

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
APRIL 18, 2011**

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 (assumed the chair at 8:44); Keith Thibault, Vice Chair; Charles Beauregard, Sr., Bob Mitchell, Jerry Walker. Alternates John Arnone, Bryan Rudgers, Charles R. Beauregard, Jr. Town Planner Sara Carbonneau also was present, as were alternate position nominees Sara Tatro and Jim Vitous.

Vice Chairman Thibault called the meeting to order at 7:00.

MINUTES

Motion by Beauregard, Sr. to approve the minutes of the March 21, 2011 meeting. Second by Walker. All in favor.

1. (Public Hearing) Variance

Applicant: Michael Piermarini

Property owner: Michael Piermarini

Property location: 841 West Swanzey Rd Tax Map 71, Lot 14

Zoning District(s): Business

Request: Variance from Section V.B.3. to permit the construction of a shed that does not meet required setbacks.

Members seated: Thibault, Beauregard, Sr., Mitchell, Walker. Rudgers was seated for Hutwelker.

Representing the application: Michael Piermarini

Abutters present: none

Vice Chairman Thibault called the public hearing to order at 7:05.

DISCUSSION

Members received an April 11, 2011 application summary from Town Planner Carbonneau.

Piermarini said that he bought the property in 2004, and now needs a place to store garden implements and firewood, thereby freeing up space in cellar. Piermarini said that there is no place to put the shed on his lot that would be in accordance with the zoning ordinance. Furthermore, Piermarini said, his neighbor would object to having the shed located near their shared lot line. The proposed shed would be 12' x 12' and would be constructed on sonotube posts. Board members and Piermarini discussed the site at length, and decided that a site walk would help to clarify the site's layout and limitations. Members scheduled a site walk for 6:00 p.m. on Monday, May 16, with the intention of

continuing the public hearing shortly after 7:00 p.m., at the regular ZBA meeting.

Motion by Rudgers to continue the public hearing until May 16. Second by Walker. All in favor.

2. (Public Hearing) Variance

Applicant: Mian Swanzey Realty, LLC

Property owner: Mian Swanzey Realty, LLC

Property location: 163 Monadnock Highway Tax Map 19, Lot 68

Zoning District(s): Business

Request: Variance from Section V.B.3. to permit the construction of a car wash, gas pumps, canopy and sign that do not meet required setbacks.

Members seated: Beauregard, Sr., Mitchell, Walker. Rudgers was seated for Hutwelker; Arnone was seated for Thibault, who recused himself due to a potential conflict of interest and left the table. Mitchell assumed the chair.

Representing the application: Nasir Mian

Abutters present: Paul Tierney, Susan Tierney, Patricia Forsyth, Gordon and Jean Tacy, Eleanor Goodrich

Mitchell called the public hearing to order at 7:26.

DISCUSSION

Members received an April 11, 2011 application summary from Town Planner Carbonneau. Carbonneau stated that the ZBA had granted a special exception on May 15, 2006 to permit the construction of a gas station and vehicle wash facility, subject to the condition that a right turn lane in the southbound direction of Route 12 be installed. Carbonneau said that the applicant had submitted but subsequently withdrawn an application for site plan review. In 2006, as today, said Carbonneau, a gas station or car wash requires a special exception. Carbonneau said that the property has access to public water and sewer via the North Swanzey Water Precinct, although the property currently is not connected to these systems. Carbonneau said that the hearing notice had been posted within the legal requirement of five business days, and said that focus of the evening's discussion was on the requested setback variance.

Mian distributed photographs depicting the grade of the property, and said he requests a variance because of the shape and slope of the lot. Mian said that the front portion of the lot is level with the highway, and the rear portion has about a 20' drop in elevation. Mian said that the proposed pumps, canopy and sign would be located about 35' from the front property line, and the building would be located about 95' from the front property line; the car wash at the rear of the building would be accessed by a drive that provides room for stacking of vehicles. Mian said that curb cut locations had been identified by the State to maximize sight distance. Board members and abutters reviewed the site plan and photographs.

P. Tierney asked general questions about the original site plan, and determined that the gas station would be about 120' from his property, with the car wash between 40' and 60' further. Mian said that a buffer would protect against light; however, the final configuration of the buffer would be determined during the site plan review process by the Planning Board. Mitchell advised

abutters that the ZBA already had approved a special exception for the use as a gas station and vehicle wash facility.

Forsyth asked whether State and Federal approvals had been granted. Carbonneau said that the applicant had obtained ZBA approval, but had not completed the site plan review process before the Planning Board. Between 2006 and 2011 Town voters had approved a change in setback distance that applies to the application now under consideration, eliminating structures in the 30' to 75' setback area. (In the Business District, "all buildings and structures shall be located 75 feet from the front property line. The front setback for everything except buildings and structures is 30 feet." [V.B.3.]) Carbonneau said that NH-DES requires a permit to install fuel storage tanks, and that such permit has not yet been obtained. In addition, should a wetlands permit be required, Carbonneau said, the Swanzey Conservation Commission would review the application on behalf of the Town, and members of the public would have additional opportunity to express opinions and concerns at that time.

Goodrich asked how close the proposed pumps would be to the highway. Mian stated that the pumps would be 36' from the front property line.

Tierney asked whether the plans for the originally proposed hotel were "null and gone." Mian said that the economy does not justify the hotel, which has been removed from the plan.

