

Town of Swanzey, New Hampshire
Swanzey Zoning Board of Adjustment
Meeting Minutes – May 18, 2020

CALL TO ORDER:

This meeting of the Swanzey Zoning Board of Adjustment (ZBA) was called to order at 7:07 p.m. by Chair Keith Thibault. The meeting was held via Zoom software for electronic conferencing due to the COVID-19 health emergency in the State of New Hampshire. Emergency meeting pursuant to Executive Order 2020-04, Section 8 and Emergency Order #12, Section 3. Members present: Thibault, Adam Mulhearn, Anne Karasinski, Bryan Rudgers, Bill Hutwelker, Alternate Eric Kallio, Alternate Bob Mitchell, Recording Secretary Beverly Bernard and Director of Planning and Economic Development Matthew Bachler. Bernard called the roll and read aloud the agenda for the meeting.

Roll call for the meeting:

Keith Thibault – present at home and in a room alone
Ann Karasinski – present at home and in a room alone
Bill Hutwelker – present at home and in a room alone
Bryan Rudgers – present at home and in a room alone
Adam Mulhearn – present at home and in a room alone
Alternate Eric Kallio – present at home and in a room alone
Alternate Bob Mitchell – present at home and in a room alone
Alternate Ruth Snyder – not present

OTHERS PRESENT:

There were 32 attendees at the meeting. Jonah Gosnell with Apex Racing was present.

PUBLIC ACCESS: The public access to the meeting online via www.zoom.us, using the Zoom App on a cell phone or tablet or laptop, or using a landline by calling (929) 205-6099 and entering Meeting ID number 235 370 4380. If there is difficulty accessing the meeting, please call (603) 352-7411 ext. 108.

PUBLIC HEARING:

Special Exception Application

Asher Properties, LLC requests a Special Exception for an 80-unit multi-family dwelling development on property located at 173-175 Monadnock Highway, pursuant to Section V, Article B.2(b) of the Zoning Ordinance and shown at Tax Map 19, Lot 67 and located in the Business District.

Bachler said that he has received an email from Chad Branon with Fieldstone Land Consultants on behalf of Asher Properties requesting a continuance to the ZBA meeting of June 15, 2020 due to a meeting conflict and the fact that the architectural plans for this project are not yet completed.

Motion was made by Hutwelker to continue the hearing for request of Asher Properties, LLC for a Special Exception for an 80-unit multi-family dwelling development on property located at 173-175 Monadnock Highway, pursuant to Section V, Article B.2(b) of the Zoning ordinance to June 15, 2020. There was a second to the motion by Mulhearn and no further discussion.

Thibault said he will be abstaining for the vote and recused himself for this application. All were

in favor by roll call except Thibault who abstained. **Motion passed**

REGIONAL IMPACT: Bachler spoke about the Board reviewing applications for regional impact. He reviewed the list of possible impact factors on neighboring communities when determining if there is potential regional impact. Kallio asked if this is voted separately from the criteria for granting a Variance or Special Exception and Bachler said that it is. Bachler said the Town is required to notify adjacent towns and Southwest Region Planning Commission (SWRPC) if the Board declares a development has potential for regional impact and they are afforded status of abutter for that application.

Mulhearn asked about the timeline for decision. Bachler said if the Board voted this evening that there was an item with regional impact, we would have sufficient time to send out notice to next meeting (14-day time period). Mulhearn said that if there was an application, would that application be continued to the following meeting. Bachler said that "yes", it would need to be continued to the next meeting to allow for the necessary time to notify adjacent municipalities and the regional planning commission. Thibault said something could come up during the presentation that could change the minds of the Board about regional impact. He also asked how often regional impact applications occur, and Bachler said during his time with the Town it has been rare. Bachler said as to the timing for addressing the issue, he has always seen it done at the beginning of a meeting.

Rudgers began to make a motion but was interrupted by Hutwelker. Hutwelker said there is potential financial impact. He said in the case of the application of Market Basket for their store, the City of Keene was awarded an amount and the Town of Swanzey awarded funds for tree cutting. Potential for impact is there. Thibault said the timing is such that in the course of a hearing the Board learns about the potential impact, the vote should occur at the time of the presentation. Mulhearn said only the submission is on hand now, and to vote on something without knowing the full story is premature.

