

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES
APRIL 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 April 17, 2006 meeting of the Swanzey Zoning Board of Adjustment was called to order at 7:00 p.m. by Chair William Hutwelker. Members present: William Hutwelker, Charles Beauregard, Sr., Keith Thibault, Bob Mitchell, Jenn Gregory and alternate Bob DeRocher. Town Planner Sara Carbonneau was also present. The agenda for the evening's meeting was read and the following matters were addressed:

1. Appointment of Alternate Members. Carbonneau reported that there were no nominations for the alternate member positions.

2. Minutes from March 20, 2006 and April 4, 2006 (site visit).

Motion by Beauregard to approve the minutes from March 20, 2006 and April 4, 2006 (site visit) as submitted. Seconded by Gregory. Vote: All in favor.

3. Public Hearing (Special Exception Application). Mian Swanzey Realty, LLC requests a special exception from Section V.B.2.a. to permit the construction of a gasoline station and a vehicle wash facility on property situated at 163 Monadnock Highway. The property is shown at Tax Map 19, Lot 68, situated in the Business Zoning District. *Note: The Applicant has requested that this matter be continued to May 15, 2006 at 7:00 p.m.*

Motion by DeRocher to continue the public hearing in this matter without further notice to May 15, 2006 at 7:00 p.m. Seconded by Beauregard. Vote: All in favor.

4. Public Hearing (Area Variance Application). NH Exterior, agent on behalf of Vance & Barbara McNally, requests 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 74 South Winchester Street, shown at Tax Map 72, Lot 42 situated in the Residence Zoning District.

Property owners Barbara and Vance McNally were present. No abutters were present. Seated were: Hutwelker, Beauregard, Mitchell, Gregory and Thibault. Public hearing opened.

Thibault and Mitchell stated that while they were not at the site visit, they independently viewed the site. Beauregard stated that he did not visit the site.

Carbonneau noted that a revised site plan was provided on April 11, 2006. The revised site plan shows a 24' (deep) x 30' (wide) garage located 23 feet from the edge of pavement.

Board members were provided with copies of Code Enforcement Officer Weston's notes concerning the test pits that were viewed on the property on April 10, 2006. Weston noted that the soils were adequate for the construction of a garage on the property – Weston did not notice any evidence of organic matter, such as roots, stumps, etc. in the test pits.

DeRocher expressed concerns as to whether the soils were suitable for the garage. It was noted that while the test pits were dug 4 feet deep, the condition of the soils below the test pits were unknown. DeRocher also stated that the southeasterly test pit was dug at least 2 to 3 feet inside of the footprint of the proposed garage. DeRocher stated that the materials at the edge of the southeasterly slope clearly had organic matter in it. Carbonneau stated that the Code Enforcement Officer could always revoke a building permit if the soils were not found to be satisfactory.

V. McNally stated that NH Exteriors was considering an 8 foot frost wall at the rear of the structure. Board members discussed whether an 8 foot frost wall was either necessary or advisable. It was suggested that the Code Enforcement Officer could make the decision as to what would be required once the area is excavated.

Hutwelker inquired why the garage could not be sited at the northerly end of the property. Hutwelker felt that there was more room for parking in the northerly location, as well as better sight distance. V. McNally stated that siting the garage to the northerly side of the property would still require a variance from the side setback, as well as possibly interfering with the drainage.

Hutwelker and Thibault both felt that an engineer should be retained to determine if the soils are suitable to support a 24' x 30' garage. Public hearing closed.

The Board reviewed the criteria for granting an area variance. The majority of Board members agreed that the applicant met all the criteria established in Boccia for granting an area variance. Hutwelker stated that he disagreed, noting that there were other options available for siting the garage. Thibault noted that the applicant would still require an area variance if the garage was located to the north side of the property. Board members discussed if the site was appropriate due to questions regarding the stability of the soils. It was felt that once the

excavation was done, before the footings were set, the Code Enforcement Officer could make a decision about the suitability of the soils for the garage – if the soils were not suitable, the building permit could be revoked.

Motion by Gregory to grant the area variance application as amended by the revised site plan dated April 11, 2006 showing a 24' x 30' garage situated 23 feet back from the edge of pavement, with the condition that should the Code Enforcement Officer determine that the soils are not suitable then the building permit could be revoked. Seconded by Mitchell. Vote in favor: Gregory, Beauregard and DeRocher. Opposed: Thibault and Hutwelker.