Other concerns from abutters included the grade of Route 12 in the vicinity of the proposal (the danger of winter ice; the noise of jake brakes), traffic flow into and out of the property, the location of a diesel fuel pump, the impact of noise and lighting on residential abutters, drainage, and potential for contamination of Wilson Pond

Mitchell said that a 2006 traffic study addressed some of these issues, and reminded those present that the Planning Board would have to approve whatever is built on the site. Mitchell said that a permit from NH-DES would be required should the proposal generate any impacts on wetlands. Mian said that a fence will separate the property from neighbors. Mitchell read e-mail correspondence relating to the proposal from Frank G. Underwood and Gordon & Jean Tacy.

Speaking from the audience as a member of the public, Hutwelker said that he strongly encouraged the Board to deny the application. Hutwelker said that circumstances have changed, and the Board should not feel obligated based on approval of the 2006 special exception, because Mian had not proceeded to request site plan approval from the Planning Board. Hutwelker said that the area had changed, with completion of Southwest Community Service's senior housing project. Hutwelker said that there was no rational basis for granting relief on this parcel, and said that voters clearly expressed support for the amended setback. Hutwelker expressed regret that Swanzey ZBA decisions lack a "sunset" clause.

Hutwelker asked whether the business could exist without the variance, by using the property in an alternative way. Mian said that the proposed layout is the most appropriate, factoring in the traffic study's recommendations for safety on the site; furthermore, it would not be economically justifiable to fill the northern portion of the lot to the degree that would be necessary to re-locate the gas pumps to this area.

Goodrich stated that she opposes granting the variance because, in her opinion, many other types of businesses would generate less traffic and not affect the wetlands. Goodrich wished the applicant success in other endeavors.

Mian said that traffic counts have changed less than 1% since 2006, and said that the senior housing project has not generated any change that affects traffic counts at his property. Mian said that his proposal would comply with all State and federal requirements, such as double-walled tanks, double- or triple-walled piping, monitoring systems, etc. Mian said that the project would be environmentally safe, would create jobs, would be a good use of the property, would improve on existing conditions, and would not be detrimental to abutters.

Hearing no further comments or questions, Mitchell closed the public hearing at 8:28.

Board members discussed the potential impact on Route 12 (a “gateway to Swanzey,” according to Arnone) of locating the proposed structures within the setback. Members discussed public comments received at the meeting. Members agreed that much time had elapsed since the ZBA’s 2006 approval of the special exception, and discussed the voter-endorsed zoning amendments that had taken place during those years. Mitchell said that changing the grade of the relatively large lot might open up alternatives for locating the structures.

Members reviewed the criteria for granting the requested variance.

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

Based on their prior discussion, members agreed that the variance could not be granted without the proposed use being contrary to the public interest.

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

Members agreed that spirit of the ordinance would not be observed.

3. Would granting the variance do substantial justice?

Members agreed that granting the variance would not do substantial justice.

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

Given a lack of objective testimony, members agreed it would be hard to determine whether the variance could be granted without diminishing surrounding property values. ZBA opinion was divided on this question.

5. Do special conditions of the property distinguish it from other properties in the area?:

Members agreed that special conditions do exist, but not ones that distinguish the property from other north Swanzey properties, per se. ZBA opinion was divided on this question.

A. Owing to the property’s distinguishing special conditions,

(i) Is there a fair and substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative.

AND

(ii) Is the proposed use a reasonable one?

Members agreed a gas station is a reasonable use for the Business District.

Motion by Arnone to deny the variance from Section V.B.3. to permit the construction of a car wash, gas pumps, canopy and sign that do not meet required setbacks. Second by Walker. All in favor.

Thibault returned to the table.

3. Election of Alternate Members – two positions available, with terms to expire at Town Meeting 2013 and Town Meeting 2014. Two nominees as of April 11, 2011 (Jim Vitous and Sarah Tatro). Board members agreed to defer consideration of this item until the end of the meeting.

Hutwelker assumed the chair at 8:44. Tatro and Board members discussed differences in approach between the Planning Board and ZBA. **Motion** by Beauregard, Sr. to nominate Tatro to fill the term that will expire at Town Meeting 2013. Second by Beauregard, Jr. All in favor.

In response to questions from the Board, Vitous explained that now-resolved personal reasons had caused him to resign from his former position as alternate. **Motion** by Mitchell to nominate Vitous to fill the term that will expire at Town Meeting 2014. Second by Arnone. All in favor.

4. Other matters as may be required

A “sunset” clause for ZBA decisions; active and substantial development Board members and Carbonneau discussed advantages and disadvantages, as well as possible mechanisms for imposing a deadline for executing approved proposals. Carbonneau said that she will research whether such a deadline would have to be a part of the ordinance, or could be enacted through the Board’s rules of procedure. As an alternative, Board members discussed imposing deadlines on a case-by-case basis.

Members also discussed and clarified the definition of “active and substantial development.”

Indemnification Walker raised the issue of Board members being sued, individually, as a result of their actions on the ZBA. Those present discussed legal representation, as well as umbrella (personal) liability insurance policies. Carbonneau will speak with Town Administrator Fox for additional information.

ADJOURNMENT

Motion by Beauregard, Sr. to adjourn. Second by Beauregard, Jr. All in favor. The meeting adjourned at 9.32 p.m.

Respectfully submitted,

Victoria Reck Barlow
Recording Secretary