Motion was made by Mulhearn that Apex Racing application could not be construed to have potential for regional impact. There was a second by Rudgers.

Bachler said that if the Board decides that an application has potential for regional impact, the status of abutter is given to the neighboring towns, then the public hearing would be kept open until they had an opportunity to be heard. We would need to keep the public hearing open and continue the application. Kallio said it is important to provide notice to abutters as soon as possible. Bachler said the decision is made by the Board and he cautioned the Board against treating every application as having regional impact. He said this is more applicable to large development projects. Bachler noted he has not received notice from any abutting Towns during the time he has been employed with the Town of Swanzey. Hutwelker said he believes that it comes up seldom and the vote should be taken at the beginning of the meeting and if after hearing the application we need to do so, can change our vote.

Rudgers said he agrees with Hutwelker. Thibault concurs that it is going to be rare and taking a vote at the beginning of the meeting is fine, and could change mind during the applicant's presentation is fair. Karasinski said she agrees.

Mulhearn amended his motion to add Asher Properties LLC as well. **Motion** was made by Mulhearn to **amend** his motion so as to add that to the best of their knowledge, none of the applications before the ZBA tonight can be construed to have regional impact. There was a brief discussion about potential financial impact when there is a decision about regional impact. All were in favor by roll call. **Motion passed.**

MINUTES:

- The meeting Minutes of April 13, 2020 were considered. **Motion** was made by Mulhearn to approve the meeting Minutes of April 13, 2020. There was a second to the motion by Kallio and no further discussion. All were in favor by roll call except for Thibault and Hutwelker and Mitchell who all abstained. **Motion passed.**
- The meeting Minutes of May 4, 2020 were considered. **Motion** was made by Mitchell to approve the meeting Minutes of May 4, 2020. There was a second to the motion by Rudgers and no further discussion. All were in favor by roll call except for Thibault and Hutwelker who both abstained. **Motion passed.**

Bachler provided public participation guidance to those members of the public should they wish to speak during any public hearing.

Rudgers noted that Mulhearn did a good job chairing the meeting in Thibault's absence.

PUBLIC HEARINGS

Special Exception Application

Apex Racing, LLC requests a Special Exception for a repair garage use on property located at 972 West Swanzey Road, pursuant to Section V, Article B.2(a) of the Zoning Ordinance. The property is located in the Business District and is shown at Tax Map 70, Lot 33. This had been originally scheduled for April 20, 2020

Bachler provided documentation to the Board that showed the existing building to be approximately 6,100 sq. feet. The applicant is proposing a new curb cut for Westport Village Road to the rear of the property. Bachler noted that applicant will need to obtain proper permits from the NH Department of Environmental Services (NH DES) for all hazardous waste materials associated with the business.

Public Hearing opened at: 7:55 pm

Discussion: Gosnell explained the business would be related to race cars and not be an average car repair facility. He said he is a local resident business owner. He said he would improve the property and the business would not impact the wetland area.

Thibault asked how the business is different from a regular repair shop. Gosnell said it would be primarily dealing with race cars, taking a car to increase speed depending on the track they are racing on. They will change oil, but the work being done will be more performance oriented. Suspension will be an important factor in adding speed. He said there isn't anyone offering anything like this service in the area. He noted there are several racetracks in New Hampshire so it is a good area for this kind of business.

Thibault asked if they will be building racing cars from the ground up and Gosnell said he is hoping to do so in the future. Thibault asked about rebuilding engines and Gosnell said mostly no, these engines are usually sealed engines to make the sport a little more cost effective. Gosnell said they will be selling parts. Mulhearn asked about customer traffic – number of customers. Gosnell said he anticipates 10 – 20 people in a day. Folks won't be in the building for very long. Parts will be available online as well. Thibault said he can hear Monadnock Speedway clearly from his home and asked about any noise created by the business. Gosnell said firing cars up will be done inside the building with doors shut. Thibault noted the location is close to single family homes and he wanted to make sure noise would not be a factor of the business.

Mulhearn asked about the block building. Gosnell said it is an existing building, the front is brick, but the entire building is steel with cement floors. Front will be retail store about 1500 square feet and rest will be shop and space for working on the vehicles. He said the building has two bathrooms and handicapped parking.

Kallio asked about storage – any long-term storage? Gosnell said some will be there for a period of time while being worked on. A customer may leave a trailer, but cars will not be left outside. He said the cars will stay indoors or outside on a trailer, covered. Kallio asked about waste oil and Gosnell said a friend gets waste oil from him for his machine shop. The oil will go into a 55-gallon drum and sealed.

Thibault asked for other questions from the public, but there none at this time. Bachler said he and the Department of Public Works (DPW) have been working on rear access to the site. He also noted the wetland on the site and that there is a 125-foot setback from a septic system to the wetland and if the septic fails as certified by Health Officer, then it can be replaced. He said this property is also adjacent to Mini-Mart property which had a gas storage spill that impacted this property. This property is subject to water testing by NH DES. He noted the property was tested in April and it meets water quality standards at this time.

Thibault asked for the reason for the driveway on Westport Village Road. Gosnell said the reason is for trailers to drive around more easily and avoid the well. He noted the discussion with the road agent as to where the access would be.

Mitchell noted the septic and well highlighted on the drawing and asked is the current septic 125 feet from the wetland and is there a place to put the septic and keep it out of the wetland should the current septic fail. Bachler said they don't know where the wetland boundary is exactly so he could not confirm the existing setback.

Thibault asked for public comment: There was none.

Thibault asked for questions from the Board. Hutwelker asked if there will be storage of waste material outside. Gosnell said he is in process of moving oil tanks inside and all storage will be inside. Hutwelker asked why a new curb cut is needed. Gosnell said because of change in ownership and business has changed. Gosnell said the septic system is operational as of right now. Gosnell said he isn't making any modifications to State Route 10 access.

Thibault checked for public comments again and there were no comments from the public.

Public hearing closed at: 8:22 pm

Hutwelker complimented the applicant on improving the look of the property. Rudgers said he concurred with Hutwelker.

The Chair reviewed the **Checklist for Granting a Special Exception** with the members of the Board: Is the exception allowed by the ordinance? **Members said: All said yes**

5 yes

Are the 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 said: Rudgers said yes, Hutwelker said yes, there are multiple similar businesses in the area, but the idea about asking for similar uses permitted in the district is a discussion that needs to occur at some point; Mulhearn yes; Karasinski yes; Thibault yes**

5 yes

- b. *Will such approval reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood?* **Members said: Mulhearn no, no testimony to the contrary; Karasinski no; Hutwelker no and said noise will be contained and no painting so no odors, and no evidence as to property values and the business owner has improved the building and therefor probably raised property value in the area ; Rudgers no; Thibault no**

5 no

- c. *Will there be a nuisance or serious hazard to vehicles or pedestrians?* **Members said: Karasinski said no, the applicant is making an effort to get the traffic off the road quickly; Hutwelker no; Mulhearn said no given the anticipated number of customers won't be a lot of additional traffic; Rudgers said no; Thibault no, given the testimony no serious hazards.**

5 no

- d. *Will adequate and appropriate facilities be provided for the proper operation of the proposed use?* **Members said: Hutwelker said yes, he has well, septic and 3-phase power. The rest of the Board said yes**

5 yes

The Chair reported that "yes" prevailed and entertained a motion to grant the request for a special exception to Section V, Article B.2.a of the Zoning Ordinance based on the responses to the checklist for granting a special exception.

Karasinski **moved** to grant the request of Apex Racing, LLC for a Special Exception for a repair garage use on property located at 972 West Swanzey Road, pursuant to Section V, Article B.2(a) of the Zoning Ordinance on property located in the Business District and shown at Tax Map 70,

Lot 33. Mulhearn seconded the motion and there was no further discussion. All were in favor by roll call. **Motion passed.**

DISCUSSION/OTHER BUSINESS

Motion for Re-Hearing

Avanru Development Group, Ltd requests that the Board grant a rehearing regarding the Board's decision rendered May 4, 2020 on the Special Exception Application submitted by Avanru Development Group, Ltd. Thibault recused himself and asked Mulhearn to take over chairing the meeting and Mulhern seated Kallio for Thibault. Hutwelker recused himself and Mitchell was seated for Hutwelker.

The Board discussed the rehearing request. Mulhearn asked if everyone had read the request and the members stated that they had reviewed the request. None of the members had any questions or comments at this point.

Bachler reviewed the request from Attorney J. P. Harris which was a motion for rehearing that was received on May 14th. He said the Board has 30 days to act on that request. This is not a public hearing and the Board will not be taking comments from the public. If the Board grants a rehearing then a new public hearing would be held, and new notices would be done. He noted the applicant can file an appeal with the Superior Court should the rehearing be denied. The reasons for granting a rehearing should be compelling ones such as new evidence that was not available at the time of the hearing. Bachler said the applicant is arguing that the Board made an error in criteria A. and criteria B of the Special Exception requirements

Criteria A. involves identifying the application as similar and appropriate to the area and Attorney Harris claims the Board used a new standard. He advised the Board that they should consider their interpretation of the Town's ordinance given their experience of serving on the Board and how criteria had been interpreted in the past. References were made to Haley Heights and Colonial Village and another site plan recently granted.

Criteria B. involves approval based on not reducing local property value nor being injurious, obnoxious, or offensive to the neighborhood – the applicant's Attorney said the Board erred in its finding because it was based principally on the size and setback of the project.

Bachler reviewed the meetings held by the Board on the application and noted the testimony provided during the public hearings and in writing. Bachler said the Minutes and Videos from the meetings are posted on the Town's website. He said the Board has an option to refer point by point of the argument for rehearing.

Mulhearn said there was six hours plus spent from both the applicant, abutters, and the members of the Board on this application. Mulhearn said the meeting was recorded and asked if the members had specific points to make.

Mitchel said the discussion provided by the Attorney that Mitchell set new standards is incorrect. Mitchell said he spent some time on the definition of "offensive" and what that meant for this application – he did not attempt to establish new standards. He was focused on the definition of "offensive". Rudgers said he respects the Applicant and his Attorney following current procedures. He

said that some of the questions were subjective. What he finds offensive, others might not. There is some level of subjective opinion involved. He said he thought the Board rendered an opinion that is it comfortable with. He said he is not about to change his mind. Mulhearn asked Karasinski for her thoughts. Karasinski said if there was new information or some change in what the applicant is trying to accomplish then she would reconsider, but she did not see that in this situation. She said she is not uncomfortable with her decisions and she is not going to change her mind. Mulhearn ask Kallio about his opinion. He said he read the letter from the Attorney and he could understand their concerns and also respects all involved. He said he would not change his vote and he has respect for the other Board members positions as well. He said his concern is that the Board is assured that their reasons are articulated properly. He said a lot of time was spent on this and everyone did their best. Mulhearn said he agrees that the Board heard the case and understood and voted on their best understanding of the criteria and everyone is supportive of their vote. He said he respects the applicant's position as well but he agrees that the information as presented has not changed.

Motion was made by Rudgers to deny a rehearing request of Avanru Development Group, LTD for a Special Exception for a 76-unit multi-family dwelling on property located at 115 Old Homestead Highway, pursuant to Section V, Article B.2.b of the Zoning Ordinance, shown at Tax Map 37, Lot 7 in the Business District which was denied at the ZBA meeting of May 4, 2020.

There was a second to the motion by Karasinski and no further discussion

In favor by roll call: Mulhearn, Karasinski, Rudgers and Mitchell

Opposed by roll call: Kallio

Motion passed.

ADJOURNMENT

Motion to adjourn was made by Kallio and seconded by Mitchell and all were in favor. ***Motion passed.***

Adjournment occurred at 8:52 p.m.

Respectfully Submitted,



Beverly Bernard, Recording Secretary