property; there would be no negative impact to vehicles or pedestrians, with Board members noting that there would probably be a reduction in vehicular traffic; and adequate and appropriate facilities would be provided including water, sewer and parking.

Motion by Mitchell to grant the special exception, subject to driveway modifications being reviewed and approved by the DPW Director. Seconded by Geheran. Vote: All in favor.

4. Public Hearing (Special Exception Application) – Ideal Consolidated Services, Inc. requests a special exception from Section IV.B.2.a. to permit the construction of multi-family housing (6 buildings,

each having 2 living units therein) on property situated off Eaton Road. The property is shown at Tax Map 41, Lots 9-2 and 9-3, situated in the Residence Zoning District. The property is owned by the Jeannette Rondeau Living Trust. Board members, in conjunction with Rob Hitchcock from SVE Associates and H. Gregory Johnson felt that the site visit could be rescheduled to Monday, April 2, 2007 at 5:30 p.m., with the public hearing to continue immediately at the conclusion at Town Hall. Motion by Gregory to continue this matter without further notice to Monday, April 2, 2007 at 5:30 p.m. at a site visit, with the public hearing to continue immediately at the conclusion of the site visit at Town Hall. Seconded by Mitchell. Vote: All in favor. It was noted that the site visit is part of the public hearing process and that the public is welcome to attend.

Geheran stated that he will not be involved in this matter, as he will have an employment relationship with one of the abutters in the near future.

5. Public Hearing (Area Variance Application) – Peter Delaney, on behalf of P/L Limited Partnership, requests an area variance from Section III.M.3. to permit a boundary line adjustment to occur with property owned by Winn I. Johnson which would result in P/L's property only having 25.62 feet of frontage on a town maintained road and providing Johnson's lot with 95.72 feet of frontage. P/L's property is shown at Tax Map 57, Lot 97-1 and Johnson's property is shown at Tax Map 57, Lot 97. Both properties are located off of Railroad Street and situated in the Business Zoning District. Seated were: Beauregard, Gregory, Hutwelker, Thibault and Mitchell. Rob Hitchcock and Russ Huntley from SVE Associates were present, as well as Peter Delaney, on behalf of P/L Limited Partnership. No abutters were present. Public hearing opened.

Hitchcock reviewed the plan before the Board. Hitchcock stated that Keene Tree (KT), owned by Johnson, has accessed its property for years over property owned by P/L. Port-O-Lite (located on P/L's property) has utilized access over P/L's property from a different location than the driveway utilized by KT. Hitchcock stated that the boundary line adjustment would provided KT/Johnson with owned frontage on Railroad Street, as Map 57, Lot 97 currently does not have frontage on a Town maintained road.

Huntley noted that P/L's property also borders Cemetery Road a distance of 339 feet, noting that it is the Town's position that Cemetery Road is a Class VI road. Huntley further noted that P/L's actual curb cut is located off of Cemetery Road.

Board members questioned why the boundary line adjustment was desirable, as while it would make KT's property conforming as a rear lot, it would reduce the class V road frontage of P/L's property to 25.62 feet.

Hitchcock stated that it would provide KT with the opportunity to expand its business and to own the right of way it has utilized for years.

Huntley stated that he felt the location of the proposed boundary line adjustment was reasonable due to the fact that there is a substantial wetlands area and fire pond between the KT access way and the remainder of P/L's property. Huntley stated that the property/frontage currently utilized by KT for its right of way is essentially useless to P/L due to the division of the property by the wetland area.

Board members questioned how the VFW property (Map 57, Lot 98) relates to this application. Hitchcock stated that the VFW is currently owned by Peter Delaney (in his individual capacity). If the boundary line adjustment takes place, it was suggested that Delaney would also convey the VFW property to KT/Johnson. Huntley stated that the VFW building encroaches on the property line and, in some cases, actually is located on P/L's property. If this property is conveyed to KT/Johnson in conjunction with the boundary line adjustment, it is possible that the encroachment issues may be resolved.

Board members questioned why the adjustment does not occur at the present time, since Peter Delaney is the owner of the VFW lot and appears to have control of the P/L property. Delaney suggested that they did not wish to do this at the present time, as he has been working with KT/Johnson to convey the right of way and surrounding property to KT/Johnson.

Board members expressed concern that Johnson was not present at this meeting, noting that the decision by the Board would eventually affect Johnson's property should the boundary line adjustment take place. Carbonneau noted that should the variance be granted, the next step would be the submission of a boundary line adjustment application that would need to be signed by all parties involved.

Public hearing closed. Beauregard stated that he believed that KT had access to Prospect Street. Board members felt that this was an important avenue to pursue and the public hearing was re-opened.

Huntley noted the parcel owned by Johnson (Map 57, Lot 97), which is the subject of the proposed boundary line adjustment, does not have frontage on Prospect Street. Map 57, Lot 97 may benefit from a right of way/easement to Prospect Street. However, without further reviewing the title work, a definitive answer was not available this evening. Board members felt that information regarding potential access to Prospect Street was important when considering this matter and suggested that a continuance might be appropriate. Hutwelker stated that he would like Johnson to be present if this meeting is continued.

