SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
NOVEMBER 20, 2006

[Note: Minutes are not final until reviewed and approved by the Board. Review and approval on 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, Keith Thibault, Bob Mitchell, Charles Beauregard, Sr. and alternate Bob DeRocher. DeRocher was seated for Jenn Gregory. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following items were addressed:

1. Minutes from October 16, 2006. Carbonneau noted that the minutes should be amended to reflect that the Board requested that Robyn Lane Romano provide a draft agreement regarding driveway maintenance. Motion by Beauregard to approve the minutes from October 16, 2006 as amended. Seconded by Thibault. Vote: All in favor.

2. Public Hearing (Application for Area Variances). Gail Guyette requests an area variance from Section IV.A.3. and from III.X. in order to create a new lot in the Rural/Agricultural Zoning District that does not contain 3 acres of upland soils and does not have the required 225 feet of road frontage. The property is located off Route 32 and Hale Hill Road, shown at Tax Map 9, Lot 7. **This application has been withdrawn at the request of the applicant.**

3. Public Hearing (Application for Variances). Kenneth & Joyce St. Lawrence request a variance from Section V.B. to permit an existing building situated on property located at 51 Pine Street to be used as a residence (there is currently an existing residential use on the property) and from Section VII.E.2. to permit the construction of a septic system that does not meet setbacks from wetlands. The property is shown at Tax Map 57, Lot 128 situated in the Business Zoning District. **This application has been withdrawn at the request of the applicant.**

4. Public Hearing (Application for Variance). Robyn Romano requests a variance from Section III.M.5. to permit more than one structure to utilize the access to a rear lot. The property is located off CL Lane and shown at

Tax Map 13, Lot 7 situated in the Rural/Agricultural and Residence Zoning Districts. Robyn Romano appeared before the Board. No abutters were present. Public hearing opened.

Romano provided the Board with copies of revised house plans, a letter from DPW Director Dunham stating his approval regarding the shared driveway and a proposed agreement regarding the shared driveway. Public hearing closed.

The criteria for granting the use variance request were reviewed. It was found that there would be no diminution in surrounding property values; granting the variance would not be contrary to the public interest, would observe the spirit of the ordinance and would do substantial justice; and denial of the variance would result in unnecessary hardship. It was noted the driveway already exists and serves the current house. In addition, the DPW Director supported the decision to grant the variance. Motion by Thibault to grant the use variance permitting two residences to utilize the access serving a rear lot. Seconded by DeRocher. Vote: All in favor.

5. Public Hearing (Application for Special Exception). Still Brothers Contracting, Inc. requests a special exception from Section V.B.2.e. to remove the existing mobile home and to permit the construction of a one-family dwelling on property situated at 12 Pasture Road. The property is shown at Tax Map 18, Lot 89, situated in the Business Zoning District. The property is owned by Alexander D. Gemmell, Trustee. Jonah Ketola appeared on behalf of Still Brothers Contracting, Inc. No abutters were present. Thibault assumed the role of Chair for this matter. Public hearing opened.

Ketola reviewed the plan before the Board, noting that the existing mobile home on the property will be removed and a new two-story house will be constructed on the site. Ketola stated that the new house will be no closer to the property lines than the existing mobile home. Ketola noted that the property is served by both public water and sewer.

Thibault explained that the property is situated in the Business Zoning District and that it is possible that additional commercial development could occur in the area. Ketola stated that he was aware of that fact.

Ketola noted that a future property owner may want to construct a garage on the premises. The Board informed him that the property owner will need to come back before the ZBA in the event that the garage does not meet required setbacks; noting that if the special exception application is granted, the use of the premises as a residence becomes a permitted use and a garage can be added (assuming all other zoning regulations are met). Public hearing closed.

The criteria for granting a special exception were reviewed. It was specifically noted that the applicant was seeking permission to replace an existing mobile home with a new stick built home on the property and would not encroach any further on setbacks. Motion by DeRocher to

grant the special exception application. Seconded by Beauregard. Vote: All in favor.

6. Public Hearing (Application for Special Exception). Laszlo Kovacs requests a special exception from Section V.B.2.e. to allow the existing one-family dwelling to be considered a permitted use and to permit a carport to be constructed on the premises. The property is situated at 130 South Winchester Street, shown at Tax Map 72, Lot 48 situated in the Business Zoning District. Laszlo Kovacs appeared before the Board. No abutters were present. Thibault assumed the role of Chair for this matter. Public hearing opened.

Kovacs stated that he would like to construct a carport on his property, noting that the existing structures as well as the proposed carport would meet all setback requirements. Since the property is located in the Business Zoning District, he is seeking a special exception to establish the residential use of the property as a permitted use.

