

**SWANZEY ZONING BOARD OF ADJUSTMENT MINUTES  
JUNE 16, 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**

Keith Thibault, Charles Beauregard, Sr., Robert Mitchell, W. William Hutwelker, III (arrived at 7:48)

Alternate Bryan Rudgers was seated for Jennifer Gregory until 7:56. Robert DeRocher (arrived at 7:18) was seated for Hutwelker until 7:56, then was seated for Gregory for the balance of the meeting.

Town Planner Sara Carbonneau also was present.

Vice Chairman Thibault called the meeting to order at 7:00 p.m. and read the agenda for the meeting.

Noting the length of the agenda, Thibault explained the Board's practice of commencing a public hearing after 9:00 p.m. and ending consideration of an application by 10:00 p.m. If necessary, public hearing on remaining applications will be postponed until a later meeting.

The Board addressed the following items.

**MINUTES**

Motion by DeRocher to approve the minutes of May 19, 2008, with the footer corrected to show the May 19, 2008 date of the meeting, and with Item 1 corrected to show that DeRocher made the motion to approve. Second by Beauregard. All in favor. Minutes approved.

**1. VOTING ON ALTERNATE MEMBERS NOMINEES**

Deirdre Geer has been nominated for the available position, term to expire at Town Meeting 2011. Motion by Beauregard to appoint Geer. Second by Mitchell. All in favor. After being sworn in, Geer will begin serving at the July meeting.

**2. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION**

Applicant: Paul Robbins

Property owner: Paul Robbins

Property location: 78 Wilson Pond Road Tax Map 19, Lot 78

Zoning District(s): Residence

Request: special exception from Section IV.B.2.d to permit the construction of

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an accessory structure that is greater than 1,000 square feet.

Thibault explained that the Board prefers to seat five members, because an application requires three affirmative votes to prevail. With only four members present, applicants have the option of requesting a continuation to the next regular meeting, on July 21.

Rogers chose to have his application heard on June 16.

Thibault opened the public hearing at 7:15.

Members seated: Thibault, Beauregard, Mitchell

Alternate Rudgers was seated for Gregory. DeRocher (arrived 7:18) was seated for Hutwelker.

Representing the application: Paul Robbins

Abutters present: none

#### DISCUSSION

Robbins proposes to construct a 52' x 26' pole barn to store vehicles, equipment, and supplies that he currently stores outside under tarps and a tent canopy. Robbins calculated the proposed size of the structure based on the square footage of materials he would like to get under weatherproof cover. The building will be approximately 16' feet tall, and located 37' from the nearest property line on his 1.3-acre lot. Rogers will not maintain any business vehicles in the structure.

Because no business will be run from the storage building, the use will not generate additional traffic.

Access to the lot is by a right-of-way from Wilson Pond Road. The lot is not highly visible from the road, and views from the neighbors are buffered by existing vegetation. Robbins provided photographs showing the proposed location and views of the proposed location.

By 6/10/08 e-mail, Frank Underwood (Tax Map 19 Lot 72) states that he has no problem with the proposed structure.

Thibault 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 in the affirmative.

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 to both parts of the question.

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 negative.

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

Members agreed in the positive.

MOTION by Rudgers: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception from Section IV.B.2.d to permit the construction of an accessory structure that is greater than 1,000 square feet at Tax Map 19, Lot 78. Second by DeRocher. All in favor.

### **3. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION**

Applicant: Alan Lehtola

Property location: 83 Monadnock Highway Tax Map 18, Lot 135

Zoning District(s): Business

Request: Special exception from Section V.B.2.a. to permit the property to be utilized for auto repair, sales of automobiles and auto accessories.

Thibault opened the public hearing at 7:35.

Members seated: Thibault, Beauregard, Mitchell

Alternates Rudgers (seated for Gregory), DeRocher (seated for Hutwelker).

Representing the application: A. Lehtola

Abutters present: none

#### DISCUSSION

Lehtola proposes to renovate the interior of an existing garage-type structure to accommodate his proposed primary use for auto repair, along with incidental sales of automobiles and auto accessories. There will be no changes to the exterior of the structure. The use requires 5 parking spaces; 9 spaces are shown on the site plan. Code Enforcement Officer Weston has inspected the site.

The former owner of the property received ZBA approval for this special exception, which expired after one year on non-use. No complaints resulted from the former use of the property. The use will require site plan approval from the Planning Board.

Thibault closed the public hearing at 7:44.

#### REVIEW OF CRITERIA

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

*1. Is the exception allowed by the ordinance?*

Members agreed in the affirmative.

*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 to both parts of the question.

*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 negative.

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

Members agreed in the positive.

MOTION by Beauregard: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception from Section V.B.2.a. to permit the property at Tax Map 18, Lot 135 to be utilized for auto repair, sales of automobiles and auto accessories. Second by DeRocher. All in favor.

#### **4. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION**

Applicant: Harold Blair

Property location: 1115 West Swanzey Road Tax Map 88, Lot 40

Zoning District(s): Business and Residence

Request: Special exception from Section V.B.2.e. to establish the existing house as a permitted use in the Business District.

Thibault opened the public hearing at 7:48.

Members seated: Thibault, Beauregard, Mitchell

Alternates Rudgers (seated for Gregory), DeRocher (seated for Hutwelker).

Representing the application: H. Blair

Abutters present: none

#### DISCUSSION

Blair proposes to construct a 12' x 12' addition to a house located in the Business District. The addition expands a use that is permitted only by special exception.

The house and proposed addition meet all setbacks. The house is located on a 1-acre lot.

Thibault cautioned Blair to be aware that business activities are the intended purpose of the zoning district, and the potential exists for his neighbors to establish approved businesses. Blair stated that he understood this potential.

Thibault closed the public hearing at 7:54.

#### REVIEW OF CRITERIA

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

1. Is the exception allowed by the ordinance?

Members agreed in the affirmative.

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 to both parts of the question.

- 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 negative.
- d. Will adequate and appropriate facilities be provided for the operation of the proposed use?  
Members agreed in the positive.

MOTION by Rudgers: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception from Section V.B.2.e. to establish the existing house at Tax Map 88, Lot 40 as a permitted use in the Business District. Second by Mitchell. All in favor.

## **5. PUBLIC HEARING: USE VARIANCE APPLICATION**

Applicants: MNTS Land, LLC

Property owners: Dana Pinney and Cheryl Pinney (Tax Map 19, Lot 97); 234 Old Homestead Highway LLC (Tax Map 19, Lots 97-2 and 97-3)

Property location: off Route 32 and Safford Drive Tax Map 19; Lots 97, 97-2 and 97-3

Zoning District(s): Business, Industrial Park

Request: Use variance from Section VII.D to permit wetlands alterations for buildings and parking

Hutwelker assumed the chair, and opened the public hearing at 7:56.

Members seated: Hutwelker, Thibault, Beaugard, Mitchell

Alternate DeRocher (seated for Gregory).

Representing the application: Jim Phippard

Also present: Dana Pinney; Len Chaloux, Moore Nanotechnology Systems LLC president; Representative Jane Johnson

### DISCUSSION

The Town's wetlands conservation overlay district does not allow construction of buildings and parking areas in wetlands without a use variance. The intent of the ordinance is to prevent destruction of natural wetlands.

Phippard presented an overview of conceptual construction plans that would result in impacts to wetlands on the site. He presented a conceptual site plan showing the three existing lots proposed for development. The concept calls for re-configuring and re-subdividing the lots to create two lots, so that each is partially in the Business and partially in the Industrial Park zoning districts.

In its initial phase of development, Moore Nanotechnology Systems LLC plans to construct a 36,000-square-foot building. A second phase calls for expanding the building by an additional 20,000 square feet. Moore Nanotechnology plans to relocate a second company to Swanze in the future, and to construct a second building at that time. Client access to these buildings will be off Route 32, with parking areas at the side and rear for employees and deliveries to be accessed from Safford Drive.

The site plan depicts existing wetlands that total approximately 80,000 square feet (over 1.5 acres), delineated in the fall of 2007. These wetlands were

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man-made years ago as ditches to collect and divert run-off to culverts, then into a ditch at the intersection of Page Court and Route 32. The pending application relates to the wetland areas delineated on the plans in Phases I, II and III.

Phippard stated that analysis of the wetlands indicates relatively low value and limited functions: The wetlands provide sediment retention and nutrient retention. Because they have been mowed and maintained to prevent growth of trees, the wetlands do not provide meaningful wildlife habitat.

The plans call for replacing and enhancing the wetland functions and values on-site, through storm water treatment. Surface water will be directed into a rain garden, designed to allow the surface water to infiltrate into the ground. The raised rim of the storm water catch basin is protection against overflow. At the front of the property, a larger system will be lined with vegetation to allow further infiltration. Any overflow will discharge into drainage systems.

Phippard explained that developers now are required to control, to predevelopment conditions, the volume as well as the rate at which storm water leaves a property. Where possible on the site, excess water must be captured and allowed to infiltrate. This proposal will be designed for a 50-year storm event, as well as for 5-year and 2-year events.

Due to the extent of proposed wetlands impacts, both federal and NH-DES wetlands permits and state mitigation are required. Permit applications must account for future plans for expansion beyond the five years during which the permits are valid. The developer seeks to keep open the option for expansion of both businesses; development plans call for eventually parking about 100 employees at each building.

Phippard presented the conceptual plans to the Swanzey Conservation Commission (SCC) at its June meeting. After a thorough review, the SCC expressed its intent to support the application for wetlands impact, not yet filed. To accomplish additional wetland mitigation required of the state and federal permits, Phippard will consider town recommendations for upland areas that might receive permanent protection. 243 Old Homestead Highway LLC owns over 100 acres of additional adjacent land that could provide mitigation, thereby protecting vernal pools and buffering Marcy Hill residences from the industrial park.

Phippard stated that the proposed development is in accordance with the objectives of the TIFF district and recent expansion of utilities. He expects that the businesses will generate tax revenues in excess of expenses of the bond, thereby benefiting the public. He stated that private rights of property owners will be protected because the proposed businesses will not generate excessive traffic, noise or fumes, and that all business activities and storage will occur within the buildings. The businesses will create no danger to public health. The on-site storm water system will filter storm water, promote infiltration, and control flooding. He stated that the property is unique by virtue of being surrounded by roads; the wetland is unique because it was man-made. He stated that the proposal is a reasonable use that will comply with all zoning.

Johnson spoke in support of the proposed use of the land. She endorses the tone the proposed businesses would set for future development.

Hutwelker closed the public hearing at 8:42.

#### REVIEW OF CRITERIA

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

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

Members agreed in the affirmative.

2. Could the 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 variance result in unnecessary hardship to the land owner, according to the Simplex test for determining unnecessary hardship?

- a. A zoning restriction as applied to the property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment;

Members agreed in the affirmative.

- b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property;

Members agreed in the affirmative.

- c. The variance would not injure the public or private rights of others.

Members agreed in the affirmative.

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

Members agreed in the affirmative.

5. Would granting the variance do substantial justice?

Members agreed in the affirmative.

MOTION by Thibault: Having found that the application meets all five criteria, motion to approve the use variance from Section VII.D to permit wetlands alterations at Tax Map 19; Lots 97, 97-2 and 97-3 for all three phases of buildings and parking. Second by Beauregard. All in favor.

#### **6. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION**

Applicants: MNTS Land, LLC

Property owners: Dana Pinney and Cheryl Pinney (Tax Map 19, Lot 97); 234 Old Homestead Highway LLC (Tax Map 19, Lots 97-2 and 97-3)

Property location: off Route 32 and Safford Drive Tax Map 19; Lots 97, 97-2 and 97-3

Zoning District(s): Business, Industrial Park

Request: special exception from Section V.B.2.a to permit the construction of a manufacturing facility

Hutwelker opened the public hearing at 8:46.

Members seated: Hutwelker, Thibault, Beauregard, Mitchell

Alternate DeRocher (seated for Gregory).  
Representing the application: Jim Phippard  
Also present: Dana Pinney; Len Chaloux, Moore Nanotechnology Systems LLC  
president; Representative Jane Johnson

#### DISCUSSION

Phippard presented an overview of conceptual construction plans for a manufacturing use in the Business district, located on the front portion of the property that is parallel to Route 32.

Phippard said that the area is a suitable location due to its access to the State highway, adequate lines of sight, and updated utilities. The use is similar to two others in the immediate area, and will not reduce property values because all activities will be conducted within the building. The use will not generate fumes, excessive traffic or noise. Materials will be delivered at the rear of the building, using the Safford Drive access. Counts conducted by traffic engineer Laurie M. Rauseo indicate that the use could generate 300 trips/day, but only 30-40 trips during peak hours. Existing curb cuts will accommodate truck circulation and employee traffic. Due to the lack of sidewalks in the area, there will be no impact on pedestrians. Municipal water and sewer are available, as is three-phase electrical service. The site can accommodate all parking for immediate and future business needs.

Hutwelker noted that the request for a special exception pertains only to proposed development Phases 1 and 2. The developers will need to return to the ZBA when ready to construct Phase 3. Phippard concurred: Plans for the future industrial building are as yet undeveloped, and so are not currently under consideration.

Phippard stated that, pending ZBA and Planning Board approvals, the long-term intention is to file a petition with the town to re-zone the front of the lot from Business to Industrial Park district. Residential uses are leaving the area. The proposed business could be the “gateway” company to the industrial park.

Hutwelker closed the public hearing at 9:00.

#### REVIEW OF CRITERIA

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

1. Is the exception allowed by the ordinance?

Members agreed in the affirmative.

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.

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

Members agreed in the positive.

MOTION by Mitchell: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception from Section V.B.2.a to permit the construction of a Phase 1 and Phase 2 of a manufacturing facility located at Tax Map 19; Lots 97, 97-2 and 97-3. Second by Beauregard. All in favor.

## **7. PUBLIC HEARING: SPECIAL EXCEPTION APPLICATION**

Applicant: Thomas Transportation

Property owner: Spencer Grayson Real Estate

Property location: 93 Monadnock Highway Tax Map 18, Lot 134

Zoning District(s): Business

Request: special exception from Section V.B.2.a. to permit the property to be utilized for automotive use, including service, repair and rental of vehicles for Thomas Transportation.

Hutwelker opened the public hearing at 9.05.

Members seated: Hutwelker, Thibault, Beauregard, Mitchell

Alternate DeRocher (seated for Gregory).

Representing the application: Dave Bergeron

Also present: Edward Thomas, Tom Bogar

### DISCUSSION

Bergeron explained that the property already has been granted a special exception to allow its use as an automotive dealership, with no mechanical service. Thomas's limousine business requires light mechanical servicing of his fleet. In the future, his business may expand to include rental vehicles, which also would require light mechanical servicing. Thomas hopes to expand the rear of the building to create more service bays. These bays would not be used as a public service facility.

Bergeron stated that the lot currently has about 75 parking spaces. Some are 8' wide display spaces, and Thomas intends to retain some of these display spaces. He will re-stripe to 9' the spaces required by zoning for his use.

Except for re-striping of the parking lot and the future addition of bays to service Thomas Transportation vehicles, the remainder of the site will remain unchanged. The property has been used as an automotive dealership since 2003.

Municipal water is available at the site. A State-approved septic system was installed in 2004 and has adequate capacity to handle the wastewater from the bathrooms. The wash water generated by the detailing work is stored in a holding tank, with an alarm to indicate when it needs to be emptied. Thomas anticipates needing to have the holding tank pumped every 4-6 weeks.

Hutwelker closed the public hearing at 9:20.

#### REVIEW OF CRITERIA

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

*1. Is the exception allowed by the ordinance?*

Members agreed in the affirmative.

*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 to both parts of the question.

*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.

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

Members agreed in the positive.

MOTION by Mitchell: Having found that the application is allowed by the ordinance and the specified conditions are present, motion to approve the special exception from Section V.B.2.a. to permit the property located at Tax Map 18, Lot 134 to be utilized for automotive use, including fleet service and repair, and rental of vehicles for Thomas Transportation, with the condition that automotive repairs be limited to fleet service and the rental vehicles. Second by DeRocher. All in favor.

#### **8. OTHER BUSINESS AS MAY BE REQUIRED.**

#### **ADJOURNMENT**

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

Submitted by

Victoria Reck Barlow  
Recording Secretary