

**Board of Adjustment
Canterbury, NH
Minutes of Hearing
30 March 2022**

**Case No. 2022-3 Special Exception-Office Establishment
Special Exception-Accessory Dwelling Unit**

Present were: Chairman Joe Halla, Jim Wieck, Christopher Evans and (Alternate) Lisa Carlson.
Calvin Todd and Web Stout were excused absences.

Also present were: John Schneider, Matt and Katie McKerley and Tim Bernier.

Chairman Halla advised those present **M.D.M. Management, LLC** is seeking two special exceptions regarding their property on Oxbow Pond Road located at Map 267, lot 46 in the Commercial zone. The proposed uses state "An office establishment in the commercial district with over 5,000 square feet of floor area" and "An attached accessory dwelling unit to a business above the office space inside the proposed commercial building on Lot 46". The applications reference Article 5.3C and Article 2, Section 2.5.1, Article 5, Section 5.3C Table of Uses, and Article 18, Section 18.3(1)(A) respectively. Chairman Halla gave a detailed description as to the conduct of the hearing procedure.

Tim Bernier introduced himself as well as Matt and Katie McKerley, owners of M.D.M. Management, LLC who he is representing in tonight's hearings. He noted under our regulations in the commercial zone 5,000 square foot commercial buildings are permitted by right and anything over that is by special exception. The property is located on Oxbow Pond Road and abuts Thomson Lawncare. The McKerleys own the lot he pointed out on the large map brought to the hearing. They are proposing a building similar to the one already there that is 4,000 square feet on the corner lot. It will abut Dumpster Depot. Their primary basis for requesting the special exception is that this fits with the neighborhood. Thomson Lawncare is a commercial building on this lot that's well over the size of this building. This is about half the size of our proposed lot, so density wise it's about the same. A 5,000 square foot commercial building doesn't really take into account lot size so it's just a....., it's not a density issue It's a commercial building in between two other commercial uses and other commercial uses in the neighborhood are right in the middle of your commercial zone. It's going to be the same type of use as on the abutting lot. They are individually paved. It will be used as incubator space for multiple small businesses from an embroidery company to a yoga studio whose businesses grow out of a space or they grow and take more than one unit. They are very popular. The Town of Bow has 30 of these buildings. It works out really well to have these buildings in your commercial zone space. He showed where the parking lot will be with office space in the front. Different people have different needs for office space. So, you get kind of an open bay with flexible commercial use space noting the overhead doors. People can use the spaces however they work for them. Chris asked so you build out as needed. Tim concurred. The inside of each of those individual spaces, it means the walls can be taken out so they could expand. It's very flexible commercial space for whatever someone might want it for. We have designed the site to meet the most strict environmental standards for storm water management, the septic system on site, the well, so all the storm water is collected from the impervious surfaces and will

go to a retention basin in the ground. They do not need a DES permit because it is small and under 100,000 square feet. They met those standards.

Tim stated there is a set of criteria that they need to meet and he read aloud what they submitted in their application:

1. The site is being developed to have new commercial space, in the Commercial Zoning District. The development is quite similar to the abutting development on Lot 45 and will provide opportunity for jobs and services in the area.
2. The building will be used as commercial office space in the Commercial Zone. Abutting lots are already developed for commercial use. Thomson Lawncare is probably the busiest with vehicles going in and out. These building will house contractors, plumbers or electricians who go out once and come back at the end of their workday after offsite working. The new 9,450 s.f. building will be similar to the building on abutting Lot 45, just longer and will provide jobs and services for the area.
3. The site is on Oxbow Pond Road between two lots similarly developed for commercial use in the Commercial Zone. The proposed building and use are quite similar to the existing development on abutting Lot 45. The lot can support the proposed use and runoff from the site is controlled. The biggest hang up to this area was the difficulty getting in and out at the Daniel Webster Highway (Route 4) entrance. The new interchange will alleviate all this traffic back up.
4. The site was designed to meet the requirements of the Commercial Zoning District, with the health and safety of neighboring residents and businesses taken into consideration. The abutting lots on either side of this site are already developed in a similar fashion. The septic will go out front and the well in the back.
5. Tim asked the McKerleys if they'd had any complaints about their first building use. There have been none. The existing building has been in use since the summer of 2020. Right now, there is an embroidery business and a yoga fitness studio. Jim asked how do you control the use of the parking spaces. He asked if they are allowed to store materials or equipment outside. Katie McKerley explained the use of space in the parking lots out front and in the back. Jim said he was thinking more about if there was manufacturing going on, could they store materials...Katie said technically manufacturing is not what they would want in their building. It would require another kind of special exception. Matt McKerley noted the company that does detailing work has a trailer parked outside. They don't want a business that would have clutter outside making it look unsightly. The proposed office development/use would not constitute a nuisance in these ways. The development and use are in line with the regulations of the Commercial District. The development and use proposed on the lot is not substantially different from the abutting Commercial uses.
6. Yes. It's not a manufacturing facility. They want to attract small businesses all of them looking professional. Abutting Lot 45 has a very similar 4,000 square foot building with office space. The proposed use on Lot 46 is in keeping with the abutting Commercial development and uses in the neighborhood. The development on the lot will be tasteful and is a reasonably low impact Commercial use.

7. No. There really hasn't been a traffic issue with the use of the building. The Route 4 intersection and trying to get out certainly, but that is going to be resolved. The building being proposed is for commercial office space and will not create any hazardous conditions that would be detrimental to the site or the surrounding area.