Motion by Beauregard to continue consideration of this matter, without further notice, to April 16, 2007 at 7:00 p.m. Seconded by Gregory. Voting in favor of the motion were Gregory, Beauregard and Hutwelker. Opposed to the motion were Mitchell and Thibault. Motion passes.

6. Public Hearing (Area Variance Application) – Mary and William Ryan request an area variance from Section III.U.6. to permit the operation of a home occupation in an existing space in excess of 300 s.f. The property is located at 129 Westport Village Road, shown at Tax Map 88, Lot 1 situated in the Residence Zoning District. William and Mary Ryan appeared before the Board. Seated were: Hutwelker, Beauregard, Thibault, Gregory and Mitchell. Geheran stepped away from the table and was seated in the audience, nothing that while he is not an abutter to the Ryans, he is a neighbor. No abutters were present. Public hearing opened.

M. Ryan reviewed the application before the Board. Ryan stated that the business will essentially be an “internet storefront,” but that they also desire a “real business” location where items may be displayed. In addition, Ryan stated that the gallery is, in essence, a staging area where items will be photographed in different settings for display on the internet.

The space will be located in the lower level of what was once a barn and will include the 12’ x 36’ gallery; a 12’ x 12’ office and lobby area; a 12’ x 12’ artist studio; a 12’ x 12’ storage area; and as 12’ x 36’ wood workshop.

Ryan stated that the only indication that a home occupation is located on site will be a sign consisting of 4 s.f. and a mail box for the business. Ryan stated that the home occupation will not change the nature of Westport village. Ryan stated that they estimate that there may be 0 to 6 customers per day coming to the site, but felt that was a high estimate.

The woodworking shop would be operated by W. Ryan. He noted that use uses only “hobby type tools.” None of the tools utilized would require 3-phase power. W. Ryan stated that they would also like to construct a small detached structure in which to apply finishes to the property. The purpose of the structure would be primarily to keep fumes out of their house, especially since they have living area above the proposed business area. It was later noted that the finishes utilized are primarily water-based products. Any combustible or flammable materials will be stored in a locked metal cabinet.

W. Ryan stated that the woodworking is typically smaller pieces, custom boxes and wood sculpture.

M. Ryan stated that one of the main reasons for requesting the variance is to be able to utilize the space for a viable purpose. Ryan noted that the structure can no longer be utilized for housing farm animals, as it has been converted to living space. In addition, Ryan noted that even it could be use for housing farm animals, there is no longer any farmland associated with the property (the parcel now consists of 1.24 acres).

Mitchell questioned whether the proposed use fell under the criteria for home occupations. Carbonneau stated that the Board of Selectmen, at the time the application is submitted to them, make a determination if the proposed use falls under the criteria. Thibault asked if this determination should be made by the Board of Selectmen first. Carbonneau stated that she felt that the Board of Selectmen would not address the application until the ZBA made a determination about the 300 s.f. limitation. Mitchell stated that he did not feel that a retail component was an appropriate part of a home occupation. Carbonneau noted that the Board of Selectmen has granted other home occupation applications with retail components, such as gift shops.

Ryan stated that she did not feel that the proposed use would negatively impact the area. She noted that there would be minimal customers coming to the site and that the majority of her business would be conducted via the internet. She also noted that if she utilized FedEx or UPS, deliveries would occur only once a day. Ryan noted that they are very close to the West Swanzey Post Office.

Geheran stated, in his capacity as an interested neighbor, that he does not have any concerns regarding this project. M. Ryan stated that she had also personally contacted the abutting property owners and that none of them expressed any concerns regarding the proposal. Geheran also noted that concerns expressed by Mitchell earlier in the meeting that this it could possibly become a “distribution center” were not feasible due to the extremely limited space for storage. Public hearing closed.

The criteria for granting the variance were reviewed. It was noted that property values would not be diminished should the variance be granted, noting that it the improvements to the property would probably increase property values. It was also noted that granting the variance would not be contrary to the public interest. Hardship was reviewed and it was noted that due to the prior modifications to the structure (converting a portion of the barn to living space), that the structure and the barn and the property were no longer suited for farm animals. It was noted that the spirit of the ordinance and substantial justice would be observed if the variance was to be granted.

Motion by Thibault to grant the area variance application subject to the following conditions:

- a. Parking spaces for the business use will be limited to 6 spaces;
- b. The outbuilding to be utilized for the application of finishes to wood will be limited to 150 s.f.; and
- c. The maximum hours of operation will be 9 a.m. to 6 p.m. seven days per week.

Motion seconded by Beauregard. Vote: All in favor.

7. Election of Officers. Beauregard nominated Hutwelker to serve as chair and Thibault to serve as vice-chair. Seconded by DeRocher. Vote: All in favor.

Motion by Gregory to adjourn. Seconded by Beauregard. Vote: All in favor. Meeting adjourned at 11:00 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner