

## ZONING BOARD OF ADJUSTMENT

Wednesday, November 17, 2010  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman Peter Harris; Norma Patten, Pleasant Oberhausen and Marshall Ford.  
Members Absent: Linda Couture (E)  
Alternates Present: Mark Mastenbrook.  
Staff: Candace Daigle, Rick Ball and Elaine Murphy.

The chairman opened the meeting at 7p.m. and appointed M. Mastenbrook as a voting member for tonight's meeting.

**Abutters' Hearing – Lakeview at the Meadows:** Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to amend the previous Special Exception to a two-unit Assisted Living Residential Treatment and Rehabilitation Facility for the support and rehabilitation needs of up to 16 clients with cognitive impairment with 4 staff (non-live in). Property is located at 87 Horne Road in an "R" Zone, Tax Lot 110-006, ZBA #5210Z.

At least three members have viewed the site.

Mr. Eldon Munson and Mr. Matthew Moore presented the application.

Mr. Munson explained that he represents Lakeview Care Partners and they are interested in buying the Ferncrest property on Horne Road. The proposed use is similar to the elderly assisted living facility that has already been approved for the site. They are proposing a residential treatment and rehabilitation facility that is similar to assisted living but has more services.

Mr. Munson explained that the rural nature of the site is ideal for this facility. There has been work done on the building to make it into an assisted living facility and he will follow through with those plans. They will not be adding any building or changing the property. The building is designed to house up to 16 clients and 4 non live in staff. This is a good use of the property

P. Oberhausen explained that he abstained from the last application for assisted living because he had concerns about fire safety. The proposal now is to bring in clients with brain damage and stroke victims and he wants to know how they are going to get the clients out of the building in the event of an emergency. Mr. Munson explained that he will bring the building up to safety codes; something the

previous applicant was unable to do. The State and Licensing Board requires them to have regular fire drills and do regular inspections to make sure that the clients can be evacuated from the building in a timely fashion. They are also installing a sprinkler system. P. Oberhausen wanted to know if they would be installing the fire system before they have clients in the building. Mr. Munson explained that before the State issues them a license all fire safety requirements have to be met.

M. Mastenbrook wanted to clarify that there will be no additional structures because the application is for 2 units. Mr. Munson explained that it is just the one existing building that has an upstairs and downstairs. The bedrooms are set up to house eight clients upstairs and eight clients downstairs. The number of clients on each level may be adjusted to meet the needs of the clients.

P. Harris stated that he has read the history of the site and the previous owner had hardships that prevented them from meeting the conditions of approval. He is pleased to have this applicant move forward with the safety upgrades that the previous owner couldn't do.

Mr. Munson addressed the special exception criteria. He stated that the site is appropriate because it was approved for an assisted living facility. The outside area is an ideal environment for their clients as they plan on having outdoor activities as well as a garden in the summer. The interior of the building has been renovated and the outside is in good shape.

Mr. Munson stated that property values will not be affected. They plan on being good neighbors. This type of business is very competitive so it is important that they provide a safe environment with easy access and that they keep the property looking good in order to remain competitive with other similar businesses. No nuisance or hazard will be involved.

M. Ford stated that clients may have impairments and he wanted to know what would stop them from wandering off. Mr. Munson stated that the clients will not be Alzheimer patients or have brain injuries that would cause them to wander off. The clients would be the ones that want to be there for treatment. Staff will work with clients so that they do not wander off. Staff will also be trained on who to contact and what to do if someone does wander off. There will be someone with the clients when they are outside which will reduce the chances of someone wandering off.

Mr. Munson addressed the need for adequate sanitary facilities stating that there are plenty of bathrooms and bathing facilities on site. Mr. Moore stated that he designed a new septic in the event the current system fails. The current septic is designed for 1400 gallons a day which is more than adequate for this project. The new system is designed for 1250 gallons a day. The current system is bigger than required and will be used until they have a failure. At that time the new system will be installed.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

**BOARD ACTION – LAKEVIEW AT THE MEADOWS:**

**MOTION:** P. Oberhausen moved to grant a Special Exception of Article 5 Table 1 of the Zoning Ordinance to amend the previous Special Exception to a two-unit Assisted Living Residential Treatment and Rehabilitation Facility for the support and rehabilitation needs of up to 16 clients with cognitive impairment with 4 staff (non-live in) as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact. No abutters present.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. The facility shall provide all required fire, health, building, life safety and parking facilities and obtain all licenses, permits and certificates of occupancy required by the Town of Belmont and the State of NH.
2. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.

The motion was seconded by N. Patten and carried. (5-0)

**Abutters' Hearing – John Klement for Winnisquam Beach Campground Unit Owners Association:**

Request for a Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing unit closer (9.8') to the wetlands than allowed (35') but not closer than the existing building. Property is located at 16 Park Place in an "RS" Zone, Tax Lot 117-015-000-046, ZBA # 5310Z.

M. Mastenbrook stepped down from this application. The chairman explained to Mr. Klement that the Board usually consists of five voting members and that an affirmative vote of three is necessary to pass any motion or approval. He has the option of going with a short Board or postponing. A short Board is not a reason for a rehearing. Mr. Klement stated that he will go with a short Board.

At least three members have viewed the site.

Mr. John Klement presented the application.

Mr. Klement explained that he has a 1966 trailer that he wants to replace with a new unit. He will be 9.8' from the wetlands. The use will remain the same.

P. Oberhausen stated that the unit will have a 24' x 48' concrete pad and wanted to know how Mr. Klement was going to get out of the unit. Mr. Klement used the plan to show the staircases, one on the front and one on the side.

P. Harris stated that the unit is a 1966 model and older units tend to have safety issues especially with wiring. This proposal is an upgrade and is more compliant with building codes. They are staying within the existing footprint. Mr. Klement explained that he is having the unit custom made so it will fit in the existing footprint.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

**BOARD ACTION – JOHN KLEMENT FOR WINNISQUAM BEACH CAMPGROUND UNIT OWNERS ASSOCIATION :**

**MOTION:** N. Patten moved to grant a Special Exception of Article 11.A.3.d of the Zoning Ordinance to replace an existing unit closer (9.8') to the wetlands than allowed (35') but not closer than the existing building as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use.
3. No factual evidence is found that property values in the district will be reduced.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. All setbacks certified during construction as required.
2. No other structures or additions (incl. decks, porches, landings, etc.) that do not meet setback are allowed by this approval.
3. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.

P. Oberhausen amended the motion to include that any roof peak not exceed 8' above the unit.

The motion was seconded by P. Oberhausen and carried. (4-0)

M. Mastenbrook rejoined the Board.

Mr. Warren Colby stated that his attorney on route and asked that the Board give her a few

minutes to arrive. The Board agreed to proceed with other business until the attorney arrives.

**BOARD'S ACTION - MINUTES:**

**MOTION:** P. Oberhausen made a motion to approve the minutes of October 27, 2010 as written. M. Mastenbrook seconded. Carried (5-0)

**STAFF REPORT:**

**NOTICE OF DECISION:**

The chairman signed the Notice of Decision for:

- Tracy Anderson tax lot 122-033.
- Happy Tails Dog Park of the Lakes Region tax lot 224-040.
- Casey & Jamie Crumb for No Limit Motorsports tax lot 124-004
- Scott Chapman tax lot 119-048.

**DECEMBER'S MEETING:**

C. Daigle reminded the Board that next month's meeting will be upstairs in the Corner Meeting House.

**HANDOUTS:**

The Board received the 2010 "Board of Adjustment in New Hampshire" handbook. They also received the 2011 meeting schedule.

**Abutters' Hearing – GMI Asphalt, LLC for Summa Humma 106 Realty Trust, LLC:** Request for:

- A. A Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow a contractors yard (paving) in the commercial zone. ZBA # 5410Z
- B. A Variance of Article 4 of the Wetland Ordinance to allow fill closer (0') to the wetlands than allowed (15'). ZBA # 5510Z.
- C. A Variance of Article 4 of the Wetland Ordinance to allow a 900 gallon above ground fuel storage tank closer (235') to the wetlands than allowed (250'). ZBA # 5610Z

Property is located at 288 Laconia Road in a "C" Zone, Tax Lot 210-001

At least three members have viewed the site.

Atty. Patricia Panciocco presented the application. Mr. Randy Shuey, Mr. Mark Bourgeois, property owner and Mr. Warren Colby, GMI owner, were also present.

Ms. Panciocco explained that they are requesting a special exception and two variances. She is requesting that the variance to allow fill closer (0') to the wetlands than allowed (15') to be tabled to allow them to obtain more information on the wetlands and property lines. She is also requesting that the variance to allow a 900 gallon aboveground fuel storage tank closer (235') to the wetlands than allowed (250') be tabled because they may be going to relocate the tank to meet the setbacks.

Ms. Panciocco explained that the property fronts on Rte 106 and is in the commercial zone. It is a 5 acre parcel with 324' of frontage. They share a driveway with Winnepesaukee Trucking. They are proposing to put a new building on the property and do some paving with the remaining property being gravel. She explained that the staff report indicates that the filling of the wetland has spilled over onto the adjacent property and that dates back to the 1980's. She explained that they will address those issues when they apply for the variance.

Ms. Panciocco addressed the criteria for the special exception. She stated that Rte 106 is a busy road and there are similar uses in the area. They are requesting a special exception for a contractor's yard. They will need a site plan for the proposed steel building. The drainage from the site will be treated by bioretention so nothing will be leaving the site. The existing building will be used for an office for GMI. There will be ten trucks that leave the site daily and return at night. The trucks don't generally return during the day.

Ms. Panciocco stated that the use is permitted by the ordinance. The site is appropriate because it is zoned commercial and has frontage on Rte 106. It is adjacent to other sites that park vehicles on site. There are other businesses in the area because it is a commercial zone. Property values will not diminish because it is similar to others in area. They will be putting up a new building and paving the area. They will deal with drainage issues in an environmentally safe way. They will enhance property value and will be correcting problems of the past. There will be no nuisance or hazard involved, they are storing vehicles, there will be no blasting. Fuel on site is only for their vehicles. There will be a new adequate septic system, the well is already there and the electrical service for the new building will be underground. The structures will meet setback requirements with the exception of wetland setback.

Ms. Panciocco stated that there is concern with the wetlands and her clients will remedy them. They have met with a wetland scientist to determine the edge of the wetlands. They are going to dig some borings to determine where the historic wetlands are located. They will also address the silt on the adjacent property.

P. Oberhausen wanted to know when the trucks come back at the end of the day will they have any asphalt in them and what will they do with it. Mr. Warren Colby stated that there will be no material stored on site. The trucks empty their load at the asphalt plant every day.

N. Patten wanted to know what will be stored in the new building. Mr. Mark Bourgeois stated that the building will be built on a concrete base and have concrete walls to meet the State's codes. N. Patten wanted to know if they are doing repairs in the building and if gas and oil will be stored in the building. Mr. Bourgeois stated that only small equipment repairs will be done there. Their trucks are serviced at Winnepesaukee Truck which is why this is an ideal location for them as they share a common driveway.

Mr. Allen Kimball, an abutter, stated that the wetlands have been filled over the years and

wanted to know if they are going to move material back to where it was. Ms. Panciocco stated that she would like to talk to Mr. Kimball about that issue and how to resolve it. R. Ball stated that the property line has been flagged and there is 10' of fill on Mr. Kimball's property.

Mr. Randy Shuey entered the meeting and addressed the wetland issues. He stated that he has been reviewing the environmental issues and has looked at the information provided the aerial photos and fill has crept onto the property and the toe of the slopes have been located over the property line. There have been five or six large boulders that have been moved. He has looked at a 1989 site plan that showed the existing condition of the property and the topo showed that there are wetlands close to the property line. They need to dig under the fill to determine what is there. They need to get to the toe of the fill and dig into it to come up with the wetlands line.

P. Harris stated that the applicant received a letter in 2007 that there was a problem with unpermitted filling of the wetlands. Mr. Bourgeois stated that the fill was in piles and he didn't think anything of pushing it back when he cleaned it up in the spring. He didn't push anything to the side only back. He cleaned up the piles over the course of three years and people keep dumping things on the site because they see other people doing it. There were no tenants on site when this happened. He can't control what people dump on site because there is no gate to prevent people from accessing the site. Over this past year he put cement blocks there to stop the dumping but he can't control the past.

P. Harris stated that Mr. Bourgeois has a good reputation that precedes him. He has a working business in town that helps balance the tax base and invests in Belmont's growth. Mr. Bourgeois stated that he has other properties in town and they are well kept and maintained. He has improved those properties.

R Ball wanted to know what the plan is for the southwest slope that has been unstabilized since 2007. Is that going to be cleaned up? Mr. Shuey stated that the toe has some invasive species and that is a problem. There is older fill in the back that has been pushed back sometime between 1989 and 1991. They can try to recreate the wetlands but how far can they go without doing more harm to the wetlands. They can stabilize what is already there.

M. Ford stated that they are putting in a lot of pavement and he wanted to know if there a containment system so the drainage doesn't overflow onto Winnepesaukee Truck's property. Mr. Shuey used the plan to show the drainage and the dry wells and explained that the drainage will not overflow on the adjacent property.

M. Ford stated that there is a 40' berm and they are not going to be able remove the fill without creating more damage to wetlands. Mr. Shuey stated that they will work with Mr. Kimball to mitigate the problems. GMI has created a temporary bench for good stabilization. It is better now than in the past. When cutting back the slopes they will be putting up erosion control. If done properly they can make a 2:1 slope. For safety they will go down from the top and not go in from the bottom. Once it is done it can be seeded. Mr. Colby stated that if they go from the underneath with equipment it can cause problems.

M. Ford wanted to know how soon this could be done. R. Ball stated that they need an Alteration of Terrain permit and that could be a month out.

P. Harris stated that the proposal for a contractor's yard will be an improvement and an asset to the neighbors. There are no negative comments from abutters related to the contractor's yard. There is no nuisance or hazard involved. They are following the State and Town codes and will have all safeguards in place. There are adequate sanitary facilities. They will follow fire safety codes and have secondary containment for hazard material.

M. Mastenbrook stated that over the years there has been a lot of dumping on site and he wanted to know what they plan to stop the onsite dumping. Mr. Bourgeois stated that there will be lighting and security cameras installed. They will also have a front gate that will be closed when there are no employees on site. Mr. Colby stated that they will be putting rocks along the back so they cannot enter the property from that way. When the tenant leaves they will install fences and they will be locked up.

The chairman asked if anyone in the audience had any questions or comments. There being none, he closed the public hearing.

### **BOARD ACTION – GMI ASPHALT, LLC FOR SUMMA HUMMA 106 REALTY TRUST, LLC:**

**MOTION:** P. Harris moved to grant a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow a contractors yard (paving) in the commercial zone as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2. The specific site is appropriate for the use. It is a commercial use in a commercial zone, next to a highway and is similar to surrounding businesses.
3. No factual evidence is found that property values in the district will be reduced. It will enhance the commercial tax base and encourage other commercial businesses to come to Belmont.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved. They will follow all State and Local ordinances and regulations.
6. Adequate and appropriate facilities will be provided.
7. There is adequate sewage disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional conditions:

1. All other required permits and approvals shall be obtained.
2. All representations made by the applicant during the public hearing are incorporated as a condition of this approval.

The motion was seconded by M. Ford and carried. (5-0)

**MOTION:** P. Oberhausen moved at the applicant's request, to Table a Variance of Article 4 of the Wetland Ordinance to allow fill closer (0') to the wetlands than allowed (15') to January 26, 2011 at 7PM to allow them to address the wetland issue.

The motion was seconded by N. Patten and carried. (5-0)

**MOTION:** P. Oberhausen moved at the applicant's request to Table a Variance of Article 4 of the Wetland Ordinance to allow a 900 gallon aboveground fuel storage tank closer (235') to the wetlands than allowed (250').

The motion was seconded by N. Patten and carried. (5-0)

**OTHER BUSINESS:**

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 8:13 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy  
Administrative Assistant