

06-49 – Mahoney Farms – 30 Nobscot Road

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
OCTOBER 24, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels
Constantine Athanas

The hearing was reconvened by the Chairman, Mr. Richmond who reported the Board was in receipt of a letter dated October 19, 2006 from the applicant requesting that this application be withdrawn without prejudice. The letter indicates that following the October 11th hearing the applicant met with the Building Inspector and a solution has been arrived at which will bring the building into compliance with the Zoning Bylaw requirement. Therefore, a variance will no longer be required.

The hearing was closed and it was on motion unanimously voted to accept the applicant's request to withdraw Case 06-49 without prejudice.

Stephen M. Richmond, Chairman

Jeffrey P. Klofft, Clerk

Jonathan G. Gossels

Constantine Athanas

06-23,24,25,26 – Foreign Motors West – 122-130 Boston Post Road

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
OCTOBER 24, 2006

The Board consisted of:

Stephen M. Richmond, Chairman
Jeffrey P. Klofft, Clerk
Jonathan G. Gossels

Constantine Athanas
Nancy G. Rubenstein, Associate

For the Applicant:

Attorney Joshua M. Fox
Frederick Tierney, Arthur Motroni, Foreign Motors West
Bruce Ey, Schofield Brothers

The hearing was reconvened by the Chairman, Mr. Richmond. The Board was in receipt of the following documentation relative to the applications:

- Email dated October 2, 2006 from Planning Director
- Revised plans prepared by Schofield Brothers dated October 9, 2006
- Letter dated October 13, 2006 from the Design Review Board
- Email dated October 17, 2006 from Conservation Coordinator
- Memo dated October 17, 2006 from Planning Director
- Memo dated October 17, 2006 from Planning Director to Selectmen
- Memo dated October 18, 2006 from Conley Associates
- Email dated October 24, 2006 from Planning Director including report from MDM Transportation Consultants

Mr. Fox said at the last hearing the Board left off with the suggestion for them to go back to the Design Review Board (DRB) to come up with a landscape plan which incorporates widening of Old County Road. This was done at a meeting with the DRB on October 11th and that Board issued a report to the Selectmen with a copy to the ZBA. The report recommended approval with the exception of the signage. Mr. Fox said it is not clear as to whether a special permit is needed for the sign.

The landscape plans are the same except for a shift from native species to cultivars. One of the recommendations from the Selectmen was for approval of those plans by the Conservation Commission.

Mr. Richmond asked if there is a design plan for the roadway reconfiguration.

Mr. Ey said they incorporated the conceptual plan from MDM into the site plan so that the site plan package which was submitted to the Board accommodates that. SP-3 of the plan is the new layout. It shows a proposed 5-foot walkway easement and it shows the edge of what would be the new right of way if the town were to take that property. This easement accommodates the MDM layout.

Mr. Ey said at this point they are taking the MDM layout and will do a separate set of construction documents for the intersection which have to go to Mass. Highway. They anticipate going back about four or five times with Mass. Highway with those documents and

will invite the Planning Director and Town Engineer to attend each time. Mr. Ey said the intent is to follow the geometry as closely as Mass. Highway will allow.

Mr. Richmond said he was looking towards the ZBA's ultimate permit and was not sure he was comfortable with the level of detail in plan SP-3.

Mr. Ey said that plan was to scale and stamped by a professional engineer. It meets the dimensions of the MDM plan. However, if the Board wanted to refer to the MDM plan in the Decision, he had no problem.

Mr. Richmond indicated he would be comfortable with including the MDM plan.

Mr. Ey anticipated a 4-month process with Mass. Highway and will keep the Board apprised of the progress.

With regard to the landscaping, Mr. Ey felt their proposed landscape plan overcomes the closeness of the pavement to the corner of the building and will soften that corner.

Mr. Gossels liked the plan. His only comment was with the landscaping of the last two parking spaces on the left side of the exit driveway. He would be more comfortable if those spaces could be turned into more of a landscaped area.

Mr. Ey felt this could be done and felt he might even be able to get a third tree in there. He said there is a small pylon sign that goes in front of those trees and the trees will be over that sign. He commented that the DRB liked the simplicity of the landscaping and variety of the species. Because the building has very clean lines, they thought the simplicity of the landscaping interplayed well with the building. Mr. Ey would like to continue that theme on the corner.

Mr. Fox wanted to make two points. First, the two spaces to be removed are new vehicle storage spaces. The site plan indicates 270 active parking spaces and less than 100 new vehicle storage spaces. He said clearly there is going to be a need for additional new vehicle storage on that site. 100 doesn't work and there is an overabundance of active spaces. So there is likely going to be new vehicle storage on parking allocated as active. This was done to demonstrate that the Bylaw requirements could be met.

The Board had no problem with this.

Mr. Fox said the second point goes back to the road improvements – that is, that they have discussed with the Selectmen the issue of whether the Certificate of Occupancy would be issued if the road work was incomplete and the building was complete. There was agreement to condition and bond the amount of the work and also to coordinate with the town and bring in the necessary traffic safety while the work is going on.

Mr. Richmond was comfortable with the concept but concerned about the length of time it might take to get this done. He asked what the time frame was and what would be a worse-case delay period.

Mr. Ey said the construction of the building on the site is a one-year process and it is hoped that the plans will be approved by Mass. Highway by May or June 2007. The problem is that the utility companies won't work without an approved plan from Mass. Highway. He is hoping to have the poles moved and the intersection done when the building would open – probably mid-December 2007.

Mr. Richmond asked when ground would be broken. Mr. Ey said this must be done over the winter in order to make schedule. Mr. Tierney said BMW has given him an ultimatum of December 2007 to open.

Discussion followed on the possibility of a delay in moving the poles. Mr. Richmond suggested perhaps a conditional Certificate of Occupancy could be issued in November or December for a six-month period if the poles had not been moved by the time the rest of the construction was completed. If additional time was needed, the applicant could come back to the Board.

Mr. Ey did not anticipate any delay to go beyond 6 months. Mr. Fox said he would be agreeable to come back to the Board after six months if necessary.

In response to a question from Mr. Gossels regarding lighting, Mr. Fox said after the Selectmen's meeting they contacted Channel Buildings, the lighting engineers, but have not yet heard back from them. What he was trying to ascertain was whether or not there were dimmers on the lights or whether they just shut some of them off. He said it can be done either way.

Mr. Gossels had concerns regarding the Wingate side and along the street.

Mr. Fox said they would like to have more flexibility now that there will be less happening on the property; however, if the Board wants to have lights on Boston Post Road, it can be accommodated.

Mr. Ey said the proposed lighting is very low for a dealership. One-foot candles is too low and not safe; certainly 5-foot candles is low for operating hours.

Mr. Gossels had no problem with the light during operating hours. His concern was after operating hours cease. Mr. Ey said there is very little spillover because these are cutoff fixtures.

Mr. Gossels said they may want to have a light on the pole to light the intersection noting this was discussed at the last hearing.

Mr. Richmond said there are two lighting plans: a basic plan for non-operational lighting and a plan for security lighting. He would suggest approval of both plans subject to modification by the Selectmen.

Mr. Ey said the Selectmen are going to want to take a look at the site once the lights are on. He said this was done at Land Rover and adjusted until a comfortable level was arrived at that was acceptable. He said he was amenable to working with the Selectmen on the lighting. He added that they are sensitive to the lighting on the Wingate side and have spoken to them regarding this. He said there is very little spillover onto that property.

Discussion then followed on conditions which should apply to the Special Permits, after which the public hearing was closed and the following motion was placed and seconded:

CASE: 06-23

MOTION: "To grant Foreign Motors West, Inc., applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 25 of the Zoning bylaws, to operate an automobile sales and service facility, property located at 122-130 Boston Post Road (Industrial District #2) and a portion of 30 Goodmans Hill Road (Residential Zones A-1 & C2)."

CASE: 06-24

MOTION: "To grant Foreign Motors West, Inc., applicant, a Special Permit under the provisions of Section 2230, Appendix A,C,Use 12 of the Zoning bylaws, to allow motor vehicle sales and rental."

CASE: 06-25

MOTION: "To grant Foreign Motors West, Inc., applicant, a Special Permit under the provisions of Section 2230, Appendix A,C, Use 13 of the Zoning Bylaws, to allow motor vehicle general and body repair."

CASE: 06-26

MOTION: "To grant Foreign Motors West, Inc., applicant, a Special Permit under the provisions of Section 2230, appendix A,C, Use 14 of the Zoning Bylaws, to allow motor vehicle light service."

All development shall be in accordance with the following:

1. Plans titled "Proposed BMW Dealership at 130 Boston Post Road in Sudbury, Massachusetts," prepared by Schofield Brothers of New England, Inc., Framingham, MA, consisting of sheets SP-1 through 9, L-1 through 3, A1-1 and 2, A3-1 and 2.
2. Plans titled "Electrical Lighting Plan prepared by Cote Electrical Engineers, Hampstead, NH, consisting of sheets E1-3.

3. Traffic improvements as shown on MDM conceptual Traffic Improvement Plan dated September 21, 2006, as may be amended by the Mass. Highway Department. Approval will be required from the Board of Appeals for any substantial changes to these plans.

ADDITIONAL CONDITIONS:

1. Prior to the issuance of a Certificate of Occupancy, the applicant will take such measures so as to legally merge the 2 lots comprising the project premises into a single parcel, and shall submit proof of same.
2. No commercial activity will be allowed on the residential lot which is currently identified as Lot 2B.
3. The sidewalk will be constructed across the entire frontage as shown on the plan and will connect to, or be aligned with, adjacent sidewalks. Additionally, the sidewalk will connect to the Wingate driveway along the frontage to the west.
4. Prior to issuance of a Certificate of Occupancy, the applicant will grant to the Town of Sudbury a walkway easement or deed for that portion of the walkway which is outside of the right of way as shown on Plans SP-4. Any such easement or deed will be subject to approval by Town Counsel.
5. The applicant will construct and maintain storm water controls as shown on the plans and will obtain a construction storm water permit prior to commencement of construction on the site. The applicant will comply with the storm water pollution plan required to be maintained by that permit.
6. Landscaping and fencing shall be substantially as proposed in the plans titled "Landscape Plan", Sheets L-1 through 3, prepared by Schofield Brothers of New England, dated October 5, 2006, as may be modified in accordance with Site Plan approval by the Board of Selectmen, except that the two south westernmost parking spaces will be eliminated and will be landscaped and include a mature tree. Ongoing maintenance and replacement of materials as necessary will be required. Any substantial changes to these plans will require approval by the Board of Appeals.
7. All lighting shall be substantially the same as that proposed in the plan titled "Electrical Lighting Plan", Sheets E-1-3, prepared by Cote Electrical Engineers, dated March 6, 2006, as may be modified in accordance with Site Plan approval by the Board of Selectmen, and shall be otherwise consistent with the provisions of Section 3427 of the Zoning Bylaw. Lighting shall be extinguished during non-business hours as shown on the Security Lighting Plan so as to provide minimum lighting for security purposes consistent with adjacent properties. Any substantial changes to these plans will require approval by the Board of Appeals.

8. The applicant shall complete the construction of the roadway improvements shown on the MDM conceptual Traffic Improvement Plan referenced above prior to the issuance of a Certificate of Occupancy for the project, provided that the Building Inspector may issue a conditional certificate valid for up to six months if (a) the completion of the roadway improvements is delayed due to difficulties in utility pole relocation that are beyond the reasonable control of the applicant, and (b) the applicant posts a bond for the value of the remaining work prior to issuance. No additional extensions to the conditional certificate will be allowed without the approval of the Board of Appeals.
9. There will be no construction activities which produce off-site noise before 7AM or after 6PM Monday-Friday, or before 8AM or after 5PM on weekends or federal holidays.
10. Hours of operation shall not exceed Monday through Friday from 7AM-8PM, Saturday, 9AM-5PM, Sunday Noon to 5PM.
11. No heavy bodywork is allowed on the premises.
12. No fuel storage is allowed on the premises.
13. All car repair and car service work shall be performed inside the buildings on the premises. There shall be no exterior storage of car parts or equipment. Car washing will occur only within the car washing structure described in the application materials, and car washing residues will be captured and held in a tight tank and shipped off site for disposal.
14. There will be no outdoor public address system allowed on the premises.
15. All deliveries of automobiles on car carriers must come from the west along Route 20/Boston Post Road and such car carriers while in Sudbury are limited to travel only on Nobscot Road, Boston Post Road, Landham Road and the frontage along Old County Road.
16. At no time will cars be allowed to park or load on Old County Road.
17. On-site deliveries by car carriers are limited to the hours of 9:30AM-3:30PM.

18. All signs on the property will either comply with the Sign Provision in the Bylaw or will require approval by the Board of Appeals.
19. No flags, banners, spinners, pennants or other such display banners shall be displayed on the premises without first obtaining the required approvals.
20. This permit is non transferable. A change of any controlling interest in the applicant will be considered a change in ownership and will require approval by the Board of Appeals. One year following receipt of the Certificate of Occupancy, the applicant will be required to return to the Board of Appeals to discuss operations and compliance.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The applicant requires four separate special permits for the purpose of operating a BMW dealership with its associated services. The property is primarily located in an Industrial District and is an allowed use subject to the granting of a special permit(s) by the Board of Appeals. The smaller portion which is zoned residential will be merged with the primary property and no commercial activity will take place on that portion.

The Board finds that the use is in an appropriate location. It will not be detrimental to the neighborhood and will not significantly alter the character of the zoning district. It is consistent with other commercial activity in the area, in particular the Land Rover dealership to the east as well as another dealership adjacent to that facility.

The applicant has demonstrated that adequate and appropriate facilities will be provided for the proper operation of the proposed use, and further, that the proposed use will not be detrimental or offensive to the adjoining zoning districts and neighboring properties due to the effects of lighting, odors, smoke, noise, sewage, refuse materials or other visual nuisances. The applicant has also agreed to fund the reconfiguration of the intersection in front of the property as well as the striping along Route 20 in an effort to lessen the traffic impact which will occur as a result of this facility and which will provide improved safety conditions at the intersection of Boston Post Road and Old County Road resulting in a benefit to motorists traveling along that stretch of road.

The Board believes that with the conditions placed on its Decision with regard to the various special permits granted, the proposed project will exist consistent with special permit guidelines and be an asset to the area.

Stephen M. Richmond, Chairman

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