

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
MARCH 15, 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 Beaugard, Sr., Bob Mitchell, Jerry Walker. Alternates John Arnone, Bob Smith, and Charles Beaugard, Jr. Town Planner Sara Carbonneau was also present.

Chairman Hutwelker called the meeting to order at 7:00 p.m. The agenda was read and the following items were addressed:

MINUTES

Motion by Walker to approve the minutes of February 8, 2010 meeting. Second by Arnone. Vote: All in favor.

1. Discussion regarding new variance application form: The Board reviewed the new form, specifically noting the changes to the hardship criteria. Hutwelker pointed out that the new application equires the applicant to specifically spell out what the "special conditions" of the property are. Thibault noted that information provided at the Municipal Law Lecture Series indicated that the area to be considered when determining special conditions is the immediate surrounding area versus those properties situated in the same zoning district but may be located some distance away.

2. (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."

Prior to the opening of the public hearing Jerry Walker stepped down as he is an abutting property owner; Bob Smith and Bob Mitchell also stepped down due to personal relationships with the parties. Walker, Smith and Mitchell took seats in the audience. Seated were Hutwelker, Thibault, Beauregard Sr., Beauregard Jr. (seated for Walker) and Arnone (seated for Mitchell).

John Coughlin, Jr. was present on behalf of the applicants. Abutting property owners Gary and Debra Davis and Jerry Walker were present. Selectman Bruce Tatro and Code Enforcement Officer James Weston were also present. Public hearing opened.

Coughlin stated that he was requesting a continuance as Attorney Hanna was unable to be present this evening, as a result of continuing side-effects from an injury which he sustained in February. Hutwelker stated that he had spoken with Hanna late last week. Hutwelker stated that Hanna had requested a continuance to either April 14 or April 28, 29 or 30. Board members asked why this could not be continued to the next regularly scheduled meeting in April (April 19th). Hutwelker informed the Board that Hanna had indicated that he was unavailable on April 19th as it is school vacation week, Hanna's wife is a teacher and that they had already made vacation plans.

Thibault and Beauregard Jr. both expressed the opinion that the materials submitted by Hanna were complete and that it would be possible to go forward with the public hearing this evening. However, Thibault also noted that due to the circumstances, the Board should seek to make reasonable accommodations.

Walker (in his capacity as an abutting property owner) expressed his opinion that the impact on abutting property owners needed to be taken into account - notably that their time was valuable and continuances were an imposition on them. Walker and D. Davis stated that Wednesdays were not available for them and expressed their preference for the public hearing to either go forward this evening or, as a second choice, to be continued to the next regularly scheduled meeting.

Motion by Beauregard Jr. to continue the public hearing without further notice to Monday, April 19, 2010 at 7:00 p.m., noting that the applicant needs to make whatever accommodations that may be required to go forward on that evening. Seconded by Thibault. Vote: All in favor.

3. (PUBLIC HEARING) VARIANCE APPLICATION

Applicant: Bruno Kosheleff

Property owner: Bruno Kosheleff

Property location: 138 Old Homestead Highway Tax Map 18, Lot 174-1

Zoning District(s): Residence & Shoreland Protection District

Request: Applicant seeks a variance from Section XI.B.1. to permit the expansion (addition of a partial second story) of a non-conforming

structure.

Seated were Hutwelker, Thibault, Beauregard Sr., Mitchell and Walker. Kosheleff appeared before the Board. No abutters were present. Public hearing opened.

Carbonneau stated that while the public notice indicated that a variance was also sought from Section XI.C.1., she had determined that a variance was not required from this section. Carbonneau stated that she had spoken with Jay Aube at NH-DES who informed her that relief was not required from NH-DES pursuant to the shoreland protection act (RSA 483-B), as the applicant was not expanding the footprint and was not increasing loading on a septic system (as this property is connected to public sewer). Since relief will not be required from NH-DES pursuant to RSA 483-B, a variance would not be required from Section XI.C.1.

Board members were provided with a copy of Carbonneau's ZBA Application Summary dated March 10, 2010, noting that the property is connected to public water and public sewer. Carbonneau also provided the Board with a copy of a letter from abutting property owner Rachel Elkins, who expressed her support for the application.

Kosheleff stated that he wished to add a partial second story to the existing structure. The addition would be 185 s.f.; however 135 s.f. would be "useable" space - the remainder would be the stairway and landing. Kosheleff stated that the addition was modest, but would greatly increase his use of the property, allowing for a second bedroom.

Thibault stated that he had viewed the property and the neighborhood. Thibault noted that this property is substantially different from the surrounding properties, noting that the property is a single story structure; the structure has no basement; the structure is substantially smaller than most in the area; the topography of the lot is two-tiered; and the lot itself has a different configuration than the other lots in the area - all of the characteristics differentiate this property from others in the area.

Thibault noted that the Town requires a 540 s.f. footprint for a single family dwelling. While the proposal would not increase the footprint, it would add cubic volume, making the structure more similar to others in the area. Thibault noted that adding a second story would also have minimum impact, due to the lower grade of the existing structure versus those in the area. Public hearing closed.

Board members discussed the special conditions of the property and concurred that with Thibault's comments raised during the public hearing. The Board reviewed the criteria for granting a variance as follows:

1. Could the variance be granted without being contrary to the public interest?

Members agreed in the affirmative.

2. Would the spirit of the ordinance be observed if the variance were granted?

Members agreed in the affirmative.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative.

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

Members agreed in the affirmative.

5. Do special condition of the property exist that distinguish it from other properties in the area?

Members agreed that there were special conditions of the property - conditions specific to the physical aspects of the site included small lot size, configuration of the lot, and topography of the lot. Board members also noted that there were characteristics of the structure that were different from other structures in the area, which were more fully described by Thibault earlier in the hearing.

5.A.i. Owing to the special conditions of the property that distinguish it from other property in the area, there is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application of the provision to the property?

Members agreed in the affirmative.

And

5.A.ii. Is the proposed use a reasonable one?

Members agreed in the affirmative.

Since criteria 5.A.i. and 5.A.ii. were met, the Board did not need to consider criteria 5.B. as follows: Owing to the special conditions of the property that distinguish it from other properties in the area the property cannot be reasonably used in strict conformance with the ordinance, and a variance is necessary to enable a reasonable use of the property.

Motion by Thibault to approve the variance from Section XI.B.1. to permit the expansion (addition of a partial second story) of a non-conforming structure. Second by Walker. All in favor.

4. Election of Officers

Mitchell nominated Hutwelker to serve as Chair and Thibault to serve as Vice-Chair. Seconded: Beaugard. Vote: All in favor.

ADJOURNMENT

Motion by Beaugard to adjourn. Second by Smith. All in favor. The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Sara H. Carbonneau
Town Planner