Tim noted they are not in the Natural Resource Zone so that is not applicable. Chairman Halla asked if the Board had any questions. There were none. He asked if anyone wished to speak in favor and no one spoke. He asked if anyone wished to speak in opposition. No one spoke. He returned to the applicants for anything they might want to add. They had nothing further to add. The Board had no further questions and Chairman Halla closed the testimony portion of the hearing. Chairman Halla moved that the Board **GRANT** the special exception for the office building for the following reasons:

1. That granting the permit would be in the public interest because it is a commercial property in a commercial zone that is allowed by special exception. It seems like an adequate use of the lot the way it's laid out.
2. That the proposed use would not adversely affect the property values in the district. The abutting property is in the same district as this one and would not affect the any of the property values that this building would abut.
3. That the specific site is an appropriate location for the proposed use because it is an office building that's allowed in a commercial zone. The special exception just allows it to be larger.
4. That the proposed use would not adversely affect the health and safety of the residents and others in the area and would not be detrimental to the use or development of adjacent or neighboring properties. There is nothing there that would indicate that any of these items would be a problem.
5. That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odors, heat, glare or unsightliness. No indication that any of those would exist.
6. That granting of the permit would be in the spirit of this ordinance because it is a use that is allowed by special exception and he has met the conditions for a special exception.
7. That the proposed use would not constitute a hazard because of traffic, hazardous materials or other conditions. No indication of hazardous materials or any problems with traffic.

Christopher Evans seconded the motion. The Board vote was a unanimous decision to **GRANT** the special exception. Chairman Halla explained the thirty-day appeal process.

Chairman Halla stated the Board would now move on to the second special exception application regarding an attached accessory dwelling unit above the office space inside the proposed commercial building.

Tim noted some of the Board members may have been present when they came before the ZBA for the site next door. The office space for these buildings are sixteen feet tall, so the office space is eight and there is a mezzanine above it. In the building next door, they put an apartment above it for workforce seasonal workers for.....primarily. Thomson Landscaping has the same thing. They have a large that

they have several seasonal workers stay in as well. Both properties on either side do this. One of the reasons.... your regulations allow it up to a 1,000 square-foot is the maximum that it has to be and it has to be employees related to the business, which it will. One of the users that looked at the existing building on the abutting lot was an ambulance company. They were interested in the space and people could cook their own meals there. They don't live there, but between calls they are there and have to be on call for a twelve-hour shift or something. So, they could upstairs and cook their own meals and kind of have the residential space that they are in, kind of attracted them..... it could be landscape or somebody else. Labor today is so hard to find, seasonal help is a big part of what everybody is doing. The criteria is the same, he offered to run through it quickly.....Chairman Halla asked, this person, the people are going to be seasonal help in this one, or permanent or.....Katie McKerley stated it depends on the type of business, for landscaping it's seasonally. If it were the company that reached out to them for their first building, the ambulance or transport company, that's a year-round thing. Their interest would be for their employees that are doing their shifts. Chairman Halla asked for clarification that the people there would somehow be connected to one of these businesses. Katie concurred. Those employees would be more of an overnight shift, not residing there. Chris asked are you requesting that one of these apartments above is for one of the units or for all of the units? Matt McKerley advised what they would do for like say for approximately over three of the front office spaces would be an apartment with a little kitchenette type thing. So, it would be directly above the office space, not above the garage. Chris asked for three of the units. Matt stated it would be one apartment above say three of the office spaces. Time clarified the floor plan with the space available. The apartment will have its own access. They don't have to go through a unit to get there. So, somebody could rent only one unit and the office space on the first floor without the space up top. Three of the units would have no up top space, just the downstairs office and the garage space. Chris repeated back, so if you are answering my question, what I'm hearing is there is one apartment, not one for each unit. Matt concurred. The fourth unit would have use of mezzanine space for storage. Chairman Halla asked if there were any other questions from Board members. There were none. No one spoke in favor or in opposition. The applicants had nothing further to add to their testimony.

Jim Wieck made a motion to **GRANT** the accessory dwelling unit special exception for the following reasons:

1. That granting the permit would be in the public interest. Accessory apartments are allowed over a commercial space with a special exception.
2. That the proposed use would not adversely affect the property values in the district. It wouldn't be seen. The people would be associated with those businesses in the building.
3. That the specific site is an appropriate location for the proposed use. It is a commercially zoned area for a commercial building with an associated apartment.
4. That the proposed use would not adversely affect the health and safety of the residents and others in the area and would not be detrimental to the use or development of adjacent or neighboring properties. It would be totally within the proposed building and would not be seen by anyone. It's a perfect space and would not have a negative effect.
5. That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke,

dust, odors, heat, glare or unsightliness. It would be contained within the proposed building and a residential use and none of those considerations would be affected.

6. That granting of the permit would be in the spirit of this ordinance. It fits in with a commercially zoned area and commercial use in that area.
7. That the proposed use would not constitute a hazard because of traffic, hazardous materials or other conditions. Hazardous materials would not be present in the residential setting beyond the consumer products that are normally allowed for residential use. Having a car or vehicle there would not increase traffic over what would already be there for commercial use.

Chairman Halla seconded the motion. The Board vote was a unanimous decision to **GRANT** the special exception. Chairman Halla again described the thirty-day appeal process and reminded the applicants they must go before the Planning Board for site plan review.

The Board approved the minutes of 2022-2 as written.

Respectfully submitted,

Lisa Carlson, Clerk
Board of Adjustment