Thibault explained that the property is situated in the Business Zoning District and that it is possible that additional commercial development could occur in the area. Kovacs stated that he was aware of that fact. Public hearing closed.

The criteria for granting the special exception application were reviewed. It was noted that the house has been in existence since the 1950s and meets all setbacks. Motion by Beauregard to grant the special exception application. Seconded by Mitchell. Vote: All in favor.

7. Public Hearing (Application for Area Variance). Lawrence Alley, Jr. requests an area variance from Section XI.B.2.to permit the construction of an addition onto an existing non-conforming structure. The property is located at 19 West Street shown at Tax Map 57, Lot 8 situated in the Residence Zoning District. Lawrence Alley, Jr. was not present, but had informed Code Enforcement Officer Jim Weston that he wished the Board to address his application in his absence. No abutters were present. Hutwelker resumed the position of Chair and for the remainder of the meeting. Public hearing opened.

Carbonneau reviewed the application, noting that the proposed addition will meet all setback requirements. However, the existing porch on the existing house does not meet setbacks. Therefore, a variance is required to expand a non-conforming structure. Public hearing closed.

The criteria for granting an area variance were reviewed. It was noted that the proposed addition will meet all setback requirements. Motion by Beauregard to grant the area variance application. Seconded by Mitchell. Vote: All in favor.

8. Public Hearing Re "Application to Amend Condition of Approval Regarding Special Exception Granted on January 9, 2006," submitted by Larry F. Koch. The applicant seeks to amend Condition 2

of the Zoning Board of Adjustment's approval dated January 9, 2006 by permitting Tax Map 79, Lot 6-4 to connect to the existing sewer main which runs through the lot. The property is located off Owen's Drive and is situated in the Rural/Agricultural Zoning District. Attorney Michael Bentley appeared before the Board on behalf of Larry Koch. Interested citizens Lorraine Stoddard, Victoria Barlow and Bruce Barlow were present. Public hearing opened.

Bentley stated that Koch was seeking permission to connect to the existing sewer main which runs through Tax Map 79, Lot 6-4 to serve a new house to be constructed on Map 79, Lot 6-4. Bentley noted that Lot 6-4 was created after the ZBA established the condition on January 9, 2006 regarding further connections to the sewer system.

Bentley stated that it was his understanding that a stub serving this lot was installed approximately 13 years ago and provided a photograph of the site. (This photograph was returned to Attorney Bentley at the end of the meeting at his request. Carbonneau asked that a copy be provided to the Town for the record.)

Bentley noted that when the ZBA imposed the condition that "no additional sewer hook-ups above and beyond the 72 condominium units proposed will be permitted to be connected to the California Brook Estates and/or the proposed project's sewer system," Koch's existing house was already connected to the sewer system. Bentley also represented that the stub that would serve Map 79, Lot 6-4 was already in existence. Bentley acknowledged that the stub was not mentioned nor was the concept of a possible subdivision creating Lot 6-4 mentioned during the public hearings regarding the condominium project. Bentley stated that he was not aware on January 9, 2006 that his client was considering subdividing the property to create Lot 6-4. Board members noted that the Planning Board approved the subdivision creating Lot 6-4 in April 2006, also noting that plan was drafted in March 2006.

Bentley stated that it was his client's understanding that the intent of the Condition 2 was to prohibit further sewer connections past or beyond the condominium project, specifically northerly and westerly of the Forest View Estates project.

Bentley stated that the sewer system has more than sufficient capacity to handle one additional lot and that by allowing the connection, it would alleviate the need to install a septic system which could potentially fail. Bentley also stated that should the Board not grant the requested relief, Lot 6-4 would possibly be the only lot in town with a sewer line running through it, but not connected to the line.

Board members and Bentley were provided a letter dated November 20, 2006 from Victoria Barlow expressing her opinion that Koch's request should be denied. V. Barlow stated that nothing has changed since January 9, 2006 to justify the granting of the pending application to amend the conditions.

Bentley stated that he did not feel that this was an "unplanned sewer expansion," as described in Barlow's letter. Bentley stated that the line is already present and that there was no possibility for additional connections between this lot and Forest View Estates. Beauregard stated that he did not feel that this was an expansion, as the line already exists. Beauregard also noted that connecting to the sewer system would minimize the chance of pollution. Barlow disagreed, noting that the condition of the existing system is virtually unknown.

Hutwelker noted that if the Board grants this request, there may be a good argument for granting a future application to construct multi-family housing on the premises, as the lot would be served by a sewer system and that it already abuts multi-family housing.

