

ZONING BOARD OF ADJUSTMENT

Wednesday, October 27, 2010
Belmont Corner Meeting House
Belmont, N.H.03220

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

The chairman opened the meeting at 7p.m.

Abutters' Hearing – Tracy Anderson, Executor: Continuation of a request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to house agricultural animals (horses). Property is located at 25 Church Street in a "V" Zone, Tax Lot 122-033, ZBA # 4810Z.

At least three members have viewed the site.

Atty. Patrick Wood, Mr. Ernie Roy, Ms. Tracy Anderson and Mr. Dennis Whitcher presented the application.

Atty. Wood explained that he received a staff report and he wants to correct item 3 to show that the people interested in doing this are the buyers of the property not the tenants. The application was presented earlier and some of the Board members have had a chance to view the property and one of the issues was the wetlands. The wetlands have been flagged by a wetland scientist.

Atty. Wood stated that the proposal is on a 3.1 acre lot to use as residential with two horses for the owners. The horses will be in a barn in one of the existing buildings. He stated that it is an existing nonconforming structure with regard to the 50' setback. He is asking for the building to stay where it is. The horses will be kept in a fenced in area with an electrical fence around most of the area. The area would go around the wetland area. The fence would be designed so that it would skirt the wetlands and there would be no horse traffic or other use of the wetlands. There have been documents presented on how they will use the property and what they will do with the manure.

Ms. Christina Beadle-Tash stated that they would be collecting the manure every day and putting it in a dump trailer and the trailer would be transported weekly to a farm to be spread in their fields to grow hay. The smell from urine can be controlled through the feed. The farm is going to be so far up the embankment and use Best Management Practices, is separated from the river and is away from

neighbor's house that smell and containmination should not be an issue.

Ms Sally Roberts stated that the applicant currently buys hay from her. She has over 100 acres and they take some of the neighbor's horse and cow manure and spread it over their fields for fertilizer.

Atty. Wood stated that an issue was raised on how to deal with manure. They have a plan in place that explains how that will happen. They have submitted written documentation on it. He stated that he has printed off the regulations from the Department of Agriculture for the treatment of horses and stated that the applicant will be meeting all those regulations. The horses will not be grazing in the fenced in area. The fenced in area will be for their exercise. The hay they will be buying and other grains will be kept in the barn. This is not a pasture for grazing the horse but an exercise area.

Atty. Wood showed an ariel photograph taken in the winter that shows the number of trees along the river. If you google a map of the site it shows that it is completely filled in with trees. The visibility to the river shows a great deal of protection between the fenced in area and the river. The other houses are also shielded by trees. Where the horses are will be far enough away so there won't be any issues with visibility. Horses are not ordinarily noisy animals they generally are very quiet. The noise factors should not be an issue.

Atty. Wood stated that he has looked at the Wetlands Ordinance and one of the permitted uses in the wetland area is a nature trail. They are not proposing that for the wetlands but the ordinance states it is a permitted use.

Atty. Wood went through the criteria for a special exception. The site is appropriate for the use because under the zoning ordinance it is a permitted use with a special exception. Under case law and NH law that means that the town has determined it is an appropriate location for this type of use. Property values will not be reduced because this is a 3.1 acre parcel in a village zone. The impact on neighbors will be limited. Having two horses isn't going to reduce the value of the property. Mr. Roy, a realtor is here to testify to that. He is familiar with the property values in the area. It is his opinion that it will not affect the value. The only objection they are aware of from abutters is the wetlands issue and they have identified the wetlands, they are marked off and they will be fenced off. There is no nuisance or hazard with two horses that are ridden and exercised. There will be adequate facilities for the operation, the barn, the feeding and protection of the wetlands area. There is safe and sanitary sewage disposal. They have talked about the manure and how it will be taken care of. The dimensional requirements are met other than the existing building and they are asking that the nonconforming status be recognized. The use and the intensity of it have been discussed. It is nothing beyond a normal residential use on a 3.1 acre of land. It doesn't create any more noise, fumes, odor or vibrations or other use. They meet all the criteria for a special exception and ask the Board to grant it.

The chairman opened the public hearing to abutters.

Mr. Steven Booth, an abutter at 31 Church Street, explained that his property line touches the applicant's line. He is opposed to the horses. At the last meeting he asked the wetlands be delineated and

the application was tabled solely on that issue but there are other issues. He uses his backyard and he is in close proximity of where those horses will be located. He disagrees with the testimony that there will be no odors or fumes. He has a swimming pool and barbeque that he uses in his backyard and despite Best Management Practices he can't believe that there is not going to be any odor that will interfere with the use and quiet enjoyment of his land. He stated that this is being forced on him as an indulgence and he is very opposed to it. He disagrees with a lot of the issues including the size of the land. It is not 3.1 acres as brought up but is actually 2 acres. He has deeds that have been put forward that have stated that the land is 4 acres and 2 of the acres have been sold off. There are only two acres there. It diminishes the size of the lot that has been in discussion. It is going to be relatively close to his land. He is sure the individual seeking to purchase the land is a fine gentleman however he is very angry about this. He does not wish to have a neighbor that has horses. There are going to be nuisances, odors, flies and other things. The barn is too close to his property line. He does not wish this special exception be granted. He will bring forth a nuisance lawsuit or something of that nature.

M. Mastenbrook wanted to know about the flies and what are the plans to control them. Ms. Beadle-Tush stated that there is a feed formula that stops flies from being hatched. There is also a product that does not let flies hatch and if one or two hatch then they have a short life span. You never see more than one or two flies and they cannot travel more than 50'.

Atty. Wood stated that the issue of the size of the lot has been raised. The tax map shows it is a 3.1 acres and it has been their understanding that it is 3.1 acres. The Ordinance only requires 1 acre for animals so they meet that requirement. Even at 2 acres they exceed the requirement. Whether it is 1 or 3 acres under the Zoning Ordinance it is a permitted use by Special Exception.

P. Oberhausen referred to Article 4J and wanted to know why the applicant feels that they should use a nonconforming structure to house the animals. The Zoning Ordinance states "Animal buildings, keeping areas and waste material storage areas shall be minimum of 50' from all property lines, wells, water bodies and wetlands areas." Atty. Wood stated that he thinks they are well over the 50' from the wetlands area as well as 50' from the water body. The building has been there 30 years and has been used for outdoor uses similar to this. He is not sure if it has been used as a barn before. Mr. Witcher stated that they used to have animals. Atty. Wood stated that he doesn't know the last time animals were there but it has been used for agriculture purposes such as animals. He is asking under the nonconforming structure section in the ordinance that they be allowed to keep the building in that location. He understands that there is a 50' requirement from property lines but they have met all the other 50' requirements. The only things in the building are the horses. They indicated that they are making a serious effort to make sure the waste is properly removed in a timely fashion so there will be no gathering of waste. If you look at the site the structure is a considerable distance away from Mr. Booth's property. The opening of the barn is facing towards Tioga River away from Mr. Booth's property. That is another means of protecting Mr. Booth's concerns and interest. The conditions of 4J have been substantially met. The spirit of the Ordinance has been met. The only issue is the setback of the building.

M. Ford had a question for staff about Article 5 Table 2 footnotes 9-10 on a preexisting

nonconforming lot that allows setbacks to be reduced by half and yet this is calling for 50'? Should it be 25'? C. Daigle stated that the reduced setback allowed would be for setbacks from property lines and this is not a setback from property line it is a setback from wetlands that is required under 4 J for the agricultural building. It is not a setback in Table 2. It is a specific requirement for an agricultural building. C. Daigle explained that this involves the distance between a property line and an agricultural building.

Mr. Witcher stated that over the years the building has been used for pigs, chickens and geese as well as a maple syrup operation. Until his mother passed away it was an active farm and is grandfathered. Mr. Booth had a big pasture similar to theirs up on the hill. When they were growing up through the years some 15-20 years ago there were always horses in Mr. Booth's field. They were down wind and much closer to the property line then theirs will be. They used to sled down the hill near the horses. There used to be 5 or 6 horses left out to pasture that people on Concord Street use to board there. This proposal is to keep the horses on the other side of the barn which is 150' away from where Mr. Booth's horses used to be.

P. Harris wanted to know which way the wind blows across the property. Mr. Witcher stated that usually the wind comes out of the west. The prevailing wind is 90% that way unless they have a northeaster. Most of the weather comes from the backside.

Mr. Booth stated that he couldn't disagree that his father had horses on the property. However it was an indulgence he had with neighbors and at any time he could have put a halt to it if it became a nuisance. He would be put in a situation in which he would have no recourse but to file a lawsuit against these people. He does not want neighbors coming in which are going to be adversarial and that is what is going to happen.

P. Harris stated that just not being happy is not enough for denial it has to be based on facts. Mr. Booth stated that there can be no guarantee that there will no noise or flies and other things that will make an invasion of his property. His father never used that back area. He mowed it. He actually uses it now and he is in close proximity to the area that the applicant will be using. He has no other place to go. He bought property that is on an angle and has slopes. He is closer now than his father ever was. It has always been a quiet neighborhood and this is going to change the complexion of it. P. Harris stated that it usually takes some demonstrable facts. To him this is an opinion. Mr. Booth stated that the barn is too close. It is 25' away from his property line. Adding to this is the potential nuisance of the horses.

C. Daigle stated that the structure is definitely preexisting nonconforming. The change of use has to comply with the applicable parts of the ordinance. If there was some evidence that the building had been used within 24 months as an agricultural building it would be grandfathered. Nonconformities expire in 24 months. If it was used within 24 months as a preexisting nonconforming use that would still be valid.

Mr. Witcher stated that currently it is used as a woodshed. He doesn't know if in the last two years if his mother had any chicken or geese. She always kept animals in the yard. The pigs have been

gone for a number of years. C. Daigle stated that chickens are considered agricultural. Mr. Booth stated that there have been no chickens in the last three years. P. Harris wanted to know if they would need a special exception for the barn. C. Daigle stated that they would need a variance for the 50' but they would have to apply for it.

M. Ford stated that in RSA Chapter 672 general provisions section 672-1, it goes down through planning and zoning and when it gets to agriculture it says that "agriculture activities are a beneficial and worthwhile feature of the NH landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers." This is State law they need to be careful. C. Daigle stated that it a State regulation and the Planning Board was very cognitive of the rule when they developed the Zoning Ordinance. The fact that the State's statute states that agricultural activities are beneficial does not permit the Zoning Board to waive the Zoning Ordinance regarding agricultural animals without a variance.

P. Harris wanted to know who oversee agricultural animals. C. Daigle stated that it would be Code Enforcement.

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

M. Ford stated that the lot is located in a country setting. It is larger than most of the surrounding lots. The rear portion of the lot is considerably larger than the front and there is a heavy wooded buffer around two sides and a lightly wooded area around the front and the side towards the abutter. The property is unique in its environment and makes the proposed two horses on the property a reasonable use.

BOARD ACTION – TRACY ANDERSON, EXECUTOR:

MOTION: M. Ford moved to grant a Special Exception of Article 5 Table 1 of the Zoning Ordinance to house agricultural animals (horses) as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted. It is a reasonable use.
2. The specific site is appropriate for the use. It is a large lot in a country setting. Two sides have a mostly wooded buffer. The front and abutter's side is has a lightly wooded buffer.
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. The abutter's objections were not 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. The animal building shall meet the 50' setbacks.

Additional Conditions:

1. Use shall comply with Zoning Article 4.J.
2. Limit is 2 horses.
3. Best Management Practices as described.

The motion was seconded by P. Oberhausen and carried. (5-0)

The applicant wanted to know if he built a lean to on the other side of the property would that be acceptable. C. Daigle stated that as long as the lean to complies with the setback in the ordinance. The applicant wanted to know if he uses the barn for hay would he have to move the barn. C. Daigle stated that the structure that houses the animals would need to be in compliance with those setbacks in the ordinance. P. Oberhausen stated that that if they build a three sided structure they need a building permit.

