

**Town of Milford
Zoning Board of Adjustment Minutes
June 2, 2016
Case #2016-06A & B
Hammer Family Realty I, LLC & Salt Creek Properties, LLC
Special Exception**

Present: Kevin Johnson, Chairman
Michael Thornton (not present for final vote)
Joan Dargie
Jason Plourde
Len Harten,

Absent: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant Hammer Family Realty I, LLC and Salt Creek Properties, LLC for the properties located at 39 Hammond Road, Tax Map 43, Lot 75 and 30 Hammond Road, Tax Map 43, Lot 71, in the Commercial Zoning District, for the following Special Exception requests:

Case #2016-06A Special Exception request pursuant to Article VI, Section 6.026.A to allow the disturbance of approximately 9,982 SF of wetland impact to construct an automobile dealership, associated parking, and site improvements.

Case #2016-B Special Exception request pursuant to Article VI, Section 6.02.6.B to allow the disturbance of approximately 28,000 SF of associated wetland buffer areas to construct an automobile dealership, associated parking, and site improvements.

MINUTES APPROVED ON 11/3/16

Kevin Johnson, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He then introduced the Board. He continued by informing all of the procedures of the Board. He read the notice of hearing. The list of abutters was read. Representative of Hammer Family Realty, LLC, 34 Hammond Road LLC, and Sandford Surveying & Engineering were present.

Raymond Shea of Sandford Surveying & Engineering came forward to present the case. With him was David Hammer, owner of property. He gave an overview of the proposal. Two properties, on 30 Hammond Rd which was formerly a furniture store and residence, and on 39 Hammond Rd which is an existing residence. Will impact approx. 9,980SF of wetland and approx. 28,000 SF wetland buffer. Started with pre-applications meetings with NH DES, one at regional office in Portsmouth with Regional Inspector. Presented proposal and discussed wetlands, value of wetlands, type of wetlands. A second meeting with DES in Concord with wetland employee and Corps of Engineers representative. At those meetings, discussed 17,000SF wetland impact. Were encouraged to go forward. Subsequently they

reduced wetland impact. He pointed out on the plan the areas of proposed wetland impact for parking lot. Across the street is proposed parking with minor intrusion into the buffer zone. Since original submittals a proposed slight change to the building which was just being presented to ZBA. Didn't additionally affect wetland impact or buffer impact. Building submitted was two-story. Proposed change is for single story.

K. Johnson asked if that changed the amount of square feet.

R. Shea said no. Footprint of impacts is same. Total green space is 57 percent, leaving significant amount of green space.

Before questions, list of abutters was read. Only R. Shea, D. Hammer were present.

K. Johnson asked Board for questions.

J. Plourde asked re the new building going in, there were previously paved parking areas.

R. Shea said that was correct. No more impervious. Just moving the building within the pavement.

J. Plourde trying to make sure, re impervious surfaces, they were not having to find additional spaces.

R. Shea said there would be 67 spaces for employees and customers at standard sizes. Will be a number for inventory and display which can be reduced. Total of 450 to 500 spaces, leaving aisles open. Spaces for customers and employees are standard sizes. Couple being affected are being moved to a different part.

K Johnson, since both cases are wetland related, facts are materially the same, wanted to have both cases presented together and criteria considered separately for each. OK with the Board?

Board members agreed.

R. Shea said assessment of wetland, function and values, were presented with the cases. In review process it was generally agreed this wetland location and type had low value and low function, which was why they decided to impact this way.

K. Johnson said, for benefit of public, applicant passed out copies of photos. Those were in the packet that Board members had and available for review, so no new material arrived that evening.

Applicant then read application.

Article X Section 10.02.6 A-E Criteria:

1. The proposed use shall be similar to those permitted in the district:

The proposed car dealership and associated car display areas are a permitted use in this zone.

2. The specific site is an appropriate location for the proposed use because:

The site is on an existing town road with access to Routes 13 & 101. Subsequent to a lot line adjustment, the site will be of adequate size and configuration to accommodate the proposed dealership and car display areas.

3. The use as developed will not adversely affect the adjacent area because:

The site is part of a master planning of the surrounding area and will be developed with the adjacent areas and properties in mind.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

The site has been designed to accommodate additional traffic into the facility and display areas and in consideration of possible future road improvements. Being a dead end road, there is no through traffic that might endanger pedestrians crossing from the main facility to the display area across the road.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

The site has been designed with adequate parking, travel lanes, car storage, septic system, drainage system and other facilities sufficient to ensure proper operation.

Section VI, Section 6.02.6 A&B Criteria:

1. The need for the proposed project:

The present car dealership operates from a multi building property on Elm St. Milford. The site layout and buildings were not designed for the use and the facility does not operate efficiently and does not have room for needed growth of the business. The proposed location on Hammond Road is designed specifically for the use and future growth and has easy access and high visibility to Route 13 & 101.

2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers:

The site layout was designed to impact only those wetlands and buffers that were previously altered or are in developed areas adjacent to the existing house, yard and business. (See TES Environmental Consultants "Wetland Functions and Values Assessment" report enclosed)

4. The impact on the quantity and/or quality of surface and ground water:

There are no surface waters within the impact area. The proposed site design addresses the positive treatment of storm drainage as it is infiltrated into the ground.

5. The potential to cause or increase flooding, erosion or sedimentation:

The site design addresses the treatment of storm drainage in regards to controlling and treating the quality and quantity of runoff to protect abutting properties from flooding, erosion and sedimentation. NHDES Alteration of Terrain permit requirements also will assure these items are addressed.

6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer were also permitted alterations to the wetland and buffer proportional to the extent of their property rights:

Because the impacts on this project are wetland and buffers that are of low quality/value and in previously altered and disturbed areas, similar impact on abutting properties should have little affect on the overall wetland complex or buffer areas.

7. The impact of the proposed project on the values & functions of the total wetland or wetland complex:

No significant loss of wetland functions and values will result from these proposed impacts. (See TES Environmental Consultants "Wetland Functions and Values Assessment" report enclosed)

J. Plourde asked, re applicant's statement in application that the site is part of master planning and will be developed with the adjacent areas and properties in mind. How?

R. Shea said owners of abutting properties assisted in lot line adjustment. Road to the right of plan proposed to come from Rt. 13. Working with the neighbors on overall master planning of the siting.

K. Johnson asked Mr. Shea to show location of Joe's Karate and JP Pest relative to this proposal.

R. Shea pointed those out. Proposed road shown is partially approved to come from Rt. 13 behind the site to the southeast and access to the rest of that property. Trying to work with the abutters. Part of project is an upgrade to improve the road.

J. Dargie applicant had said no traffic impact was mentioned because it is a dead end.

R. Shea said only project beyond theirs is JP Pest.

J. Dargie asked how the new road would connect to this development.

R. Shea said it was designed in concert with the back parking lot, but not to be used as access. Because of the significant cut in that area it was designed to be constructed together so that after this there wouldn't be a lot of blasting.

J. Dargie asked where it would access.

R. Shea said main access would be Hammond Rd. Could envision a gate back there.

J. Dargie asked if it would be private or public road, because gates not usually allowed on public roads.

R. Shea said it was designed to be public. Between public road and the back of their parking lot, is what he meant, so Contemporary could control who could get in. Not envisioning gate on the public road.

J. Dargie – that won't be connected to Hammond.

R. Shea said it comes off Rt. 13 and envisioned to head out east – no plan to tie in.

J. Dargie – just for the property

K. Johnson said because they don't want to include possibility for that road now. Things may change.

R. Shea said because it is so adjacent to it they may construct that while the back part is under construction, just for ease of construction.

J. Dargie asked about elevations and effect on drainage.

R. She said has been designed to handle it. Goes down to a retention area away from wetlands. Site slopes up from Hammond Rd to the proposed building and existing house and drops to the wetland—7 to 8 ft drop—and then rises 20 to 40 ft. in the back. Drainage of the vertical parking lot goes to detention pond in lower right corner. Drainage for commercial building goes down to a bioretention area. Parking lot goes to a bioretention areas Drainage in front and eventually all to a catch basin and eventually to a swale.

J. Dargie asked if it crossed the road; is that Hammond Rd?

R. Shea said there is a culvert. Hammond Rd, correct. What isn't treated by bioretention areas goes to a swale. Area with bioretention goes to retention pond. Part of pre-application with DES and Alteration of Terrain was addressing bioretention areas. They were comfortable with those. Helps retain some water on site into the ground and filtrates the water.

K. Johnson asked if any further questions. None.

K. Johnson said he wouldn't read entire text of the Environmental Services report. It will be available on line or in the office. Environmental Services rated it a low functioning wetland, and while those have a purpose they are the least valuable wetlands. Environmental Services and Corps of Engineers all rank wetlands as to value. There are no native fish species, etc. to be worried about.

Also a communication from the Milford Conservation Commission dated May 14, 2016, which he read:

To: Zoning Board of Adjustment

From: Town of Milford Conservation Commission

In regard to Case 2016-07 (Sic) (should refer to -6A&B) the Hammond Road Contemporary auto dealership Special Exception request.

To the Board: The Conservation Commission met with the applicant at our Thursday, April 14, 2016 meeting to review and comment on the Contemporary auto dealership project. There was a site visit on Tuesday, May 10, 2016. Several members of the Conservation Commission attended the site visit along with a member of the Planning Board. The members have comments considering this application. There will be an impact to the wetland and buffer which the applicant is mitigating with several constructive stormwater management methods. The Conservation Commission's comments are as follows:

1. The Commission appreciates the applicant's utilization of previous surface treatments with the grass pavers located throughout the site. The snow storage area will be kept out of the buffers. This is a disturbed site with two wetland crossings present. The applicant has taken measures to mitigate the impact to the wetland and buffers. The Commission would like to see more pervious surface treatments. It may make for a more difficult maintenance but it would be appropriate to maintain the existing landscape and functionality of those natural resources. The Commission appreciates that the applicant had the site evaluated by a licensed wetland scientist to assess the functionality of the wetlands and habitat. The rain garden located at mid-point separates the lower from upper lot portions of the lot. This appears to be a good solution for the wetland impact proposed at this location. As requested the Commission used the evaluation use criteria 6.02.7 to review the application and offer advice to the ZBA for their consideration:

Condition 1: The need for the project impacts. In order to utilize the property the applicant does need to make the crossings.

Condition 2: The Conservation Commission feels the applicant has tried to find the least impact solution. The applicant has tried to minimize the impact by choosing the narrowest cross-section of wetland areas for the crossing, or where there was a previous impact.

Condition 3: Per the applicant, the wetland that will be impacted has been determined to be low functioning wetland as provided by the TES Environmental Consultants Wetland Functions and Values Assessment report.

Condition 4: The Conservation Commission is satisfied that the stormwater management systems proposed will address water treatment and infiltration.

Condition 5: The applicant has addressed the potential for flooding, erosion or sedimentation. The applicant has stated that he will use updated erosion treatments presented in the NH Storm Water Manual, Volume 3.

Condition 6: This site is an already impacted site with a history of human disturbance. With the stormwater management methods proposed to handle the capture, infiltration and treatment of stormwater, abutters creating the same impact should not have a cumulative detrimental impact to the habitat.

Condition 7: With the best management practices proposed, this impact should be tolerable to the surrounding landscape and natural resources.

Please contact me if you have any further questions.

Very respectfully,

Audrey Frasier

Chair, Milford Conservation Commission

J. Dargie asked where the rain garden would be.

R. Shea said called bioretention areas. Behind the building it slopes to the low point, which is one. Other is halfway up back which catches everything coming down in.

J. Dargie asked if new building would move that.

R. Shea said it will be moved a little uphill but same function. Then two catching water from the parking lot.

K. Johnson asked for further questions. None. He said since they are so similar in facts, would like to discuss them together but vote on them separately.

Discussion of Special Exception Criteria:

A. The proposed use shall be similar to those permitted in the district:

M. Thornton – yes. Conservation Commission pointed that out and said there is no conflict.

L. Harten – agreed. Proposed use is similar to those permitted in the district. After considering comments of the Conservation Commission it appears they have met all necessary treatments to the property.

J. Plourde – agreed permitted use in the district

J. Dargie – talking about wetlands, but proposed use is similar to what is in area. JP Chemical has trucks and parking.

K. Johnson agrees that use is similar to those permitted in this district.

B. The specific site is an appropriate location for the proposed use:

J. Plourde – as far as site is concerned, wetlands have been disturbed by man – pesticides, cutting in the wetlands. Lot of things itemized by DES. It is appropriate location not just because permitted by zoning but also because they are doing a lot of work trying to fix some of the damage done on the site.

M. Thornton – asked to be excused. Feeling ill.

L. Harten – believes it is. Statement that applicant made it is on existing town road with access to Rt. 13 & 101. Will be configured to accommodate auto dealership.

K. Johnson – agreed. These cases that have their own criteria re wetlands access, dwellings, home occupations, there are two sets of questions. Sometimes they appear to conflict or not fit.

On the question if they ignore the fact that this has wetlands, would this be appropriate site for the proposed use, absolutely. It has access to Rt. 13 & 101. Is it appropriate considering impact to wetland? If they look at where the wetlands are in relation to this property and the proposed development, per Conservation Commission comments, the applicant has made effort to minimize impact to whatever extent possible to utilize for commercial use.

C. The use developed will not adversely affect the adjacent area:

J. Dargie – will not adversely affect adjacent area relating to the wetland. It is low grade wetland, do she didn't believe it would adversely affect property.

J. Plourde didn't think it would adversely affect - might actually result in positive effect because of measures they are doing with potential road in back and to catch drainage.

L. Harten - agreed with J. Plourde. Didn't believe any adverse affect to the adjacent area. Will actually improve area.

K. Johnson agreed with others. If they look just from general Special Exception, didn't think it would have negative impact. On dead end road – minimum traffic that would affect others in the

area. Re wetlands, didn't see any significant impact that would affect adjacent. Plan appears to provide some benefit in capturing and treating stormwater.

D. There will be no nuisance or serious hazard to vehicles or pedestrians:

L. Harten didn't believe there would be. They are going to be sort of their own entity, on a dead end road. Only traffic would be to their business and there are provisions that would protect any moving vehicles or pedestrians. Had no issue with that.

J. Plourde – it is dead end road and looking at the wetlands impact. As far as pedestrians and vehicles didn't see serious hazard. Traffic on Hammond Rd and 13; that is not what they were reviewing or discussing or voting. All focused on the site and Special Exception proposed. Based on that criteria would say there would not be nuisance or serious hazard.

J. Dargie – only concern would be if future roads were connected. If it is stated it is a dead end and won't be connected – if that remains same, she didn't think it would be nuisance.

K. Johnson didn't see nuisance or serious hazard to vehicles or pedestrians. Didn't see where any construction on site would present risk to anyone traveling on Hammond Rd. No volume of traffic. No nuisance or hazard to 101 or 13. Level of traffic in that area with the proposed cleaning up some of those areas can easily handle traffic this business would generate.

E. Adequate appropriate facilities will be provided for the proper operation of the proposed use:

J. Plourde – yes. Believed they have adequately provided facility to accommodate the wetlands, the operation of the facility, parking areas and rain garden.

J. Dargie – agreed.

J. Harten – agreed. Applicant spelled out adequate appropriate facilities on parking, travel lanes, sewer systems. Also talking improving the road which would be a benefit to the area because they will be bringing in tractor trailers and loads of cars. Improving condition of the road, he believed, appropriate facility would be provided for proposed operation of the dealership.

K. Johnson agreed. Looking at both ways, proper operation based on information by the applicant they will be making ingress and egress improvements to the road. The shape of the property provides for natural flow control. Appropriate measures to minimize and mitigate wetland impact.

Discussion of seven criteria for wetlands:

K. Johnson read the seven criteria:

- 1. The need for the proposed project.**
- 2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers.**
- 4. The impact on the quantity and/or quality of surface and ground water.**
- 5. The potential to cause or increase flooding, erosion or sedimentation.**
- 6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer were also permitted alterations to the wetland and buffer proportional to the extent of their property rights.**
- 7. The impact of the proposed project on the values & functions of the total wetland or wetland complex.**

and asked Board members for any other comments he had. He asked for general review of the impact. Are the criteria met?

L. Harten – yes. Applicant provided adequate facilities to deal with all sections of those requirements. He had no problem.

J. Plourde agreed. They have satisfied all seven.

J. Dargie agreed. They have met requirements.

K. Johnson agreed. Based on applicant's presentation, the testimony, consultant's report, etc. they have carefully looked at requirements and done best to meet them. Also appears the Conservation Commission concurs with that and was satisfied with the proposal.

Applicant reminded Chair of public comment.

K. Johnson opened the meeting for public comment. There were none. He closed the public comment portion of the meeting.

Vote on Criteria

1. Is the Special Exception allowed by the Ordinance?

L. Harten – yes; J. Dargie – yes; J. Plourde – yes; K. Johnson – yes

2. Are the conditions present under which the Special Exception may be granted?

L. Harten – yes; J. Dargie – yes; J. Plourde – yes; K. Johnson – yes

K. Johnson asked for motion to approve Case #2016006A&B

J. Dargie made motion to approve.

J. Plourde seconded.

Final Vote:

J. Plourde – yes

J. Dargie – yes

L. Harten – yes

K. Johnson – yes

Chair informed applicant that Case #2016-06 A&B was unanimously approved by 4 to 0 vote.

The Chair reminded applicant of the thirty day appeal period.