

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING  
JUNE 20, 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; Charles Beauregard, Sr., Jerry Walker. Alternates John Arnone, Bryan Rudgers, Sarah Tatro, Charles R. Beauregard, Jr., Jim Vitous. Town Planner Sara Carbonneau also was present. Chairman Hutwelker called the meeting to order at 7:00.

**MINUTES**

Hutwelker determined that a quorum of those who had been present at the May 16, 2011 meeting were present. **Motion** by Beauregard, Sr. to approve the minutes of the May 16, 2011 meeting. Second by Rudgers. All in favor.

Hutwelker determined that a quorum of those who had been present at the May 16, 2011 site visit were present. **Motion** by Rudgers to approve the minutes of the May 16, 2011 site visit. Second by Tatro. All in favor.

**1. (Public Hearing) Variance**

Applicant: Mian Swanzezy Realty, LLC

Property owner: Mian Swanzezy Realty, LLC

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

Zoning District(s): Business

Request: Variance from Section III.S.4. to permit the construction of a sign that does not meet required setbacks.

Members seated: Beauregard, Sr., Walker. Rudgers was seated for Hutwelker, who recused himself and left the table; Vitous was seated for Thibault, Arnone was seated for Mitchell.

Representing the application: Nasir Mian was not present

Abutters present: Gordon Tacy, Eleanor Goodrich, Pat Forsyth, [several others who did not identify themselves]

Carbonneau informed those present of meeting notice posting dates, and reported that heads of Town departments had not commented on the application. Carbonneau stated that the Board had determined that a prior application was incomplete (fees unpaid) at the May 16, 2011 meeting. (Carbonneau said that she had received a voice mail message at 6:00 on May 16, 2011 – retrieved the following morning -- informing her that Mian would be

unable to attend the May ZBA meeting.) Carbonneau said that the applicant had called her to say that he would be unable to arrive at the June meeting before 7:15. Explaining that compliance with all other sign regulations would be required, Carbonneau reminded those present that the application was solely for relief from the setback requirement for the sign location.

Board members agreed to postpone opening the public hearing until 7:15, and moved on to consider the second agenda item.

Acting chairman Beauregard, Sr. opened public hearing at 7:22.

Abutters expressed frustration with the applicant's absence, and with the lack of information included in the application. Without dimensional information, abutters said, it would be impossible to determine the impact of the sign on their properties. Carbonneau advised those present that wording on the sign was not under ZBA consideration, but is considered by the Planning Board when issuing a sign permit. In response to questions, Carbonneau stated that the permanent footing for the proposed sign could not be used for part of the footing of a future structure; in the event of the sale of the property, the variance would go with the property. Carbonneau said that the sign was proposed to be located 5' from the applicant's property line (and not 5' from the edge of pavement, as some had surmised).

Vitous said that, in his professional opinion, he needed to evaluate the application for safety (What would the sign look like? For example, how would it affect lines of sight?) and for its potential disturbance to the community (for example, bright lighting). Vitous said that the application failed to provide enough information to make it possible for him to vote intelligently. Vitous noted that the request places the sign 75% closer to the road than the zoning permits. Members discussed these points, and concurred. Members discussed whether there were any obstacles to locating the sign in an area on the parcel that would not require a variance. Members agreed that they lacked sufficient information to make that determination. Carbonneau said that a sign had not been included in the original plan.

Carbonneau and Board members discussed the effect of a denial. Carbonneau said that a new application would have to be substantially different, and said that, in her opinion, supplying the missing information would not justify a "second bite of the apple."

Hearing no further questions or comments, Beauregard, Sr. closed the public hearing at 7:48.

## **DISCUSSION**

Rudgers said that it was impossible to determine whether the sign would create safety issues for motorists on the busy state highway. In his opinion, Walker said, the applicant had failed to present reasons why the ZBA should support the application. Beauregard, Jr. said that, according to the provided plans, it appears that there is room on the site to locate a sign without requiring a variance.

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?

Members agreed in the negative, stating that they lacked sufficient data to make a positive determination. Members agreed that they had heard testimony from members of the public indicating that the variance would be contrary to the public interest.

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

Members agreed in the negative, stating that the evidence presented indicated no apparent hardship.

3. Would granting the variance do substantial justice?

Members agreed in the negative, stating that they lacked evidence to show that locating the sign within the proscribed distance from the property boundary would create a hardship.

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

Members agreed in the negative, due to lack of information regarding the proposed sign's size, height and lighting.

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

Members agreed that they had been presented no information to indicate that special conditions distinguish the property.

**Motion** by Rudgers to deny the variance from Section III.S.4. to permit the construction of a sign that does not meet required setbacks. Second by Walker. All in favor.

Nasir Mian arrived at 8:10. Carbonneau informed him that the application had been denied, and said that he could re-apply with a substantially different application.

## **2. Discussion regarding time limits on variances and special exceptions**

Carbonneau explained that she had included a third component of the definition of "substantially acted upon" to give the ZBA flexibility and the discretion to develop criteria in situations where a building permit or Planning Board permit might not be required. Carbonneau said that it would be best if required criteria were clearly defined—for example, a requirement that an applicant obtain a permit from NH-DES within twelve months.

Carbonneau said that the Planning Board will consider the proposed time limits at its June 23, 2011 meeting, and recommended that some ZBA members attend the meeting to respond to questions. Carbonneau said that the Planning Board will review zoning amendments during September and October, and vote to bring proposed amendments to public hearings that will be conducted in November. In the absence of Planning Board support, Carbonneau said, the ZBA could propose the change by citizens' petition.

ZBA members discussed the proposed time limits, and agreed that the proposed limits would help to accomplish the Board's objective of encouraging development that is synchronous with current zoning and current conditions.

**Motion** by Beauregard, Jr. to recommend the proposed zoning amendments to the Planning Board. Second by Walker. All in favor.

**3. Other matters as may be required.**

July and August ZBA meetings will be held at the (air conditioned) Police Station, 34 Eaton Road.

Planning Board consideration of time limits for special exceptions and variances will take place at the Board's meeting on Thursday, June 23. Carbonneau encouraged ZBA members to attend.

Invitation to open house beginning at 2:00 p.m. on Friday, June 24 at 62-64 West Street. Carbonneau said that the property owners (MGJ Realty LLC) have invited members of the Planning Board, ZBA and Board of Selectmen to visit the newly completed multifamily housing project. Carbonneau encouraged attendance, and asked Board members to carpool. Hutwelker noted that the six 3-bedroom units already are fully leased.

NH Citizen Planner Collaborative web site for information, with on-line training modules, is available for land use boards. Carbonneau said that the web site -- <http://extension.unh.edu/cp/> -- also lists training events, and will be expanded in the future.

**ADJOURNMENT**

**Motion** by Beauregard, Sr. to adjourn. Second by Vitous. All in favor. The meeting adjourned at 8:18 p.m.

Respectfully submitted,

Victoria Reck Barlow  
Recording Secretary