

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES  
MARCH 20, 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.]**

The March 20, 2006 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:05 p.m. by Chair William Hutwelker. Members present: William Hutwelker, Charles Beauregard, Sr., Keith Thibault, Bob Mitchell and Jenn Gregory. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following matters were addressed:

**1. Minutes from February 13, 2006 and March 11, 2006 (site visit).**

Motion by Gregory to approve the minutes from February 13 and March 11, 2006 (site visit) as submitted. Seconded by Beauregard. Vote: All in favor.

**2. Public Hearing (Area Variance Application).** Michael and Ruth Horwitz request an area variance from Section IV.A.3. to permit the construction of a sunroom that does not meet required setbacks. The property is located at 8 Matthews Road, shown at Tax Map 40, Lot 18 situated in the Rural/Agricultural Zoning District. Michael Horwitz appeared before the Board. No abutters were present. Seated were Hutwelker, Beauregard, Mitchell and Gregory. Public hearing opened.

Board members reviewed e-mail correspondence from abutting property owners Paul and Jane Kennedy dated March 14, 2006.

In addition, Board members received a more detailed site plan from the applicant. The plan reflects that the proposed addition will be 12.5' from the property line at its closest point. Horwitz confirmed that the addition will be a 3-season room. Public hearing closed.

Board members discussed whether the Horwitzes had other options on the property for locating the proposed addition. After discussing the configuration of the property, it was decided that the location proposed was the only reasonable location for the addition.

The criteria for granting an area variance was reviewed. It was noted that the configuration of the lot is unusual, notably due to the fact that the rear boundary of the property is the State railtrail. In addition, Board members felt that the end of the house facing Sawyer's Crossing

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Road would not be a reasonable location due to the location of the chimney, bulkhead and gable end of the house, as well as having a greater impact upon the Kennedys' property. Motion by Gregory to grant the area variance owing to the special conditions of the property and that the sunroom would be built to the rear of the house toward the rail trail. Seconded by Mitchell. Vote: All in favor.

**3. Public Hearing (Special Exception Application).** Mian Swanzey Realty, LLC requests a special exception from Section V.B.2.a. to permit the construction of a gasoline station and a vehicle wash facility on property situated at 163 Monadnock Highway. The property is shown at Tax Map 19, Lot 68, situated in the Business Zoning District. Gregory steps down due to a possible conflict of interest. Seated were: Hutwelker, Beauregard and Mitchell. Rob Hitchcock from SVE Associates and Nasir Mian appeared before the Board. Abutters were present. Public hearing opened.

Hitchcock requested a continuance as the Applicant still is working out details for bringing water and sewer to the property. Motion by Beauregard to continue this matter without further notice to the April 17, 2006 meeting of the Board. Seconded by Mitchell. Vote: All in favor.

**4. Public Hearing (Special Exception Application).** Toby DeBattiste requests a special exception from Section V.B.2.a. to permit the operation of a business consisting of automobile sales on property situated at 935 West Swanzey Road. The property is shown at Tax Map 87, Lot 3, situated in the Business Zoning District. No one appeared before the Board on behalf of the Applicant. Abutters were present. Seated were Hutwelker, Thibault, Beauregard, Gregory and Mitchell. Motion by Mitchell to deny the application as the application itself was incomplete. Seconded by Beauregard. Vote: All in favor.

**5. Public Hearing (Special Exception Application).** Larry & Linda Cutter request a special exception pursuant to Section V.B.2.a. to construct a 1,152 s.f. building for an auto repair, inspection, service and sales business. The property is situated in the Business and Commercial/Industrial Zoning Districts and shown at Tax Map 73, Lot 25. The property is located at 657 West Swanzey Road and is owned by Theresa M. Kellogg. Seated were Hutwelker, Thibault, Beauregard, Gregory and Mitchell. Larry and Linda Cutter appeared before the Board. No abutters were present. Public hearing opened.

Cutter reviewed the plans before the Board. Cutter stated that he would like to construct a 32' x 36' (1,152 s.f.) garage on the property. The business will consist of automotive repair and limited sales of

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vehicles. There would be no parts vehicles on site. Cutter stated that 70% of his business would be inspections and repair and 30% would be sales of vehicles.

The existing house would remain on the premises. Cutter stated that the garage would be located further off of Route 10 than the adjacent Mr. P's store. Cutter stated that the driveway and parking areas will be gravel and that no pavement is planned. Access is currently off of California Street and will remain the same. There will be no bathroom facilities in the garage – sanitary facilities will be provided in the house. Cutter noted that the garage will be heated. There is a possibility that an outside water spigot may be installed. The interior of the building will have no plumbing.

Cutter noted that any hazardous materials will be disposed of by Sterling, as he does the fleet maintenance for the business. Cutter stated that no auto body repair would be done on site.

Board members discussed with Cutter the possibility of limiting the number of vehicles on the property for sale. It was suggested that a limit of 10 vehicles for sale would be on site at any one time. Public hearing closed.

The criteria for granting the special exception were reviewed. Motion by Mitchell to grant the special exception subject to the following conditions:

1. No parts cars shall be on the premises; and
2. A maximum of 10 vehicles for sale shall be on the site at any one time.

Seconded by Thibault. Vote: All in favor.

**6. Public Hearing (Area Variance Application).** NH Exterior, agent on behalf of Vance & Barbara McNally, requests an area variance from Section IV.B.3. to permit the construction of a garage that does not meet required setbacks. The property is located at 74 South Winchester Street, shown at Tax Map 72, Lot 42 situated in the Residence Zoning District. Seated were Hutwelker, Thibault, Beauregard, Gregory and Mitchell. Jeff Johnson from NH Exterior appeared before the Board. No abutters were present. Public hearing opened.

Johnson stated that the McNallys want to build a two car garage on the property. Due to the topography and the location of a culvert at the northerly end of the property, Johnson stated that there is no other reasonable or feasible location in which to build a garage. Johnson stated that the existing garage is not structurally sound for parking vehicles. Johnson noted that the McNallys would like to retain the existing garage for storage. The existing garage is 12' x 24' and the

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proposed new garage would be 26' x 30'. Gregory stated that she would like the Board to conduct a site visit.

Motion by Thibault to continue the public hearing without further notice to a site visit to be held on April 4, 2006 at 5:00 p.m. Seconded by Gregory. Vote: All in favor.

**7. Public Hearing (Area Variance Application).** H. Neil Berkson, Esq., agent on behalf of Edward F. Thomas and Sharron A. Thomas, requests an area variance from Section III.E. and III.M. to allow the construction and operation of the headquarters of Thomas Transportation Services, Inc. with access to Route 10 over a pre-existing deeded right of way. The property is located off Route 10 and shown at Tax Map 38, Lot 18 situated in the Commercial/Industrial Zoning District. Edward Thomas and Attorney Neil Berkson appeared before the Board. Also present were Attorney Michael Bentley on behalf of Lawrence Realty, LLC and Jeff and Eric Lawrence. Berkson and Bentley were asked if they had any opposition to Thibault being seated on this matter, as he was not at the prior public hearing. Thibault indicated that he was familiar with the site and had reviewed the prior minutes. Berkson and Bentley stated that they had no objection to Thibault being seated. Seated were Hutwelker, Thibault, Beauregard, Gregory and Mitchell. Public hearing opened.

Board members had previously received and reviewed a 7-page letter from Attorney Berkson dated March 15, 2006. Berkson briefly reviewed the letter with the Board. Berkson stated that the proposed use of the property is permitted in the Commercial/Industrial Zoning District and no use variance is required.

Carbonneau stated that she had spoken with Town counsel who provided a verbal opinion that the property was in the Commercial/Industrial Zoning District and that the proposed use is a permitted use in that district.

Berkson stated that differing opinions were issued in this matter by real estate appraisers as to whether granting the variance would diminish surrounding property values. Berkson noted that the Supreme Court held that "when an area variance is sought, the proposed project is presumed to be reasonable if it is a permitted use under the Town's applicable Zoning Ordinance." Berkson noted that the underlying Superior Court decision stated that if property values were diminished, it may be due to the nature of the permitted use and not due to the reduction in the setback requirement.

Berkson stated that the applicant meets all the requirements for granting an area variance, as well as meeting the substantive requirements pursuant to Section III.E. and III.M. of the Swansey Zoning

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Ordinance. Berkson stated that the intent of Section III.M. is to discourage developers from creating a number of lots which avoid the frontage requirement on town-maintained roads.

Berkson also addressed the position raised by Attorney Bentley at the prior public hearing that the Thomases had prior knowledge of the zoning restriction regarding owned frontage and that they were “disqualified” from seeking a variance as they had prior knowledge. Berkson noted that Loughlin in New Hampshire Practice: Land Use Planning and Zoning states that “the fact that a landowner purchases with knowledge of a particular zoning restriction does not prevent that landowner from seeking variance relief from zoning regulations affecting the property.”

Berkson reviewed the criteria for granting an area variance, as set forth in Thomases’ application.

Bentley stated that it was his position that a use variance would be required if the lot did not meet the requirements as set forth in Section VI.1.a. and VI 1.b. of the Zoning Ordinance. Attorney Bentley reviewed his position that an area variance was required, as set forth in his letter dated February 13, 2006, noting that the property does not meet the requirements as set forth in Section VI.1.a. and VI.1.b. of the Zoning Ordinance. In addition, Bentley stated that the applicant does not meet the requirements set forth in Section III.M.2. or III.M.6.

Public hearing closed.

Mitchell stated that it was his opinion that applicant did not require a use variance, only an area variance. All concurred.

Thibault stated that the regulations contained in Section III are general provisions applicable to all districts. In addition, Thibault noted that provisions III.E. and III.M. serve as “relief tools” to allow building on some pre-existing non-conforming lots. Thibault stated that he felt that the intent of the right of way was the same as a driveway, only that the underlying land is not owned by the Applicant.

The criteria for granting an area variance were reviewed. It was noted that the Applicant pursued other options in lieu of needing to obtain an area variance. Motion by Thibault to grant the area variance from Sections III.E. and III.M. Seconded by Beauregard. Vote: All in favor.

**8. Discussion.** Michael Bentley, Esq., attorney on behalf of Larry Koch, wishes to discuss the conditions of approval imposed by the Board on January 9, 2006 in conjunction with a letter received from NH DOT, District IV dated January 26, 2006. Withdrawn at the request of Attorney Bentley.

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**9. Election of Alternate Member.** Carbonneau stated that Robert DeRocher name was submitted to fill the alternate position expiring at Town Meeting 2009. Mitchell nominated DeRocher to fill the alternate position expiring at Town Meeting 2009. Seconded by Gregory. Vote: All in favor.

**10. Election of Officers –** Beauregard nominated Hutwelker to serve as Chair and Thibault to serve as Vice-Chair. Seconded by Mitchell. Vote: All in favor.

Motion by Beauregard to adjourn. Seconded by Thibault. Vote: All in favor. Meeting adjourned at 10:30 p.m.

Submitted by,

Sara H. Carbonneau  
Town Planner