5. Public Hearing (Area Variance Application). Edward and Susan MacPhail request an area variance from Section V.B.3. to permit the construction of a garage that does not meet required setbacks. The property is located at 29 California Street, shown at Tax Map 57, Lot 24 situated in the Business Zoning District. Seated were: Hutwelker, Beauregard, Mitchell, Gregory and Thibault. Susan MacPhail appeared before the Board. Thibault assumed the role of chair for this matter. No abutters were present. Public hearing opened.

MacPhail stated that they would like to construct a garage on the westerly side of their property. MacPhail noted that due to the topography of the site, the location of the existing septic system and the location of the existing driveway, the only reasonable location for siting the garage were on the westerly property line. MacPhail provided the Board with photographs of the site. MacPhail stated that the abutting property owners' driveway is right on the property line and that the abutting property owner does not have any objection to the variance being granted. Public hearing closed.

The criteria for granting an area variance was reviewed. Board members noted that all the criteria established pursuant to Boccia were met. Motion by DeRocher to grant the area variance due to the lack of any other suitable location on the property in which to located the garage; that the proposed garage would be located at the end of the existing driveway; and that the abutting property owner has no objection to the granting of the variance and that the abutting property owner's driveway is very close to the property line. Seconded by Gregory. Vote: All in favor.

6. Public Hearing (Area Variance Application). Richard C. McIver requests 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 51 Whitcomb Road shown at Tax Map 23, Lot 3-2 situated in the Residence Zoning District. Seated were: Hutwelker, Beauregard, Mitchell, Gregory and Thibault. McIver appeared before the Board.

Abutting property owners were present. Hutwelker resumed his role as Chair for this matter. Public hearing opened.

McIver stated that he wished to construct a garage to store his business vehicles. The garage would be located 14 feet from the property line. McIver stated that the garage could not meet setbacks due to the location of the septic system. Carbonneau noted that McIver was granted permission to construct a garage as part of the approval processes for his home occupation application.

Carbonneau referred Board members to correspondence received from Marilyn Castor and Carolyn Madden. Castor's son, Joseph Castor, was present and stated that he was there representing the interests of his mother. J. Castor stated that the construction of the garage within 14 feet of the property line would diminish the value of M. Castor's property. McIver disagreed, stating that the garage would be set back beyond M. Castor's house and would not be in the direct line of sight.

McIver stated that if a variance was not granted, he could still construct the garage. However, the garage would be smaller and would not be able to hold as much of his business equipment.

Board members inquired why the garage could not be constructed on the northerly property line (abutting the Hardys' property). McIver stated that it could, but it would not be convenient. In addition, he would need to construct a new driveway access. The Hardys were present and expressed their objection to a garage being constructed on the northerly side of McIver's property.

Board members felt that a site visit was necessary and decided on Tuesday, May 2, 2006 at 5:30 p.m. Motion by Thibault to continue the public hearing to a site visit scheduled for Tuesday, May 2, 2006 at 5:30 p.m. without further notice. Seconded by Beauregard. Vote: All in favor.

7. Discussion. Larry Koch and Michael Bentley appeared before the Board. Bentley stated that Koch is in the process of subdividing Tax Map 79, Lot 6-2 and requested clarification of the condition established by the Zoning Board of Adjustment at its January 9, 2006 meeting regarding sewer hook-ups. Hutwelker stated that the condition was clear and that had the applicant disagreed with the condition, the decision could have been appealed.

Bentley noted that a copy of the recorded wetlands permit (condition #4 in the Board's approval dated January 9, 2006) was forwarded to the Town. Carbonneau confirmed receipt of the same.

Koch also presented a plan showing proposed modifications to Route 10. Koch stated that he has spoken with various people who feel that the requirements for modifications to Route 10 as required by the ZBA in its January 9th decision are not advisable and asked if the Board would reconsider its decision. Hutwelker stated again that if the applicant had disagreed with the condition, then the decision could have

been appealed. Hutwelker stated that the ZBA has no further authority over this matter.

Motion by Beauregard to adjourn. Seconded by Gregory. Vote: All in favor. Meeting adjourned at 9:00 p.m.

Submitted by,

Sara H. Carbonneau
Town Planner