

**SWANZEY ZONING BOARD OF ADJUSTMENT
MARCH 17, 2008**

[Note: Minutes are not final until reviewed and approved by the Board. Review and approval generally takes place at the next regularly scheduled meeting of the Board.]

The March 17, 2008 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:05 p.m. by Chair Bill Hutwelker. Members present: Bill Hutwelker, Charles Beaugard, Sr., Bob Mitchell, Jenn Gregory and alternates Bob DeRocher and Bryan Rudgers. Later in the evening Bob Smith was elected as an alternate member (term to expire at Town Meeting 2011) and was seated at the table. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read, noting that election of officers would take place at the end of the meeting, and the following matters were addressed:

- 1. Minutes from February 11, 2008** – Motion by Beaugard to approve the minutes from February 11, 2008 as submitted. Seconded by Mitchell. Vote: All in favor.

- 2. Minutes from February 16, 2008** – Motion by Rudgers to approve the minutes from February 16, 2008 as submitted. Seconded by Gregory. Vote: All in favor, with Beaugard abstaining.

- 3. Appointment of alternate members** – Hutwelker noted that there are two alternate member positions vacant, with terms expiring at Town Meeting 2011. Bob Smith was the only nominee. Motion by Beaugard to appoint Smith as an alternate member, term to expire at Town Meeting 2011. Seconded by DeRocher. Vote: All in favor. Smith was sworn in by Selectman Carlson.

- 4. (Public Hearing) Appeal from an Administrative Decision** – Heidi and Brian Wheeler challenge a determination rendered on January 16, 2008 by Swanzey's Board of Selectmen denying their application for a home occupation consisting of automotive service and repair. The property is situated at 576 Swanzey Lake Road. The property is shown at Tax Map 61, Lot 2-3 situated in the Rural/Agricultural Zoning District. Seated were: Hutwelker, Beaugard, Gregory, Mitchell and

Smith (for Keith Thibault). Abutting property owners were present. Heidi and Brian Wheeler appeared before the Board.

Prior to opening the public hearing, Hutwelker inquired if Board members had been contacted by B. Wheeler. Board members indicated that they had, but did not discuss the case with Wheeler, nor did they visit the property. Public hearing opened.

H. Wheeler made the presentation to the Board. Wheeler stated that the garage has been in operation for approximately two years. Prior to operating, Wheeler stated that they had contacted town hall and were informed that home occupations were permitted in Town. Wheeler stated that they did not know who they spoke to at Town Hall. Wheeler stated that they did not know that approvals from the Board of Selectmen and the Planning Board were required in order to operate a home occupation. Wheeler stated that it was not until they received a letter from Code Enforcement Officer Weston did they realize that they were in violation of the Town's zoning ordinance.

Wheeler stated that she felt that the use, as it has been operating, met the requirements and intent of the home occupation ordinance. She stated that while they have been operating for a couple of years, many of their neighbors did not know that the business was in existence. Wheeler stated that they do not have any signs on the road indicating that the business is located on the property. Wheeler noted that they are very sensitive to any potential environmental concerns as the business is located on the same lot as their residence and well.

Wheeler noted that the business is located in an out-building and that out-buildings are considered on a case by case basis for home occupations. In addition, Wheeler stated that the ordinance does not preclude automotive repair from being a home occupation, while it does preclude doctors, dentists and veterinarians. Wheeler stated that Section III.U.9. of the zoning ordinance anticipates automotive use as it talks about "vehicles permitted to be stored outside."

Wheeler noted that Brian Wheeler is the sole employee of the business. Also, during 2007 the business generated 248 invoices, less than 1 per day during the calendar year.

Wheeler stated that by operating the business from their residential property costs can be contained. Wheeler noted that they would, in all likelihood, not be able to operate this business off-site due to the overhead.

Wheeler stated that they did not have an opportunity to present their case to the Board of Selectmen. Carbonneau stated that the meeting where the Board of Selectmen made their determination was a public meeting and not a public hearing. Selectman Nancy Carlson was present and stated that the Board of Selectmen makes their determination based on the type of the proposed use. Carlson noted that the way a particular business operates does not have any bearing on the

Board of Selectmen's determination as to whether or not the proposed use qualifies as a home occupation.

Hutwelker stated that the Town's zoning ordinance is permissive and that the only uses allowed are those set forth by the ordinance.

Selectman Carlson stated that the Town denied another home occupation within the past year or so that dealt with engine repair. However, Wheeler noted that a machine shop with similar by-products to automotive use had been approved (citing the home occupation request by Christopher Ballas). Public hearing closed.

Hutwelker stated that the Town's ordinance is a permissive ordinance and does not contemplate automotive repair and automotive maintenance as permitted uses within the home occupation regulations. Mitchell stated that automotive repair and maintenance is only allowed in certain districts and within the Business District is only permitted after the granting of a special exception.

Motion by Mitchell to deny the appeal from the administrative decision, stating that the ordinance does not contemplate automotive repair and/or automotive maintenance as a home occupation. Mitchell further added to his motion that automotive repair and/or automotive maintenance is permitted only in districts that permit higher and more intense uses and that automotive repair and/or automotive maintenance is only permitted by special exception in the Business District. Seconded by Gregory. Voting in favor of the motion were: Hutwelker, Gregory, Mitchell and Smith. Opposed to the motion was Beauregard. Motion carried.