Hutwelker informed the Board that it should be very judicious in considering whether to grant the request to amend the conditions. Hutwelker questioned what was different now versus what the situation was in January 2006 when the conditions were established. Bentley stated that the subdivision was not contemplated in January 2006. Hutwelker noted that the applicant is able to meet the conditions established in January 2006 and is also able to construct a house on Lot 6-4, as the NH-DES has already granted an approval for construction for a septic system on that lot.

Carbonneau noted that Town counsel stated that the applicant does have the right to file a motion to amend the conditions. She also stated that Town counsel provided an example where amending conditions might be appropriate – such as, the approval stated that water could be transported from the property in 8,000 gallon tanks. However, years later 8,000 gallon tanks are no longer manufactured.

Hutwelker and DeRocher both noted that they found it difficult to believe that Koch simply forget to mention the existing stub and did not mention the contemplated subdivision. Hutwelker stated that it was his opinion that the ZBA should not amend the conditions of the approval, as there was no compelling reason to do so. Public hearing closed.

Mitchell stated that it was important that the conditions established by the Board have "teeth and are enduring." DeRocher and Mitchell agreed that conditions should only be amended when compelling reasons are present.

Beauregard stated that he felt that granting the request would be the best course of action, as it would allow a structure to be constructed on the lot without the fear of a septic system failing.

Thibault noted that if the lot is connected to public sewer it would provide the opportunity for the construction of multi-family housing in the event that the zoning is changed to allow for multi-family housing in the district.

Hutwelker stated that he felt that Koch's assertion that the intent of the condition only related to his property located northerly and westerly of the condominium project was incorrect. Hutwelker noted

that at the time the condition was placed, multi-family housing was permitted in the district with virtually unlimited density if the lot was connected to public sewer and it was the Board's intent to prohibit any additional sewer connections other than those required for the condominium project.

Motion by Hutwelker to deny Koch's request to amend Condition 2 of the Zoning Board of Adjustment's approval dated January 9, 2006, specifically seeking permission to connect Tax Map 79, Lot 6-4 to the existing sewer main which runs through the lot. Seconded by Mitchell. Voting in favor of Hutwelker's motion to deny Koch's request: Hutwelker, Mitchell and DeRocher. Voting against Hutwelker's motion to deny Koch's request: Beauregard and Thibault. Motion carried.

9. Request for Rehearing – Gail Davis and Mark Desilets request that the Board grant a rehearing of the decision rendered in re: Application of David Roy for Variance and Special Exception; said decision granted on September 18, 2006. The property is situated at 49 Spring Street and shown at Tax Map 57, Lot 72.

Board members reviewed materials submitted by Attorney Little on behalf of Davis and Desilets, as well as an objection to Little's request submitted by Attorney J.R. Davis on behalf of David Roy.

Carbonneau noted that the request for rehearing was submitted in a timely manner, meeting the requirements of the statute.

Board members addressed the special exception application first. Mitchell stated that Little's Application for rehearing did not raise any new information that was not presented during the public hearing. Mitchell also stated that he did not feel that the Board had made any errors that needed to be corrected. Mitchell noted that the Board had the benefit of counsel. DeRocher agreed with Mitchell. Beauregard concurred that Little did not provide any new information nor did he feel that the Board erred in its decision.

Hutwelker stated that he felt that the Board erred in that it had no baseline information regarding noise and therefore could not judge whether the noise constituted a nuisance, noting that the sawmill was not viewed in operation. In addition, Hutwelker stated that the applicant did not provide any expert evidence that property values would not be diminished.

Finally, Hutwelker stated that he did not feel that the special exception should have been granted as it was contingent upon the granting of a variance. Mitchell stated that Town counsel advised the Board that a variance was needed to place a driveway in the residence district if it is to be utilized for a business use. However, Mitchell further noted that counsel informed the Board that the special exception application relates to the parcel itself and the proposed use, and not the access.

Motion by Beauregard to deny the request for rehearing concerning the special exception. Seconded by DeRocher. Vote in favor: Beauregard, DeRocher, Mitchell and Thibault. Opposed: Hutwelker. Motion carries.

Board members then considered the request for rehearing regarding the variance application, noting for the record that the prior discussions were incorporated into their consideration. Board members felt that this property was, in fact, unique in its environment. Hutwelker felt that unique meant one of a kind or the only one; board members disagreed.

Motion by Beauregard to deny the request for rehearing concerning the variance. Seconded by Beauregard. Vote in favor: Beauregard, DeRocher, Mitchell and Thibault. Opposed: Hutwelker. Motion carries.

10. Alternate Vacancies. Carbonneau noted that notices for filling the alternate positions have been posted. Nominations are due by Monday, December 18, 2006 at 5:00 p.m.

Motion by Beauregard to adjourn. Seconded by Thibault. Vote: All in favor. Meeting adjourned at 10:20 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner