TOWN OF SWANZEY

OFFICE OF PLANNING AND COMMUNITY DEVELOPMENT

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Swanzey Zoning Board of Adjustment
Meeting Agenda for March 17, 2025
7:00 p.m.

The regular meeting of the Swanzey Zoning Board of Adjustment will be held on Monday, March 17, 2025 at 7:00 p.m. at Whitcomb Hall, 17 Main Street, Swanzey. The public may also access the meeting via Zoom by going to www.zoom.us, using the Zoom App, or by calling (929) 205-6099 and entering Meeting ID number 235 370 4380. More information on public access to the meeting is available on the Town's website at: www.swanzeynh.gov.

1) Call to Order
2) Approval of Minutes
    a. February 24, 2025
    b. March 3, 2025
3) Public Hearings
    a. **ZBA 25-002: Special Exception (continued from 3/3/2025) –** Black Belt LLC has requested this application for a special exception to Section V, Article B.2.g to construct a drive-through facility in the Business District. The subject property is at Tax Map 220, Lot 5.
4) Other Business
    a. Discussion on changing the start time to 6 p.m.
    b. Other business as required.
5) Adjournment

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment (ZBA)
Meeting Minutes – February 24, 2025
Whitcomb Hall, Main Street, Swanzey, NH

Note: Draft Minutes are subject to review, correction, and approval by the Board. Review and approval of Minutes generally takes place at the next regularly scheduled meeting of the Board.

CALL TO ORDER:
Vice Chair Adam Mulhearn called to order the meeting at Whitcomb Hall at 7:01 p.m. Members present: Adam Mulhearn, Lisa Thorne, Anne Karasinski, Alternate Pete Delaney, and Alternate Joe Parisi. Also present were Town Planner Adam Paquette and Assistant Town Planner Stephon Mehu.

ABSENT:
Bryan Rudgers, Jay Ward, Alternate Wayne Lechlider
The Chair seated Delaney for Rudgers and Parisi for Ward.

OTHERS PRESENT:
Garrett, videographer with FACT TV, Jake Checani seeking two variances, Mark Beaudry representing Black Belt LLC, and Chad Brennon of Fieldstone Land Consultants.

MINUTES:
The meeting Minutes of December 16, 2024 were considered. **Motion** was made by Delaney to approve the meeting Minutes of December 16, 2024 as presented. There was a second to the motion by Thorne and no further discussion. All were in favor. ***Motion passed.***

REGIONAL IMPACT: The members considered whether any items on the agenda could be construed as having potential for regional impact. **Motion** was made by Karasinki that there is no evidence for regional impact. There was a second by Thorne with no further discussion. All were in favor. ***Motion passed.***

The board took under consideration the application of Jessica Ramsey-Sanchez for the position of Alternate on the Zoning Board of Adjustment. Ramsey-Sanchez presented a brief narrative of her desire to contribute to the Town she's had residence in for over two decades. Jessica has no experience with public bodies but exhibited great interest in serving her community. Mulhearn explained position of Alternate.
Karasinski made motion to accept Jessica; here was a second to the motion by Delaney and no further discussion. All were in favor. ***Motion passed***.

PUBLIC HEARING:
ZBA 24-013: Variance – Jake Checani has requested this application for a variance to Section V, Article B.1 to construct a duplex in the Business District. The subject property is at Tax Map 102, Lot 81. Lot is on the corner of Underwood Road and Lake Street.

Public Hearing opened at 7:11 pm

Discussion: Checani explained his need for two variances for a parcel he purchased in 2023; looking for a variance for duplex as it is not a permitted Use in Business District. Lot has access to public water and sewer. Checani explains the approval would not impede upon others, other than an approving neighbor. Housing would be supplied in a shortage, compliments the neighborhood, etc.
Mulhearn explains the operation of the ZBA and its ability to grant relief in consideration of the spirit of the ordinance.

Parisi asked what the setbacks were in place in the Town Ordinance at the time of purchase; Checani explained his purchase and simply purchased land abutting property in 2023. Delaney asked if the home could be moved so that the setbacks are only violated in the front or in the rear of the home. Anne seconded her concerns upon the possible movement of the home, toward center of lot. The structure's parking and driveway design were discussed; namely the distance of the driveway from property lines and intersecting roads.

Bob Goodrich, Conservation Commission member, sought clarity on the square footage of the structure and dwellings. Chuck Munson asked about adequate parking. Town Planner Paquette read questions from resident Kathryn Snow concerning the building process and permitting following approval of the Variance.

Closed Hearing closed at 7:44 pm

> The Board deliberated questions from Checklist for Granting a Variance.
>
> Delaney **moved** to approve the application. There was a second to the motion by Thorne and no further discussion. All were in favor. ***Motion passed.***

ZBA 24-014: Variance – Jake Checani has requested this application for a variance to Section V, Article B.3 to construct a duplex within front and rear setbacks, and on a lot under 1 acre in size. The subject property is at Tax Map 102, Lot 81. Lot is on the corner of Underwood Road and Lake Street.

Public Hearing opened.

Checani explained he was seeking a Variance from the front and rear setbacks, as to the irregular shape of the lot and distance it resides from neighbors and the existing home he owns on an abutting lot.

Kathryn Snow submitted concerns via Zoom; asked about dimensions on plans being done professionally prior to construction. The Town Planner stated that aspect is addressed by Code Enforcement prior to permit issuance.

The Board deliberated questions from Checklist for Granting a Variance.

> Karasinski **moved** to approve the application and Thorne seconded the motion. Karasisnki emphasizes to Jake that he should have professionals figure dimensions of walkway/house placement. All members, with the exception of Parisi whom was not in favor, were in the affirmative. **Motion passed.**

ZBA 25-001: Variance – Black Belt LLC has requested this application for a variance to Section VII, Article E.1 to construct a leach field within the 125-foot wetland setback. The subject property is at Tax Map 220, Lot 5.

Mulhearn opened public hearing.

Mark Beaudry, representing Black Belt LLC, explained the use of the proposed application, likely to be a drive-thru café or restaurant. He explained the position of DPW and DOT in relation to entrances and exits of the proposed site plan. He discussed the layout of the lot; explained that placing the leach field in the uplands, would constitute crossing 110ft of wetland to implement design. He identified the leach field as being 75-80ft from wetlands; Beaudry stated that wastewater specs all meet DES standards. He spoke to the discourse of a joint meeting of the Planning Board and the Conservation Commission, stating that Town is considering the 125ft septic setback be reduced to 75ft, possibly at the 2026 Town Meeting.
Beaudry stated the project was not contrary to public interest, as it met DES standards. He explained that choosing not to cross wetlands for wastewater is in observation of the spirit of ordinance, finding the lesser of invasive impacts. Suggested that substantial justice would be found as the impact to site would be minimal. No evidence was found to suggest the project's construction would impede upon surrounding property values. He stated that construction of the septic in the alternative construction of the leach field would go 110ft through the property and impose unnecessary hardship; said homes and businesses are already located within 125ft of wetlands. He believed this to be a reasonable use.

Karisinski asked what made this property different from other lots in the area; the applicant responded to the questions in regards to the discussed, possible changes to the Town Ordinance. Linda Hunt asked if a grease trap or the like was involved in septic setup. Beaudry showed this aspect on the plan. Amanda Gunseth stated she lives at the Emerson's property, a local business, and asked how surface water will be managed. She then mentioned the traffic at the intersection being a large safety issue. Beaudry responded with the design of septic, the state of the fill on site, and the proposed surface water management system. He identified culverts involved in said management system; said groundwater should not flood neighboring property.

Bob Goodrich explained that the property was filled illegally in 80s. Beaudry stated that in 1985, it was determined the fill could stay, per Army Corps of Engineers. Further approval by the State allowed for the fill to stay, established in 1987. Chuck Munson felt as though project should not be allowed unless a barrier is put into place for stormwater.
Alternate Joe Parisi asked if alternative placement of the leach field could prove to not require a Variance; Beaudry pointed out wetlands would need to be crossed in order to place the field in a location not needing variance. Ellen Driscoll voiced concerns with variance being granted against the spirit of the ordinance.

Chad Brennon, of Fieldstone Land Consultants mentioned the difference between Department of Environmental Services' established state setbacks and that of the Town Ordinance. He states that no scientific evidence has been found to support the establishment of a 125ft setback of septic from

wetlands. He emphasized the Conservation Commission's efforts to change the Wetlands Conservation District Ordinance from 125ft to 75ft.

Planner Paquette reads excerpt from February ConCom meeting.

Mulhearn closed the public hearing.

The Board deliberated questions from the Checklist for Granting a Variance.

Delaney stated that the 125ft is what is currently in place. Thorne said the Variance is contrary to public interest. Anne said it meets state requirements and Parisi argued 75ft setback per the state and 125ft, that of the Town, differ. Adam explained that there is flexibility in the Ordinance's guidance. Lisa said the spirit of the ordinance is not observed, as the construction of the leach field is in or near wetlands. Anne says the spirit is observed, Joe argued it is not, Peter said the spirit of the ordinance is to protect the wetlands and argued it is not in the spirit. Adam agreed it is to protect.
Karasinski said there would be justice for the applicant, Joe said granting the Variance for the leach field would not do justice to the Town, Delaney said there would be justice, Lisa said there would not be substantial justice in regard to the wetland, and Adam argues the Variance would provide substantial justice.

Due to the applicant failing to meet at least one of the five variance requirements (1, 2, 3, 4 and/or 5), it cannot be legally granted and should be denied.

> Parisi **moved** to deny the ZBA application. There was a second to the motion by Thorne and no further discussion. All were in favor. ***Motion passed.***

Chad Brennon, as time prevented his applications from being heard, requests to be heard prior to the 2025 Town Meeting.

ZBA 25-003: Variance – Fieldstone Land Consultants, PLLC, on behalf of Sapphire Business Park, LLC, is requesting a variance pursuant to the proposed amendment to Section VII, Article D of the Zoning Ordinance to allow a wetland crossing to access a large dry upland area. The subject property is shown at Tax Map 209, Lot 4 and is in the Industrial Park District.

The Chair opened the public hearing.

Brennon requested public hearing be continued to Monday March 3rd; at 7pm.

Mulhearn made a motion to move the hearing to Monday. Amended to include both applications. Thorne seconded the motion as amended. **Motion Passed**.

ADJOURNMENT
Motion to adjourn was made by Thorne and seconded by Karasinski and all were in favor. ***Motion passed.*** Adjournment occurred at 10:04 p.m.

Respectfully Submitted,

Stephon Mehu, Assistant Town Planner

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment (ZBA)
Meeting Minutes – March 3, 2025
Whitcomb Hall, Main Street, Swanzey, NH

Note: Draft Minutes are subject to review, correction, and approval by the Board. Review and approval of Minutes generally takes place at the next regularly scheduled meeting of the Board.

CALL TO ORDER:
Vice Chair Adam Mulhearn called to order the meeting at Whitcomb Hall at 7:01 p.m. Members present: Adam Mulhearn, Lisa Thorne, Jay Ward, Alternate Jessica Ramsey-Sanchez, and Alternate Joe Parisi. Also present was Town Planner Adam Paquette.

ABSENT:
Bryan Rudgers, Ann Karasinski, Alternate Wayne Lechlider, Alternate Pete Delaney.

OTHERS PRESENT:
Garrett, videographer with FACT TV, Mark Beaudry representing Black Belt LLC, and Chad Branon of Fieldstone Land Consultants, DPW Director Joe DiRusso

SEATING ALTERNATES:
The chair seated Jessica Ramsey-Sanchez for Brian Rudgers and Joe Parisi for Ann Karasinski

MINUTES:
The meeting Minutes of February 24, 2025 were considered. **Motion** was made by Thorne to approve the meeting minutes of February 24, 2025 as presented. There was no second to this motion. After discussion, there was another **motion** by Parisi to move the approval of these minutes to the next scheduled meeting on March 17, 2025. There was a second made by Thorne. All were in favor. ***Motion passed.***

REGIONAL IMPACT: The members considered whether any items on the agenda could be construed as having potential for regional impact. **Motion** was made by Ward that there is no evidence for regional impact. There was a second by Thorne with no further discussion. All were in favor. ***Motion passed.***

PUBLIC HEARING:
ZBA 25-002: Special Exception – Black Belt LLC has requested this application for a special exception to Section V, Article B.2.g to construct a drive-through facility in the Business District. The subject property is at Tax Map 220, Lot 5.

Mulhearn opened the public hearing at 7:04.

- Beaudry opened the discussion by giving an overview of the project.
- Beaudry goes over the site plan, specifically entrance and exit points and drive through lane requirements.
- Beaudry goes over the Special Exception Checklist and gives reasoning for the applications compliance with each of the criteria.
- The Planning Board has requested a traffic study at their last scheduled meeting, but the applicant has not had time to complete this.

- Parisi asks for clarification on what the conceptual approval for the exit onto Route 12 means. Beaudry explains what the DOT District 4 representative has communicated.
- Parisi asks how a traffic study can be done without a business in mind. Beaudry states that different scenarios can be used in the study. If the trip generation generates more traffic than anticipated, a site plan modification would need to be sought.
- Parisi confirms that a condition will need to be made regarding the Planning Board approving the site plan with the traffic study.
- Thorne asks about the incoming lanes off Marcy Hill Road, and Beaudry delineates each lane and what each is intended for. Beaudry explains that the lanes will not have curbing but will have clear striping to separate the lanes.
- Thorne asks about traffic along Marcy Hill Road and if people may cut across the parking lot to bypass the traffic along the road.
- Beaudry reiterates that the site plan meets all ordinance requirements for drive-throughs.
- Mulhearn asks if consideration has been given to the new leech field location. Beaudry goes over a new plan for a septic location, which would be west of the proposed structure.
- Beaudry states they are reducing peak flows on the site. He also states they are reducing the amount of impervious cover on the site.
- Bob Goodrich states that the new exit crosses a wetland and will need an additional variance if the amendment passes.
- Joe DiRusso asks about the timeline for a traffic study. Beaudry hopes to have a proposal in a couple of days, and will realistically have a study complete by the end of the month.
- DiRusso states he is concerned that there is no business decided for the site yet, and echoes concerns from Swanzey residents on traffic along Marcy Hill. His concern is that there will be traffic potentially backed up on Marcy Hill from the drive-through.
- Beaudry states there is no tenant lined up and the applicant wants to have a complete site plan prior to shopping around. The applicant knows they will need to come back before the Planning Board with any changes.
- Koski on Zoom asks if the exit lane is right only, or bi-directional. Jessica Ramsey-Sanchez also asks about this. Beaudry states that it is currently bi-directional but will take recommendations from NH DOT. The applicant prefers a bi-directional turn lane.
- Ward states that Dunkin Donuts shouldn't necessarily be used as an example. Ward states they need to consider the traffic study to fully answer all Special Exception checklist items.
- Keith Thibault states that a traffic study would be needed in order for the Board to make an informed decision. Thibault says that adequate facilities must be provided for the Board to make a decision.
- Ramsey-Sanchez asks if it's fair to compare the Dunkin Donuts off Route 10 due to the speed limit and layout of the road. She states that area is a hotspot for accidents. Mulhearn says it could be a good example, and it's the Boards responsibility to view the applications from all sides.
- Parisi asks the applicant why they aren't waiting until the Planning Board reviews/approves the application.
- The applicant requests to continue the public hearing until March 17 after a traffic study is complete.
- Ward **moves** that the meeting is continued until March 17 and agrees that the applicant may extend past the 90 day period to act in the event it is needed, as long as the applicant agrees. Beaudry, representing the applicant Black Belt, LLC, agrees to extending this 90 day period to act pursuant to RSA 674:33. Both parties have agreed to continue the hearing until March 17, 2025. The motion was seconded by Parisi. All were in favor. ***Motion passes.***

ZBA 25-003: Variance – Fieldstone Land Consultants, PLLC, on behalf of Sapphire Business Park, LLC, is requesting a variance pursuant to the proposed amendment to section VII, Article D of the Zoning Ordinance to allow a wetland crossing to access a large dry upland area. The subject property is shown at Tax Map 209, Lot 4 and is in the Industrial Park District.

- Paquette explains the need for this variance.
- Branon explains that getting this done early is more acceptable to their client so they move things along smoothly. Branon explains that waiting could compromise sales. In order to move their plans along smoothly, they must ask for this variance now.
- Branon explains that there may be some unintended consequences to the proposed amendment. He commends the efforts of the Conservation Commission but says there are significant impacts to landowners.
- The variance will allow the client to access a large upland area on Map 209 Lot 4. This is the first lot on the right side of Safford Drive.
- The applicant has received approval for a contractor bay facility on the site. The applicant could use additional parking and storage on the lot, hence the need for the crossing to the upland area. This area measures about an acre.
- There is no way to get an access easement from the abutting property owner.
- Branon states that the wetland crossing would be reviewed with D.E.S. to avoid, minimize, and mitigate the impacts.
- Branon goes through site plan showing the wetland crossing. The wetland impact would be about 2,000 square feet. Most projects that Fieldstone has worked on have had wetland impacts, including all properties along Safford Drive. He states the goal is to avoid, minimize, or mitigate the impact to the wetlands.
- Parisi asks what the applicant is proposing to facilitate the crossing. Branon explains how the culverts at this location would function.
- Branon goes over information about what determines wetlands and says the wetland on the site is a forested wetland.
- Ward asks if the wetland has been tested and Branon states that no test pits have been dug. He states some of the material from the site would be used in construction, which would help offset costs.
- Ramsey-Sanchez clarifies if the applicant must meet all state requirements if the Board votes to approve the variance. Branon confirms.
- Branon states that the Town voted to create a TIF along Safford Drive and the proposed amendment creates a hardship for both parties. States there must be balance, bringing up the potential need for a conditional use permit process. He reiterates the need for a variance and states that they have a good case for it.
- Branon states that the amendment will have unintended consequences and the ZBA will have an influx of applications due to the amendment.
- Branon states that the TIF is intended to be developed.
- Branon goes through all variance criteria as seen below.

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1. Granting the variance would not be contrary to the public interest because:
   The zoning of lot 209-4 is the Industrial Park district, as well as the ERZ and TIF districts. These districts exist to stimulate economic growth and facilitate business development. Lot 209-4 is well situated between Route 32 and Route 12, with a suitable area for commercial development and infrastructure on the lot. It serves the public interest to make the most of the tax investment that has been put into this area over the past decade. Granting this variance will allow for the productive use of this lot. Town voters approved the creation of a property tax exemption program for new commercial and industrial construction in 2020, indicating the expansion of commercial opportunities in Swanzey is something the voters would like to see. Allowing for a wetland crossing to access to best utilize this lot will not change the character of the neighborhood or threaten the health safety or general welfare of the public. It is our belief that this proposal will have no negative impacts to the public – the proposed wetland crossing will meet all other local and state requirements. The crossing will be designed to minimize impacts, will utilize Best Management Practices and will require a permit from the Department of Environmental Services Wetlands Bureau. For all these reasons we believe granting this variance will not be contrary to public interest.
2. If the variance were granted, the spirit of the ordinance would be observed because:
   We believe this proposed wetland crossing is reasonable and meets the spirit of the ordinance especially when you consider the responsible manner in which the crossing is proposed. One of the purposes of the Wetlands Conservation Ovelay district is to prevent development of structures and land uses on wetlands which would contribute to the pollution of surface and groundwater. By meeting all other local and state requirements with the proposed crossing, we believe we can safely join the usable portions of lot 209-4 without polluting or destroying wetlands. Another stated purpose of this district is to encourage those uses that can be appropriately and safely located in wetland areas – a responsibly built crossing would satisfy this purpose and would prevent the destruction of wetlands. State regulations would closely govern the installation and maintenance of any approved crossing. The wetland crossing will not threaten the health, safety, or welfare of the public. For these reasons we believe granting the variance required for our proposal would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:
   Granting this variance would allow for the productive development of a 6.88-acre lot. The proposal is to access the dry upland portion of the lot, where the most contiguous developable land exists. Denying this variance would essentially result in a land taking from the owner as a considerable portion of their property would be rendered useless since it is inaccessible in any meaningful way. The gain realized by the public in denying this wetland crossing is far outweighed by the benefit realized by both the property owner and the public by granting it. Allowing commercial development will stimulate economic growth and improve job-creating infrastructure. Granting this variance will not alter the essential character of the neighborhood or threaten the health safety or general welfare of the public. For this and all the reasons noted above we believe granting this variance would do substantial justice and allow for the productive use of a large tract of land. The current proposal is certainly a reasonable use of the property.
4. If the variance were granted, the values of the surrounding properties would not be diminished because:
   This proposal consists of commercially developing a 6.88-acre parcel located in the TIF and ERZ districts – zones that were created specifically to facilitate business development and economic opportunities. The use is consistent with the zoning and the surroundings and will have no negative impacts on the surrounding properties. New development in these districts has helped increase the job base and increase property values. Since this proposal is consistent with neighboring properties and for the reasons stated above, we do not believe that this proposal would have any negative impact on the surrounding properties. It is our experience that new construction and development generally increases the surrounding property values.

5. Unnecessary Hardship
   A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

      i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The subject property is unique given its shape and location. Granting this variance would allow for the productive use of the property. The zoning for the proposed lot is the Industrial Park district, as well as the TIF and ERZ districts. It is our belief that the development of this property is reasonable and fair when you contemplate the purpose of the ordinance provision and the specific application of that provision to the property. This proposal seeks a variance to permit the creation of a wetland crossing to join the buildable portions of an existing 6.88-acre lot. The unique shape of the wetland areas on the lot requires a crossing, and denial of one would pose an unnecessary hardship for the owner. The strict application of the proposed zoning ordinance change would require the property owner to relinquish access and use of a large portion of their commercial/industrial land. The owner has a right to use and develop their land. Typically the New Hampshire Department of Environmental Services Wetlands Bureau is the governing entity on wetland impacts as they are granted permission from the Army Corps of Engineers to regulate this. The crossing as designed will meet all state and federal guidelines and minimizes impacts to jurisdictional wetlands. The proposed crossing can be constructed safely and responsibly, following state and local regulations. We therefore believe there is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property. The regulation should seek to minimize wetland impacts but should not seek to violate landowners rights to access and reasonably use or develop properties.

      ii. The proposed use is a reasonable one because:

As stated above we believe that this proposal meets the spirit and intent of the ordinance as safe access can be provided via a wetland crossing. This proposal will also be consistent with its surroundings and will result in no negative impact to the public. It is our opinion that the proposed commercial development is reasonable as it will allow the utilization of the buildable dry portions of the property. The proposed use is allowed and encouraged in the industrial park district, and the proposed lot is suitable for such development. For this and all the reasons previously stated we believe that the proposed use and development are reasonable.

   B. If the criteria in subparagraph (A) are not established, explain how an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is

therefore necessary to enable a reasonable use of the property because:

The subject parcel is 6.88-acres with frontage on Safford Drive, between Route 32 and Route 12. It is currently a vacant lot, and proposed to be commercially developed. We believe that the shape and location of the property, and the fact that it is bisected by large areas of wetlands are special conditions that distinguish it from other properties in the area. The unique shape of the wetlands limits the property's reasonable use and therefore a variance is necessary to cross them. Denying this variance would limit the development potential for a property in the town's ERZ and TIF districts where development should be promoted as significant resources have been spent and allocated to provide municipal sewer and water services to this area. Not allowing reasonable development would contradict all the past efforts and result in significant losses to the Town from a taxbase basis. The financial loss would also be significant to the landowner with no good cause as reasonable access to and use of one's property should always be contemplated in local regulations. Utilizing the entirety of the dry upland on the lot is the most sensible way to develop this property, as the owner has a right to do. We believe the proposed development is a reasonable use of the land and harmonious with the surrounding neighborhood. This crossing would minimize environmental impacts and would be designed to meet local, state, and federal requirements.

Mulhearn opened the public hearing at 8:21pm

- Parisi comments on the destructive flooding a few years ago and asks what the state requires to maintain a culvert.
- Branon says that problems arise because the culverts were designed to different storm intensities. In general, crossings are oversized. Branon says these culverts are designed to 100-year storms. He states that back-to-back storms and increasing intensity will cause issues with erosion and soil loss. The state tries to apply the extreme for precipitation tables, and they far exceed local standards.
- He states there is recommended maintenance and they are generally self-policed.
- Bob Goodrich asks that if the 1-acre portion is not utilized, what impact would that have on taxation. If we add to that lot, would that increase taxes? He also asks how close to route 12 that portion of the lot would be.
- Branon answers that the footprint of the commercial development would be larger, thus increasing tax revenue. The portion of the lot is lower in elevation than Route 12 and should not be visible from Route 12.
- Mulhearn states that tax revenue is not applicable to the Boards review.
- Keith Thibault comments that contractor bays are a needed service and he likes the concept of the site. Keith asks if there are ways to contain possible contaminants coming from the contractor bays.
- Branon states that there is a closed drainage system on site. There is an oil/water separator. This runs from structure to structure with a drainage basin in the rear. The design for the upland portion has not been completed, but Branon anticipates a similar design.
- Every use and occupant must be evaluated by the Planning Board, so that is another line of review for the applicant.
- Parisi asks if the Conservation Commission has provided comments on this question. Paquette says there have not been any comments received.
- Ward expands on how the Conservation Commission feels about the proposed amendment and how it relates to future development.

Mulhearn closed the public hearing at 8:30pm

The Board deliberated questions from Checklist for Granting a Variance.

- Granting the variance would not be in contrary to the public interest:
  - Ward – Yes because the property is in the industrial park district and TIF district
  - Ramsey-Sanchez – Yes
  - Parisi – Yes
  - Thorne – Yes, echoing Ward
  - Mulhearn – Yes
- Granting the variance would observe the spirit of the ordinance:
  - Parisi – Yes. In the absence of Conservation Commission comments, the applicant has made a good case.
  - Thorne – Yes
  - Ward – Yes because the ordinance is meant to protect the wetlands. Building the proposed accessway, as proposed, protects the wetlands. It is not damaging. Spirit is observed.
  - Ramsey-Sanchez – Yes
  - Mulhearn – Yes
- Granting the variance would do substantial justice:
  - Ramsey-Sanchez – Yes
  - Parisi – Yes, the applicant has compelling arguments
  - Thorne – Yes
  - Ward – Yes, it grants substantial justice. Very little injustice is done to the town and very much justice is done to the applicant. The Town benefits from this as well.
  - Mulhearn – Yes. This application would not do injustice to the town or abutters. Crossing is done in an appropriate matter. It would give more usable space to the applicant.
- Granting the variance would not diminish the values of surrounding properties:
  - Thorne – Yes because we have seen no evidence to the contrary
  - Ward – Yes. They could increase in value.
  - Ramsey-Sanchez – Yes. Echoes previous reasons.
  - Parisi – Yes. Applicant has provided compelling arguments
  - Mulhearn – Yes. We have not seen testimony to the contrary.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
  - Ramsey-Sanchez – Yes because the geography of the parcel is strange and there is no other reasonable access. That chunk of the property would not be useable without this crossing.
  - Parisi – Yes. Ditto other comments.
  - Thorne – Yes. Agrees with Jessica.
  - Ward – Yes, another condition is that it is in the industrial park district
  - Mulhearn – Yes. There are a few aspects of the lot that distinguish it from other properties. Echoes Jay and other Board members
- No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:
  - Ward – Yes. The ordinance has conflicting uses for industrial park district. The purpose of the ordinance is to deny access, but this application is valid due to special circumstances on the property.
  - Ramsey-Sanchez – Yes. Agrees with Jay.
  - Joe – ABSTAIN. It's tough to read into the true objective of the potential amendment.

DRAFT

    - Thorne – Yes. Echoes previous members.
    - Mulhearn – Yes. Echoes previous members.
- The proposed use is a reasonable one:
    - Parisi – Yes. The applicant has provided a good case.
    - Thorne – Yes. Branon has provided good information.
    - Ward – Yes. It's reasonable to want to connect with another usable piece of property.
    - Ramsey-Sanchez – Yes. Applicant can't get to parcel. Agrees that it is a land taking.
    - Mulhearn – Yes. Lot has buildable land and it is reasonable for applicant to want to access all buildable land.

Motion made by Thorne to approve the variance application. Second by Ward. No further discussion. All in favor. ***Motion passed.***

ZBA 25-004: Variance – Fieldstone Land Consultants, PLLC, on behalf of 234 Old Homestead Highway Realty, LLC, is requesting a variance pursuant to the proposed amendment to section VII, Article D of the Zoning Ordinance to allow a wetland crossing to access a large dry upland area. The subject property is shown at Tax Map 209, Lot 1 and is in the Industrial Park District.

- Branon reiterates that this is similar to the previous application in that it is requesting a variance to a proposed amendment.
- The application had an approved subdivision at the last Planning Board meeting.
- Branon points out the wetland area on the site plan.
- Branon states that the property has over 7 acres of dry upland property the applicant wants access to. There is an existing crossing in the form of a footbridge.
- The project would create a 20 foot wide access road.
- Wetland impact would be approximately 4,000 square feet.
- Widening lake on each side.
- This project would require all state permitting to also include fish and game. Branon states the crossings go through a very thorough review.
- Branon explains that this application is very similar to the previous application.
- 84% of the buildable lot is on the other side of wetlands.
- Similar to the last application, they work with the state to find the best location for the crossing.
- Branon states there is not a flowing stream through the site. There is some channelized flow along Safford. Applicants can't entertain purchase agreements until a variance is secured.
- Ward asks where the existing footbridge is located. Branon points it out on the site plan.
- Branon states they would typically have a pre-application meeting with the wetlands bureau. Branon and Ward discuss pre-hearing and the work that goes along with that.
- Branon confirms to Ward that this is a wooded wetland.
- Parisi asks what has been approved by Planning Board, and Branon states that only the subdivision has been approved.
- Branon explains that there have been inquiries for the larger portion of the subdivided parcel.
- Branon goes through the variance criteria as seen below:

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1. Granting the variance would not be contrary to the public interest because:
   The zoning of lot 209-1 is the Industrial Park district, as well as the ERZ and TIF districts. These districts exist to stimulate economic growth and facilitate business development. Lot 209-1 is a larger lot compared to many that surround it, with a suitable area for commercial/industrial development and infrastructure in the rear of the lot. It serves the public interest to make the most of the tax investment that has been put into this area over the past decade. Granting this variance will allow for the productive use of this lot. Town voters approved the creation of a property tax exemption program for new commercial and industrial construction in 2020, indicating the expansion of commercial/industrial opportunities in Swanzey is something the voters would like to see. Allowing for a wetland crossing to access the rear of this lot will not change the character of the neighborhood or threaten the health safety or general welfare of the public. It is our belief that this proposal will have no negative impacts to the public – the proposed wetland crossing will meet all other local and state requirements. The crossing will be designed to minimize impacts, will utilize Best Management Practices and will require a permit from the Department of
2. If the variance were granted, the spirit of the ordinance would be observed because:
   We believe this proposed wetland crossing is reasonable and meets the spirit of the ordinance especially when you consider the responsible manner in which the crossing is proposed. One of the purposes of the Wetlands Conservation Overlay district is to prevent development of structures and land uses on wetlands which would contribute to the pollution of surface and groundwater. By meeting all other local and state requirements with the proposed crossing, we believe we can safely access the usable portion of lot 209-1 without polluting or negatively impacting wetlands. Another stated purpose of this district is to encourage those uses that can be appropriately and safely located in wetland areas – a responsibly built crossing would satisfy this purpose and would prevent the destruction of wetlands. State regulations would closely govern the installation and maintenance of any approved crossing. This crossing will provide access to an otherwise land locked property and access to property has to be contemplated in the TIF District where the community has chosen to promote commercial/industrial development. The wetland crossing will not threaten the health, safety, or welfare of the public. For all of these reasons we believe granting the variance required for our proposal would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:
   Granting this variance would allow for the productive development of a 19-acre lot. The proposal is to access the dry upland portion of the lot, where the most contiguous developable land exists. Denying this variance would result in a land taking from the owner as 5.9 acres of their property would be rendered useless as it is inaccessible in any meaningful way. The gain realized by the public in denying this wetland crossing is far outweighed by the benefit realized by both the property owner and the public by granting it. Allowing commercial/industrial development will stimulate economic growth and improve job-creating infrastructure and will be consistent with the ERZ and TIFF Districts. Granting this variance will not alter the essential character of the neighborhood or threaten the health safety or general welfare of the public. For this and all the reasons noted above we believe granting this variance would do substantial justice and allow for the productive use of a large tract of land. The current proposal is certainly a reasonable use of the property.
4. If the variance were granted, the values of the surrounding properties would not be diminished because:
   This proposal consists of commercially developing a 19-acre parcel located in the TIF and ERZ districts – zones that were created specifically to facilitate business development and economic opportunities. The use is consistent with the zoning and the surroundings and will have no negative impacts on the surrounding properties. New development in these districts has helped increase the job base and increase property values. Since this proposal

is consistent with neighboring properties and for the reasons stated above, we do not believe that this proposal would have any negative impact on the surrounding properties. It is our experience that new construction and development generally increases the surrounding property values.

5. Unnecessary Hardship
   A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

      i. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

The subject property is unique given its size and location. Granting this variance would allow for the productive use of the property. The zoning for the proposed lot is the Industrial Park district, as well as the TIF and ERZ districts. It is our belief that the development of this large acreage property is reasonable and fair when you contemplate the purpose of the ordinance provision and the specific application of that provision to the property. This proposal seeks a variance to permit the creation of a wetland crossing to access the rear of an existing 19-acre lot. The unique shape of the wetland areas on the lot requires a crossing, and denial of one would pose an unnecessary hardship for the owner. The strict application of the proposed zoning ordinance change would require the property owner to relinquish access and use of almost 6 acres of their commercial/industrial land. The owner has a right to use and develop their land. Typically the New Hampshire Department of Environmental Services Wetlands Bureau is the governing entity on wetland impacts as they are granted permission from the Army Corps of Engineers to regulate this. The crossing as designed will meet all state and federal guidelines and minimizes impacts to jurisdictional wetland areas. The proposed crossing can be constructed safely and responsibly, following state and local regulations. We therefore believe there is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property. The regulation should seek to minimize wetland impacts but should not seek to violate landowners rights to access and reasonably use or develop properties.

      ii. The proposed use is a reasonable one because:

As stated above we believe that this proposal meets the spirit and intent of the ordinance as safe access can be provided via a wetland crossing. This proposal will also be consistent with its surroundings and will result in no negative impact to the public. It is our opinion that the proposed commercial development is reasonable as it will allow the utilization of the largest contiguous dry portion of the property. The proposed use is allowed and encouraged in the industrial park district, and the proposed lot is suitable for such development. For this and all the reasons previously stated we believe that the proposed use and development are reasonable.

B. If the criteria in subparagraph (A) are not established, explain how an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property because:

The subject parcel is 19-acres with frontage on Safford Drive and Wilson Pond Road. It is currently a vacant lot, and proposed to be commercially developed. We believe that the size of the property and the fact that it is bisected by large areas of wetlands are special conditions that distinguish it from other properties in the area. The unique shape of the wetlands limits the property's reasonable use and therefore a variance is necessary to cross them. Only a small, narrow piece of land near the lot's frontage would be usable if this variance were denied. Constricting development to only that portion of the lot is not reasonable. This would limit the development potential of a property in the Town's ERZ and TIF Districts where development should be promoted as significant resources have been spent and allocated to provide municipal sewer and water services to this area. Not allowing reasonable development would contradict all the past efforts and result in significant losses to the Town from a taxbase basis. The financial loss would also be significant for the landowner with no good cause as reasonable access to one's property should always be contemplated in local regulations. Utilizing the 5.9 acres up dry upland in the rear of the lot is the most sensible way to develop this property, as the owner has a right to do. We believe the proposed development is a reasonable use of the land and harmonious with the surrounding neighborhood. This crossing and development would minimize environmental impacts and would be designed to meet local, state and federal requirements.

Mulhearn opened public hearing at 9:09pm.

- Bob Goodrich asks if the sewer water and electricity will be in the area discussed.
- Branon explains it will cross in the same area. They will be consolidating impacts to that area.

Mulhearn closed the public hearing at 9:11pm

The Board deliberated questions from the Checklist for Granting a Variance.

- Granting the variance would not be contrary to the public interest:
    - Thorne – Yes because the public voted for the Industrial Park district, thus it will be in tune with their interest.
    - Parisi – Yes. Agree with Thorne.
    - Ramsey-Sanchez – Yes. Echoing Joe and Lisa.
    - Ward – Yes. Public interest is protection of wetlands, sees no evidence this connection will be contrary to that protection.
    - Mulhearn – Yes. Echoes Thorne. Public interest is to develop this land.
- Granting the variance would observe the spirit of the ordinance:
    - Parisi – Yes
    - Ramsey-Sanchez – Yes. The ordinance is set to protect the wetlands. Applicant has explained that they will minimize the impact as much as possible.
    - Ward – Yes because the wetlands are not likely to be damaged by this proposal. Theres already a footbridge. They are replacing this existing structure with an improvement. Spirit of ordinance is to maintain access. Spirit is not to deny access that's already there.
    - Thorne – Yes. Agrees with Jay.
    - Mulhearn – Yes. Agrees with group.
- Granting the variance would do substantial justice:
    - Ramsey-Sanchez – Yes because of the districts the parcel is in. Lot can only be developed with this crossing.
    - Ward – Yes. Agrees with Ramsey-Sanchez.

    - Thorne – Yes. Echoes the group.
    - Parisi – Yes. Not granting would create an injustice.
    - Mulhearn - Yes
- Granting the variance would not diminish the values of surrounding properties:
    - Thorne – Yes. Could only increase values in the area.
    - Parisi – Yes. Agrees with Thorne.
    - Ramsey-Sanchez – Yes, haven't heard anything to the contrary. Encouraging to future development.
    - Ward – Yes. Agrees with group.
    - Mulhearn – Yes. Agrees with group.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
    - Ward – Yes. Property is in the Industrial Park District. Inaccessible without crossing.
    - Ramsey-Sanchez – Yes. Virtually undevelopable without crossing.
    - Parisi – Yes. Agrees with Jessica.
    - Thorne – Yes. Needs to cross wetland to use property.
    - Mulhearn – Yes. One of the larger portions of land available on lot. Would be inaccessible otherwise. Agree with all.
- No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property:
    - Ward – Yes. Application of provision does not harm the wetland. There is no fair and substantial relationship.
    - Ramsey-Sanchez – Yes. Agrees with Jay.
    - Parisi – Abstain
    - Thorne – Yes due to special conditions found in number 5.
    - Mulhearn – Yes. Agrees with group.
- Proposed use is a reasonable one:
    - Ramsey-Sanchez – Yes. Voted as a town to develop this district. This is the only way forward to do that.
    - Parisi – Yes. The lot is unusable without this crossing.
    - Thorne – Yes. Agrees with Parisi.
    - Ward – Yes.
    - Mulhearn – Yes it is a reasonable use. Done in a reasonable format by reducing impact.

Ward finds that these applications are more smoothly reviewed because they are in the industrial park, thus making criteria of the Variance application easier to meet.

Ward **moved** to approve the variance application. There was a second to the motion by Thorne. Parisi asks how long the variances are active. Paquette says they are good for two years. The group discusses what happens if the amendment doesn't pass. Paquette says that the town can contact town counsel to get clarification. Paquette and Branon discuss what happens if a site has site plan approval and a variance approval. All were in favor of the motion to approve. ***Motion passed.***

Other Business

- Bill Hutwelker states that the applicant lost the opportunity to secure in a healthcare facility due to the amendment going onto the ballot. Once the amendment was forwarded to the warrant, the Town lost on some opportunities. Hutwelker states there is some interest in parcel.

- Alex Torpey is the interim Town Administrator, is in office Monday and Tuesday. Hutwelker is in Wed-Friday. Each selectman has taken different departments as a liaison.
- Alex has offered the opportunity to do training from NHMA. He urges the Board to talk to chair to organize.
- Hutwelker states that Cheri Domina and Conservation Commission have put a tremendous amount of work in these wetland amendments, but they still have some unintended consequences. Hutwelker gives Paquette kudos for working with the applicant and attorneys on these variances. He praises the work of Branon and states that Branon is offering to speak to Conservation Commission.

ADJOURNMENT
Motion to adjourn was made by Ward and seconded by Thorne and all were in favor. ***Motion passed.*** Adjournment occurred at 9:33 p.m.

Respectfully Submitted,

Adam Paquette, Town Planner

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