

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
MAY 19, 2008**

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

W. William Hutwelker, III, Charles Beauregard, Sr.
Alternates Martin Geheran, Robert DeRocher
Town Planner Sara Carbonneau also was present.

Chairman Hutwelker called the meeting to order at 7:00 p.m.

Before reading the agenda, Hutwelker explained to the applicants present that the Board prefers to seat five members, because an application requires three positive votes to prevail. With only four members present, applicants have the option of requesting a continuation to the next regular meeting, on June 16.

All applicants chose to have their application heard on May 19.

The Board addressed the following items.

MINUTES

Motion by Beauregard to approve as written the minutes of April 21, 2008. Second by DeRocher. DeRocher, Beauregard and Hutwelker in favor; Geheran abstained. Minutes approved.

1. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: Dan Warner

Property owner: Anthony Magaleth, Cheshire Signs, Inc.

Property location: 201 Old Homestead Highway Tax Map 36, Lot 10

Zoning District(s): Business

Request: special exception from Section V.B.2.a to permit the operation of a machine shop.

Hutwelker opened the public hearing at 7:05.

Members seated: Hutwelker, Beauregard, Geheran, and DeRocher

Representing the application: Alan Warner and Dan Warner

Abutters present: Ed Grant

DISCUSSION

D. Warner and A. Warner propose to change the use of the building from a sign shop to a machine shop, re-locating a Keene business that designs, manufactures, and markets specialty products and parts. Tools include milling machines, presses, and other typical machine shop tools. Lubricants all are

contained; the business contracts with Safety Clean for managing these materials. The business has been located for 17 years in a garage in a residential neighborhood on Lucinda Terrace.

The machine shop would occupy the original brick powerhouse, using approximately 3,200 square feet, and would be the only business in the building. (In the future, the owners may rent for storage space or lease the cinderblock addition to another business.) Plans call for replacing windows with double-glazed windows, insulating, and replacing wiring with three-phase service. Public water and sewer serve the building.

Initially, the shop would employ two workers, and may expand to employ up to six workers. It would operate Monday through Friday from 7:00 a.m. to 6:00 p.m., with a possible Saturday morning shift. The office likely will be used during evenings, on Saturday afternoon, and on Sunday, but no machines would be operated during these hours.

The location has seven parking spaces, with space available for parking area expansion if necessary. In addition to D. Warner and A. Warner, there will be a maximum of three employees. The applicants anticipate no retail customers; occasionally, clients visit by appointment. UPS delivers materials almost daily, and 20' trucks deliver other materials approximately once per week. There is adequate space to park a flatbed truck on the northerly side of the building.

An old driveway provides access to the rear of the building, and to the approximately 1,800 square feet in the building's lower level. Within 45 days of purchasing the building, the Warners plan to re-grade the access to this area, and build a stone retaining wall. The improved access drive could help fulfill parking needs, and allow use of the space for storage.

Abutter Ed Grant asked about noise generated by the business, as well as hazardous waste.

According to A. Warner, the loudest tool – a punch press – is used about every six months, but never at night. The new insulation will dampen sound. The business neither uses nor generates hazardous metals or waste.

Citizen Greg Johnson stated that the existing shop is clean and quiet, and that the business would be a great addition to town.

In an e-mail message dated 4/28/08, Rene Fish from NH-DOT states that he has reviewed the site and has no objection to the continued use of its existing accesses.

Hutwelker closed the public hearing at 7:30.

REVIEW OF CRITERIA

Board members reviewed the criteria for granting the requested special exception.

1. Is the exception allowed by the ordinance?

Members agreed that the ordinance allows the exception.

2. Are specified conditions present under which the exception may be granted?

a. Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?

Members agreed in the affirmative.

- b. Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?

Members agreed in the negative.

- c. Will there be a nuisance or serious hazard to vehicles or pedestrians?

Members agreed in the negative, provided that there is space for the largest delivery truck to pull off Route 32. Members felt no need to stipulate closing off access to the garage that faces Route 32.

- d. Will adequate and appropriate facilities be provided for the operation of the proposed use?

Members agreed in the affirmative.

Having found that the application is allowed by the ordinance and the specified conditions are present, motion by Geheran to approve the special exception, with the condition that hours of operation be as stated in the application (7:00 a.m. to 6:00 p.m. Monday through Friday; possible Saturday morning shift). Second by Beauregard. All in favor.

2. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION

Applicant: Wayne P. Rogers

Property location: 65 South Road Tax Map 31, Lot 8

Zoning District(s): Residence

Request: Special exception from Section IV.B.2.d. to permit the construction of an accessory structure that is greater than 1,000 square feet.

Hutwelker opened the public hearing at 7:34.

Members seated: Hutwelker, Beauregard, Geheran, and DeRocher

Representing the application: Wayne Rogers and Tom Forest

Abutters present: Ron Fontaine, David Whitcomb

DISCUSSION

Rogers proposes to construct a non-commercial accessory outbuilding 248' back from the road and 30' from the property line.

Rodgers applied for and received a building permit on 12/17/07 to construct the garage 30' from South Road. Rogers stated that the new proposed location is situated further from the road, and will have less of a visual impact on abutters.

The arched steel building would be 14'10" tall, 39'11" wide, and 53' long. In a change from the plans presented, the end wall of the building would face South Road, rather than the long side. The building will be pine tree green, and landscaped with shrubbery and crabapple trees. Rodgers plans to further landscape the property line by filling in breaks in the existing vegetation with yews and crabapples. Spray insulation will help deaden noise.

No water or sewer would be supplied, and no vehicles will be stored in the

Swanzy Zoning Board of Adjustment Minutes – April 21, 2008

building, with the exception of a 4-wheeler.
Access will be from an existing driveway.

Rogers presented photographs illustrating his plans, as well as letters from neighbors.

Abutter David Whitcomb said that he is in favor of the new location. Abutter Fontaine said that while he prefers the new location, he opposes construction of the building because there are no structures of similar size in the neighborhood.

Hutwelker closed the public hearing at 8:06.

REVIEW OF CRITERIA

Board members reviewed the criteria for granting the requested special exception.

1. Is the exception allowed by the ordinance?

Members agreed that the ordinance allows the exception.

2. Are specified conditions present under which the exception may be granted?

a. Is the proposed use similar to one or more of the uses already authorized in that District and is it an appropriate location for such use?

Members agreed in the affirmative.

b. Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?

Members agreed in the negative, because the new location reduces the impact of the building, relative to the existing permitted location.

c. Will there be a nuisance or serious hazard to vehicles or pedestrians?

Members agreed in the negative.

d. Will adequate and appropriate facilities be provided for the operation of the proposed use?

Members agreed in the affirmative.

Having found that the application is allowed by the ordinance and the specified conditions are present, motion by Geheran to approve the special exception, with the conditions that the building be situated so that the arched end faces South Road to take best advantage of natural buffers, and that new plans be provided showing the approved building orientation and plantings. Second by Beauregard. All in favor.

3. PUBLIC HEARING: AREA VARIANCE APPLICATION

Applicants: Thomas and Kathleen Lilly

Property location: 24 Centerview Drive Tax Map 35, Lot 41

Zoning District(s): Residence

Swanzy Zoning Board of Adjustment Minutes – April 21, 2008

Page 4 of 6

Request: Special exception from Section IV.B.3. to permit the construction of a garage that does not meet the required setbacks.

Hutwelker opened the public hearing at 8:17.

Members seated: Hutwelker, Beauregard, Geheran, and DeRocher

Representing the application: Thomas Lilly

Abutters present: Mr. and Mrs. Sam DeYoung, Alan Soucy

DISCUSSION

Lilly proposes to construct a 24x30' 2-car garage, under 20' tall, with attic storage. The shed side of the building would face the driveway, and the finish details of the structure would match the existing porch addition on the house. He presented photographs to illustrate the proposed location.

Lilly requests an area variance to construct the building 10' from the side yard property line, in order to maximize the distance between the proposed garage and a porch addition on the house. Building the garage in this location obscures the presence of a neighbor's shed, and enhances the long view from the porch.

Town Planner Carbonneau clarified the corner lot's frontage. The front door of the house faces Centerview Drive; that side of the lot requires a 30' setback. The side of the lot in question faces Centerview Circle. The ordinance calls for a 20' side and rear setback.

Abutter DeYoung stated that there are no free-standing garages or separate buildings in neighborhood; deed restrictions (which expired in 1982) originally prevented them. Hutwelker explained that there are no restrictions against free-standing garages in the ordinance.

Hutwelker closed the public hearing at 8:38.

REVIEW OF CRITERIA

Board members agreed that the proposal would require an area variance, not a use variance. Members reviewed the criteria for granting the requested area variance.

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

Members agreed in the affirmative.

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

Members agreed in the affirmative.

3. Owing to special conditions, would the denial of the area variance result in unnecessary hardship to the land owner, according to the Boccia test?

a. Is an area variance needed to enable the applicant's proposed use of the property given the special conditions of the property?

Members could find no special conditions of the property that would preclude constructing the garage without encroaching into the required setback.

b. Is the benefit sought by the applicant one that cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than by an area variance?

Members agreed that the location of the well and septic system makes the proposed garage location the most reasonable choice, and that maintaining the maximum distance between the garage and porch would be the aesthetic preference. However, building a smaller garage could also maintain open space in the yard, without encroaching into the setback.

Members discussed whether a 10' difference in location of the proposed structure would materially affect the impact on the nearest abutter.

4. If the area variance is granted, would the spirit of the ordinance be observed?

Recognizing that the garage likely will be built, members discussed whether granting the requested variance would be advantageous to the neighborhood as a whole. Some felt that that an increased separation between the house and garage would not affect the neighborhood negatively, and might actually enhance it. Because there appears to be little buffer between lots, others felt that the garage would be intrusive if it encroached upon the setback, and that the applicant could exercise alternative options.

5. Would granting the area variance do substantial justice?

Members reviewed the definition of substantial justice: any loss to an individual not outweighed by gain to the general public.

Members were unable to reach consensus on this question.

Having found that the application meets all five criteria, motion by DeRocher to approve the area variance for the 24x30' free-standing garage to be constructed within 10' of the side lot line. Second by Beauregard. In favor: Beauregard, DeRocher. Opposed: Geheran, Hutwelker. Motion fails.

Hutwelker reminded the applicant that he has 30 days to request a re-hearing.

ADJOURNMENT

Motion by Beauregard to adjourn. Second by Geheran. All in favor. Meeting adjourned at 9:25.

Submitted by

Victoria Reck Barlow
Recording Secretary

Swanzy Zoning Board of Adjustment Minutes – April 21, 2008
Page 6 of 6