5. (Public Hearing) Special Exception and Area Variance

Applications – Southwestern Community Services (SCS) requests a special exception pursuant to Section V.B.2.b. to construct multi-family housing (38 dwelling units contained within 1 building) and an area variance from Section III.Q.1. (to permit 44 parking spaces where 76 spaces are required). The property is situated in the Business Zoning District and is shown as a portion of Tax Map 19, Lot 66. The property is located off 183 Monadnock Highway and is owned by Sandra Page. Continued from February 16, 2008 site visit/public hearing. Rob Hitchcock from SVE Associates and Darren Duffy from SCS appeared before the Board. Abutters were present. Seated were: Rudgers, Gregory, Beauregard, Mitchell and Hutwelker. Public hearing on the special exception application opened.

Hitchcock stated that there has been a minor change to the plan, noting that the subdivision plan had been revised to eliminate the "rear lot" (i.e. both lots would have at least the minimum road frontage required pursuant to the ordinance).

Duffy informed the Board that he had made a mistake at the February 11th meeting where he stated that the housing would be restricted to those 55 year of age or older. Duffy stated that the correct

age restriction is that the head of household must be 62 years or older and that the second person in residence may be of any age. Duffy noted that the units were all one bedroom units and limited in occupancy to two people. In addition, he noted 80% of the residents in this type of complex are single.

Stephanie Boucher of 47 Mt. Huggins Drive inquired if grandparents could have their grandchildren live with them. While Duffy acknowledged this was a possibility, he also stated that it was a very remote possibility due to the units being only one bedroom. Duffy also noted that whoever resides in the units must be listed on the lease.

David Beliveau of 54 Mt. Huggins Drive expressed concerns about payments in lieu of taxes and whether it was right that there was the possibility that the units could contain children but the property owner was not required to pay the school portion of taxes. Hutwelker stated that these types of concerns could not be discussed by the ZBA.

Smith expressed concerns about the lack of sidewalks in the area, noting that he did not feel that it was safe for residents to walk down Route 12 in order to buy a newspaper, etc. Duffy stated that while there are some projects that have amenities such as grocery stores, banks, health care that are accessible by walking (such as the senior housing in Winchester), many projects do not. Duffy stated that in areas that are more "remote," residents who do not have cars will rely upon neighbors, family and transportation services as required.

Gregory stated that she was concerned about the location and the lack of amenities located within walking distance. Mitchell stated that it was his opinion that seniors were more likely to drive long after they had lost the ability to walk long distances. Duffy stated that tenants are aware of the amenities (or lack thereof) when they apply for residency in the project. Duffy also stated that some tenants would prefer a more rural setting versus being in a project in the middle of an urban area.

S. Boucher stated that she had serious concerns about drivers attempting to turn left out of the project to head north on Route 12. Beauregard stated that, as someone who travels Route 12 on a regular basis, "you have to know when to head out." Rudgers stated that a major issue contributing to traffic problems on Route 12 is the lack of enforcement of the speed limits.

Gregory questioned whether the proposed access drive would be paved. Duffy stated that it would be. Gregory stated that the proposed driveway easement provided this evening indicates a gravel drive. Duffy stated that was incorrect. Hutwelker expressed his dissatisfaction that the driveway easement was a draft that had not been reviewed by Town counsel and that it contained such a glaring mistake. Public hearing closed.

Board members reviewed the criteria for granting a special exception. It was noted that the exception was allowed pursuant to the zoning ordinance. Board members felt that it was similar to other uses

permitted in the business district. However, Board members were divided as to whether or not it was situated in an appropriate location. Board members all agreed that the special exception could be granted without reducing the value of any property within the district, or otherwise be injurious, obnoxious or offensive to the neighborhood. Board members were split as to whether or not there would be a nuisance of serious hazard to vehicles or pedestrians. Board members all agreed that adequate and appropriate facilities could be provided for the proper operation of the proposed use.

Motion by Mitchell to grant the special exception as the criteria for granting the special exception had been met, subject to the condition that a driveway easement that has been reviewed and approved by Town counsel is executed. Seconded by Rudgers. Vote in favor of the motion: Mitchell, Rudgers and Beauregard. Opposed: Gregory and Hutwelker. Motion passes.

Public hearing on the variance application was opened by Hutwelker. Seated were: Hutwelker, Gregory, Mitchell, Beauregard and Rudgers. Hitchcock stated that SCS was requesting a reduction in the number of required parking spaces, from 76 to 44. Hitchcock stated that based on SCS's prior experience with similar building projects, two spaces per unit was not necessary. Hitchcock also provided information from Keene, Concord and Manchester indicating that one parking space per unit of elderly housing was required by their regulations. Hitchcock stated that an additional benefit of reducing the number of parking spaces would be the lessened impact on the property vis a vis tree clearing, fill and reduced impervious surface area. Hitchcock also acknowledged that the project cost would be reduced.

Hitchcock reviewed the criteria for granting the variance. He noted that there would be no diminution of property values if the variance was granted nor would it negatively impact any abutting properties. Hitchcock stated that granting the variance would not be contrary to the public interest and stated that he felt that granting the variance would be within the public interest as the reduced size of the parking area would have less of an impact on the site.

Questions regarding snow storage were raised. Hitchcock stated there are adequate areas for snow storage without taking up parking spaces.

Duffy stated that the rules of occupancy, as would pertain to this project, permit only one vehicle per family. Public hearing closed.

The criteria for granting the area variance were reviewed. Board members felt that all of the criteria were met. Motion by Beauregard to grant the area variance to reduce the number of parking spaces to 44 subject to receipt of the SCS tenant rules. Seconded by Rudgers. Vote: All in favor.

6. Election of Officers. Motion by Mitchell to retain the same slate of officers for the upcoming year (Hutwelker, Chair; Thibault, Vice Chair). Seconded by Beauregard. Vote: All in favor.

Motion by Gregory to adjourn. Seconded by Mitchell. Vote: All in favor.
Meeting adjourned at 9:15 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner