

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
JULY 17, 2006**

[Note: 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.]

The July 17, 2006 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:00 p.m. by Acting Chair Keith Thibault. Members present: Keith Thibault, Jenn Gregory, Bob Mitchell, Charles Beauregard, Sr. and alternates Bob DeRocher and Marty Geheran. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following matters were addressed:

1. Public Hearing (Variance Application). 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 currently is an existing residential use on the property. The property is shown at Tax Map 57, Lot 128 situated in the Business Zoning District. Geheran was seated for Hutwelker. Public hearing opened. Carbonneau noted that the St. Lawrences have requested a continuance to August 14, 2006 at 7:00 p.m. at Town Hall, as they are still seeking additional information. Motion by Beauregard to continue this matter to Monday, August 14, 2006 at 7:00 p.m. without further notice. Seconded by Mitchell. Vote: All in favor.

2. Public Hearing (Special Exception Application). Five Eagles Design, LLC requests a special exception from Section V.B.2.a. to permit the construction of a 28,000 s.f. recreation facility (all-sport arena) on property situated at 249 & 319 Monadnock Highway (Cheshire Fair property). The property is shown at Tax Map 19, Lot 94, situated in the Business Zoning District. The property is owned by Cheshire Fair Association. Due to the length of this evening's agenda, the applicant has agreed to a continuation of this matter to a special meeting to be held on Monday, July 31, 2006 commencing with a site visit at 5:30 p.m. and reconvening at the Town Hall immediately following the site visit. DeRocher was seated for Hutwelker. Public hearing opened. Motion by Gregory to continue this matter without further notice to Monday, July 31, 2006 at 5:30 p.m. at the site and immediately following the site visit

the Board will reconvene at Town Hall. Seconded by Beauregard. Vote: All in favor.

3. Public Hearing (Variance Application). David Roy requests a variance from Section IV.B. to permit access through the residence district to a logging business situated on another portion of the premises located in the business district. The property is located at 49 Spring Street, shown at Tax Map 57, Lot 72 situated in the Residence and Business Zoning District. Seated were: Geheran (for Hutwelker), Thibault, Gregory, Mitchell and Beauregard. Present on behalf of the applicant were: David and Janet Roy and Attorney Jeremy Hockensmith. Numerous abutters were present. Public hearing opened.

Hockensmith presented the Board with a Hearing Brief outlining the applicants' argument for granting the variance. In addition, Hockensmith provided the Board with a site plan, color photographs of the property and a letter of support from Vincent Scott Patnode and Ellen Patnode.

Hockensmith reviewed the Hearing Brief. It was represented that the lot has been used for the processing of wood (firewood, boards, etc.) since shortly after David Roy's father purchased the property in 1976. D. Roy noted that wood processing tools have been on the lot for many years. While there is a portable band saw mill on the property, it was noted that D. Roy's primary occupation is that of an independent logger.

Hockensmith pointed out that the property is located in both the residence and business zoning districts. Hockensmith stated that the saw mill and the wood stored on the property are entirely located within the business zoned portion of the property. It was noted that the mill currently operates under a temporary structure.

Hockensmith stated that that the mill generally operates later in the afternoon. However, on occasion D. Roy's father will come over earlier in the day to work at the mill. The mill is utilized primarily to process logs for family, friends and neighbors and is operated more as a "hobby."

In addition to the mill, Hockensmith noted that trucks for the logging business, as well as 100 to 200 cords of wood are stored on the property, within the business district zone. It was noted that D. Roy would like to eventually construct a garage on the property, within the business district zone, to store trucks and the saw mill. Most of the time the logging trucks are off site, as D. Roy doesn't make money when the trucks are not out in the field. D. Roy stated that he has a personal vehicle which he utilizes to drive to the logging sites.

Hockensmith stated that the Town informed D. Roy that a variance was needed in order for the driveway (for the business) to cross through the residence district. Hockensmith noted that if the variance was granted, his client would also need to obtain site plan review approval from the Planning Board. Hockensmith stated that it was his opinion

that the storage of trucks on the business portion of the property was a permitted use.

Carbonneau noted that the application was corrected to read that a variance was required from Section IV.B., not section V. B.3. as stated in the Hearing Brief and on the application. Carbonneau stated that she had relayed this correction to the Applicant.

After reviewing the factual background as set forth in the Hearing Brief, Hockensmith reviewed the criteria for granting the use variance, as set forth in Simplex. Hockensmith reviewed the Applicants responses (as more specifically set forth in the Hearing Brief) to each of the criteria, noting that he felt that the Applicants met the criteria for granting a use variance. Hockensmith noted that without the granting of the use variance, the Applicants would be unable to utilize the portion of their property situated in the Business Zoning District for permitted business uses, as there is no other reasonable way to access that portion of the property.

Abutting property owners Keith and Lynne Fuller were present and spoke in support of Roys' application for a variance. K. Fuller stated that the saw mill is no louder than a lawnmower. L. Fuller stated that the blower and the noise from Port-O-Lite is very loud and, further, that she did not feel that the noise generated by Roys' use of the property was a problem. Thibault also read into the record a letter from abutting property owners Vincent Scott Patnode and Ellen Patnode dated July 13, 2006.

Geheran inquired if D. Roy's business use on the property is a permitted use within the business district. Carbonneau stated that she did not know, as she was not clear as to what exactly D. Roy was doing on the property. Carbonneau stated that the ZBA needed to accept testimony, both written and oral, as to how D. Roy was utilizing the property and determine if it was a use permitted within the business district. If the use is not permitted within the business district, the applicant would also need to seek a use variance from Section V.B.

Hockensmith stated that there are other business uses in the area, including Keene Tree Service, Port-O-Lite, Sault's autobody, Scott Self's business, and Steve Knowlton's business.

Attorney Silas Little was present on behalf of abutting property owners Gail Davis and Mark Desilets. Little stated that it was his opinion that the business use of the property was not a permitted use within the business district, noting that nowhere in the ordinance does it list logging as a permitted use. Little also stated that it was his opinion that storage of business vehicles was not a permitted use within the business district. Little reviewed the general description of the Business District as set forth in Section II of the zoning ordinance, noting that "the purpose of the Business District is defeated by allowing access to property zoned for the Business District through the residence district." Little provided a 2-page document in support of his clients' position that

the variance should be denied and reviewed this document with the Board. Little noted that the applicants' application cites issues that are "personal to the applicant and not the result of any special conditions or unique circumstances which result in a 'unnecessary hardship'."

The location of the driveway was discussed. D. Roy stated that the "new" driveway was requested in order to make it easier to enter and exit the property with his logging truck, as well as to make it safer for the neighborhood. Gail Davis stated that the new driveway is not shielded or buffered from her property, noting that she did not feel that the landscaping around the new driveway was sufficient. Davis stated that she is often disturbed early in the mornings by vehicles entering and exiting the property. Davis stated that the old driveway has been utilized fairly recently, in violation of the conditions of issuance of the driveway permit for the new driveway.

Davis provided the Board with a 10-page document describing activity on the Roys' property from April 14, 2006 through July 15, 2005 (sic) and testified that the activity on the Roys' property was disturbing to her life. Davis also noted that the Fullers were located further away from the activity occurring on Roys' property.

Desilets stated that due to the use on the Roys' property, the property value of his property has diminished.

Beauregard stated that he felt that the business operating on the property was not a logging business, but rather was manufacturing, similar to Carlisle on Route 32.

DeRocher suggested that the Board may want to conduct a site visit. Motion by Gregory to continue this matter without further public notice to Monday, August 14, 2006 at 5:30 p.m. to a site visit on the property. At the conclusion of the site visit, the public hearing will reconvene at Swanzey Town Hall. Seconded by Beauregard. Vote: All in favor.

4. Public Hearing (Area Variance Application). Judy and Rodney Thompson, Jr. request an area variance from Section XI.B.2. to permit the expansion of a non-conforming structure by constructing an addition. The property is located at 50 Pasture Road, shown at Tax Map 18, Lot 97 situated in the Residence Zoning District. Seated were: DeRocher (for Hutwelker), Thibault, Gregory, Mitchell and Beauregard. Rodney and Judy Thompson appeared before the Board. No abutters were present. Public hearing opened.

Carbonneau noted for the record that the notices stated that the addition was to be utilized as a garage. This was incorrect – the addition will be living space. Carbonneau explained to the Board that a variance was required as the existing structure is non-conforming as it does not meet setback requirements. Thompson stated that the addition will meet setbacks requirements, as the addition will be to the south of the house and that the existing encroachment is on the northerly side of the house.

Thompson stated that the addition will consist of two stories, providing additional room for the upstairs bedroom. Thompson stated that the addition will not exceed the footprint of the breezeway/porch that was demolished. Thompson noted that there would be additional cubic volume to the new structure. Thompson also stated that the addition will not be higher than the existing roof line.

Thibault stated that he had viewed the property and it appeared that the addition was already constructed. R. Thompson stated that it was, in fact, already constructed. Public hearing closed.

The criteria for granting an area variance was reviewed, with the Board finding that the applicant had met all of the criteria for granting the variance. Motion by Beauregard to grant the variance. Seconded by DeRocher. Vote: All in favor.

5. Public Hearing (Area Variance Application). Richard & Pamela Oberg request an area variance from Section IV.B.3. to permit the construction of a garage that does not meet required setbacks. The property is located at 58 South Grove Street, shown at Tax Map 58, Lot 54 situated in the Residence Zoning District. Seated were: Geheran (for Hutwelker), Thibault, Gregory, Mitchell and Beauregard. Dick Oberg appeared before the Board. No abutters were present. Public hearing opened.

Oberg provided the Board with photographs of his property, showing the existing structures and the location where he wishes to construct his garage. Oberg stated that while his property address is South Grove Street, his driveway entrance is off of Woodale Avenue. Oberg noted that his house faces South Grove Street. Oberg stated that the property slopes quite a bit, noting that there was a 21 foot elevation difference between the front and the back of the property.

Oberg noted that none of his abutting property owners have expressed any objection to the granting of the variance. Carbonneau noted that no abutters have expressed any objections to her.

Oberg stated that the proposed garage would not be situated any closer to the property line than the existing house. Oberg states that the garage will be approximately 12 to 15 feet to the property line. Oberg noted that he does not currently have a garage on the property. Public hearing closed.

The criteria for granting an area variance were reviewed. It was noted that due to the topography and the location of the well and swimming pool, there is no other suitable location for a garage on the property. Board members found that the applicant met all of the criteria for granting an area variance. Motion by Mitchell to grant the area variance based on the fact that the applicant met all the criteria and subject to the condition that the garage does not go any closer to the property line than the existing house. Seconded by Beauregard. Vote: All in favor.

6. Public Hearing (Area Variance Application). Nicholas Caron & Amanda Amadon request an area variance from Section III.E. to locate a single family dwelling on a lot that does not have frontage on a town-maintained road. The property is situated off Oliver Hill Road, shown at Tax Map 22, Lot 6-1 situated in the Rural/Agricultural Zoning District. The property is owned by Frank Day. Seated were: DeRocher (for Hutwelker), Thibault, Gregory, Mitchell and Beauregard. Amadon and Caron appeared before the Board. Public hearing opened.

Caron stated that they wish to utilize the property for a single family dwelling. However, the property does not have frontage on a town-maintained road. Caron stated that there are currently two houses past the location where they would like to situate their house. Caron noted that power lines also run past the proposed house location. Also, there is currently a turn-around near the proposed house location utilized by the Public Works Department. Public hearing closed.

The criteria for granting an area variance were reviewed. Board members found that the applicants met all of the criteria for granting an area variance. Motion by Beauregard to grant the area variance as the applicant met all of the criteria. Seconded by Gregory. Vote: All in favor.

Motion by Mitchell to adjourn. Seconded by Gregory. Vote: All in favor. Meeting adjourned at 9:30 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner