

**TOWN OF DEERFIELD**  
**ZONING BOARD OF APPEALS**

**May 19, 2005**

**MINUTES**

- I. Hearing convened at 7:00 p.m., Main Meeting Room, Municipal Offices, 8 Conway Street, So. Deerfield, MA

Present: S. Barrett, G. Friary, L. Grybko, Sr., F. Olszewski (Chair), R. Sadoski, R. Bohonowicz, R. Calisewski.

- II. **Chair Olszewski opened the hearing on the application of Magic Wings, Inc. for a special permit, variance or whatever relief is required to install a freestanding ATM Machine at 281 Greenfield Road, South Deerfield, MA**

George Miller of Magic Wings and Frances Rahaim of 2Shoes ATMs present this case to the Board. Frances Rahaim gives the details of the ATM machine. The machine is 16" x 24". It is freestanding although it is secured to the floor. It will not require any construction of any kind. No walls will need to be built or anything of that sort. It is a very small machine and is similar to the one at Yankee Candle and Neighbors. The machine will be located inside the building at Magic Wings and has built-in security features. It is only requiring a phone line and a 110 electrical outlet. The machine will only be usable during Magic Wings hours of operation.

Ms. Friary made a motion that Magic Wings have the opportunity to have a 16" x 24" indoor free-standing ATM at 281 Greenfield Road to be used only during normal operating hours.

Motion was seconded. Vote was unanimous (5-0). Ron Bohonowicz, Len Grybko, Fran Olszewski, Grace Friary and Steve Barrett all voted yes in favor of the ATM.

Hearing adjourned at 7:05 p.m.

Other Business discussed during 25 minutes before next hearing.

Mr. Grybko stated that after multiple requests from the Selectmen's Office, the Board still has not received a copy of the judge's decision on two previous ZBA cases. He feels that these documents should be on file in the Selectmen's Office and should be very simple to obtain. Chair Olszewski agreed to visit the Selectmen's Office in an attempt to obtain these documents from David Nixon, Town Administrator. It was suggested that another option would be to attend the Selectboard's next meeting in order to request these documents.

Ms. Friary has a concern with the Dr. Spooky sign. She and the rest of the Board thought that Frank Campiti was going to come back before the Board with a plan for the sign and the façade of the building. Grace feels that the sign and facade of the building destroys the neighborhood ambiance. It is not up to her standards.

Ms. Friary stated that she was pleased to get the Mark Bobrowski note from David Nixon. It put her mind at ease slightly.

The Humane Society construction was the next topic of discussion. The Board has not heard any recent information with regards to their plan to build in South Deerfield. It was suggested that Mr. Grybko get the details from Brien Laporte, the Building Commissioner, on the status of that project.

- III. Hearing convened at 7:30 p.m., Main Meeting Room, Municipal Offices, 8 Conway Street, So. Deerfield, MA

Present: S. Barrett, G. Friary, L. Grybko (**abstained from vote**), Sr., F. Olszewski (Chair), R. Sadoski, R. Bohonowicz, R. Calisewski.

- IV. **Chair Olszewski opened the hearing on the application of Greg Gardner for a special permit, variance or whatever relief is required to remove more than 50 yards of top soil from lots 81, 85, 89 Mill Village Road, South Deerfield, MA**

First to speak is Gregory Gardner of Sand Gully Road, South Deerfield and Doug MacLeay, MacLeay Associates, Civil Engineers of Shelburne Falls, MA

Mr. Gardner has two building lots that have been topographically reshaped in order to avoid the need for raised septic systems. He has about 18" of topsoil to start and has put 8" back and now would like to sell the remaining 10" of topsoil. Of the 4,000 yards of topsoil, Mr. Gardner is looking to sell roughly 600 yards. Since there is over 50 yards, he is requesting a special permit in order to sell the remaining topsoil.

The first lot has now been seeded and landscaped. The loam has been respread so it is well graded. There is sod all across the front. Mr. Gardner has spread sod in order to try to prevent any washout or silt from going northerly.

There is currently only one lot left that needs to be scraped down. Of the three that Mr. Gardner owned, one already has a house on it, one is having a house built on it and the third is yet to be done.

Ms. Friary asked Greg what would happen if the Board does not grant the special permit to allow the removal of the excess topsoil. It is all about aesthetics. It will not look as nice with all of the excess topsoil remaining.

Mr. Calisewski asked Doug MacLeay if there would be any adverse affect with regards to drainage or any negative affect by removing the excess topsoil. The response was that any affect at all would be negligible.

Ms. Friary asked if there was any other way to layout the houses. The response was as follows: Any other layout that could have happened is all in the past. Mr. Gardner bought this property after it had already been divided. They were already ANR lots.

Mr. Calisewski asked if this removal of the topsoil would affect the septic system layout adversely in any way. Doug MacLeay said no, it will not.

Mr. Olszewski asked what Mr. Gardener was going to do once he has removed the piles of topsoil. Mr. Gardner responded by stating that he has spread out 2/3 of it already and only has about 600 yards left that he won't need. It doesn't make sense to put 18" of loam back.

The discussion is now turned to the public for comment.

First to speak are Dave Marsh and Herbert Marsh. Dave Marsh stated that of the 4,000 yards of topsoil, Mr. Gardner would like to remove 600 yards which is 15% roughly. Mr. Marsh recalls sitting in on a Conservation Commission last year where Mr. Gardner stated that he would put back all but 10% of the topsoil. Herbert Marsh's concern is that the minimum topsoil would only be an inch or less.

Herbert Marsh states that according to a report written by Nick Balboni of SVE Associates, there will be a 39% increase in peak flow discharge into the northern culvert and a 10% increase at the southern culvert at the conclusion of the project for the 25 year storm event.

In summary, Mr. Marsh is concerned about the amount of discharge of water onto the Marsh property. He is also concerned with the precedent that would be set if the Board allows Mr. Gardner to remove this quantity of topsoil.

Peter LaBarbera, Chair of the Deerfield Planning Board was next to speak. Since Mr. LaBarbera stated that he was from the Planning Board, Mr. Calisewski asked if he was representing the Planning Board in this case. Mr. LaBarbera clarified that he is representing himself as an individual, not the Planning Board.

Mr. LaBarbera's prospective is one of planning and he comes to that with some interest in minimizing adverse hydrological impact in the town and so he sees this as a precedent-setting matter.

Mr. LaBarbera states that according to the Zoning Bylaws, if you are removing soil and it is incidental to the construction of a house, no permit is needed. But if what you're doing is greater than what is incidental, then that is something that has to be taken up with the ZBA.

A threshold question that Mr. LaBarbera thinks the Board should ask is show us how much soil you would have to remove to support a house foundation as well as, to do a driveway. All of that is clearly incidental therefore the applicant should be allowed to conduct by right.

Mr. LaBarbera continues, what has not been presented is "show us the numbers" of what is incidental in terms of removal of soil – and not just top and subsoil but also sub grade and how much of what you're doing is in excess of what is incidental. Maybe it is significant and maybe it is not. It is not clear but they should be asked to quantify that.

Secondly, MacLeay Associates' report says that when they were asked by the Board of Selectmen to submit follow-up information, the follow-up information stated that they are only increasing the amount of run-off by a modest amount. The SVE Associates calculations suggest that they are increasing the run-off by 3 cubic feet per second. Mr. LaBarbera thinks it is more than that because he feels that some things were left out.

Mr. LaBarbera states that the bottom line is this... "Is 3 cubic feet per second significant?"

Next, if this was in the D.E.P. realm -- and in his estimation the D.E.P. does have jurisdiction - is this run-off problem, in fact, having an adverse impact on a wetland resource area.

Mr. LaBarbera stated that Mr. Gardner did not begin this problem. The issue is that he is adding something to an existing problem.

According to Mr. LaBarbera, the D.E.P. does have jurisdiction if the matter is brought to them. If the D.E.P. gets involved, things will get more complicated. Mr. LaBarbera urges the Board

to make sure that Mr. Gardner addresses Mr. Marsh's concerns and as his engineer states, they could do some pretty simple controls. According to Mr. LaBarbera, Mr. Gardner's engineer also says, in his opinion, this Board should require a topographic as-built plan to show that the final product complies with the plan. Mr. LaBarbera states that the peak discharge water could be retained on site. It is not hard to do and would not be expensive. He feels that all they have to do is size a basin somewhere at the lowest point so the basin detains the water, until the peak flow of the storm passes. That, so far, is not showing on the plans.

Next to speak is Ronald Wood, Lee Road abutter (on back side) spoke in support of Greg Gardner. He states that Greg Gardner has been above board with him on everything and has been keeping him informed of everything that is happening. Mr. Gardner has addressed all of his concerns with regards to safety, runoff, etc. Mr. Wood trusts what Mr. Gardner is doing.

Another abutter, Carol Pelis of 93 Mill Village Road also spoke in support of Greg Gardner. She stated that Mr. Gardner has told her everything that is happening; answered every question that she has asked regarding runoff, etc and Mr. Gardner has assured her that her property will not be adversely affected by the work that he is doing.

The hearing is closed to public comment for further discussion in an attempt to render a decision.

Ms. Friary is worried about precedent setting.

After further discussion, Ron Bohonowicz recommends that we continue this hearing in hopes that Mr. Marsh and Mr. Gardner could reach a mutual agreement.

Ms. Friary made a motion that this hearing is continued to Thursday, June 2, 2005 to allow the parties two weeks to continue to work through their concerns and that we reconvene on the 2<sup>nd</sup> of June at 7:00 p.m. to render a final decision

Motion seconded. Vote was in favor of the continuance (4-1).

- V. Hearing convened at 8:30 p.m., Main Meeting Room, Municipal Offices, 8 Conway Street, So. Deerfield, MA

Present: S. Barrett, G. Friary, L. Grybko, Sr., F. Olszewski (Chair), R. Sadoski, R. Bohonowicz, R. Calisewski.

- VI. **Chair Olszewski opened the hearing on the application of Douglas J. Ryan for a special permit, variance or whatever relief is required to operate a motor vehicle repair shop at 951 River Road, Deerfield, MA**

Petitioner, Douglas J. Ryan, speaks first. He states that the building is a full concrete building. It has no drains inside the building. Mr. Ryan has purchased and has been cleaning up the property. It was established that this is zoned as **CII**. Ms. Friary asked what the size of the space is. Mr. Ryan believes the space is 70' x 70' for a total of roughly 4900 square feet. Fans will be added for proper ventilation. His intent is to do auto repair and auto bodywork only.

Mr. Ryan is the only employee at this time. His current hours of operation are 5:30 pm -10:30 pm since he is working full-time at another job. There will not be any unregistered vehicles

outside of the building. It is a self-contained space. The closest house to this property is Locust Press. At this time, there will not be any vehicle storage or auto sales taking place. In another year or so, Mr. Ryan would like to take on towing as part of his business, at which time, temporary storage of towed vehicles may be taking place. Mr. Ryan will be adding a fence around the property and the building will be alarmed. Mr. Ryan has not determined as yet whether he will be adding cameras or not.

It was asked if Mr. Ryan also owns the outbuildings on this property and he said that he does. Mr. Calisewski asked if the oil tanks will be removed and Mr. Ryan stated that yes the oil tanks will be removed and he has no plans of adding any gas tanks.

Mr. Bohonowicz suggests that a handful of restrictions be added to the special permit (if granted) and as Mr. Ryan expands, he can come back before the Board.

After a brief discussion, Ms. Friary made a motion to grant a special permit to Mr. Ryan to operate an auto repair and auto body shop at 951 River Road, Deerfield, MA with the following conditions:

1. Hours of operation restricted to 8:00 am to 10:30 pm Monday – Friday and Saturdays during the day.
2. Limited to Auto Repair and Auto Body work only.
3. No more than six vehicles on the premises outside of the building at one given time.
4. The premises must be secured by an alarm when no one is working.
5. The maximum number of persons working at this establishment will be limited to Mr. Ryan plus one employee.

Motion was seconded. Vote was unanimous (5-0) to grant the special permit.

Hearing adjourned.

Respectfully submitted,

Patricia Kroll  
Clerk to the Zoning Board of Appeals