Abutters' Hearing – Happy Tails Dog Park of the Lakes Region: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow an outdoor recreational facility (dog park) in the commercial zone. Property is located at 576 Laconia Road, Tax Lot 224-040, ZBA # 4710Z

At least three members have viewed the site.

Ms. Lisa Clutters presented the application.

P. Harris explained that before acting on the application the Board must act on the waivers.

Ms. Clutter explained that they are asking the Board to waive the filing and noticing fees because they are a nonprofit. They are willing to pay the Notice of Decision fee of \$16.44. P. Harris stated that fees are part of the application process and if the fees are waived it would cost the taxpayers because someone has to cover the cost of the notifications and the cost for staff to put the application together and review the application. Ms. Clutter wanted to know if the fees are not waived could she pay them by the end of week. C. Daigle stated that they would have no way of collecting the fees. P. Harris stated that if they are not planning on doing the build out until next spring why don't they wait until they can raise the money for the fees. He stated that Ms. Clutter put together a nice packet but if they have no plans to move forward at this time then maybe they could wait until the next meeting. Ms. Clutter stated that the organization doesn't have the money but if the Board gives her time she can go and get her checkbook if the Board doesn't waive the fees.

BOARD ACTION HAPPY TAILS DOG PARK OF THE LAKES REGION:

MOTION: P. Harris moved to deny the following waivers;

1. \$100 filing fee;
2. \$90 noticing fee.

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

Ms. Clutters left the meeting to get the fees and agreed to let the Board continue with the next application until she returns

Abutters' Hearing – Casey & Jamie Crumb for No Limit Motorsports: Request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance for an auto repair business in the village zone. Property is located at 181 Main Street, Tax Lot 124-004, ZBA #5010Z.

P. Harris recused himself from this application and appointed M. Mastenbrook as a voting member for this application.

At least three members have viewed the site.

Mr. Casey Crumb and Mr. Jamie Crumb presented the application. Mr. Shawn Dudek was also present.

Mr. Crumb stated that the building has a four bay garage and they want to do auto repair in the garage. He explained that they have submitted the hours of operation and explained that it is a residential building and they have to take their tenants into consideration. The garage needs to be upgraded, mostly fireproofing.

M. Mastenbrook wanted to know if the site is on the aquifer. They stated that it is.

P. Oberhausen stated that there is no offsite parking and when someone brings snowmobiles and motorcycles to be repaired they would have to park on School Street to unload. Mr. Crumb stated that there is 20' to get around the building and if they go on the School Street side there is more than enough room to park. P. Oberhausen stated that he is concerned that there would be no room for the buses to get around if customers park in the road. Mr. Crumb stated that on any given day there is a half dozen parked vehicles on the street. Mr. Dudek stated that he would ask their clients to move if he sees that parking becomes an issue. There is plenty of garage space and he will be the only employee. He will work on only what fits in the garage.

N. Patten wanted to know about fumes getting into the apartments. Mr. Crumb stated that the garage would be fireproof with double 5/8" sheetrock as a barrier from the apartments. He will use common sense to protect the tenants and neighbors.

M. Ford reviewed the history of prior uses. He stated that the garage was built as storage area and Mr. Hampe asked for an auto repair shop in the building and it was denied. He filed with Superior Court and they agreed with the Zoning Board decision because it is a near a school and there are children walking up and down the street to get to school. The applicant has come back to the Board to ask for something that was already denied. Mr. Crumb explained that the Code Enforcement Officer has been to

the barn and explained that they did not meet code. Mr. Hampe was trying to have a towing business and they are not asking for a towing business. Mr. Crumb stated that the Code Enforcement Officer stated that once the garage was fireproofed then they could proceed. M. Ford stated that it is a noble idea but this is not the right district for the use due to the close proximity to the school. Mr. Crumb stated that there is a hardware store in the area that stores stuff close to the road. He also noted that Belmont Garage is around the corner and is close to the school. M. Ford stated that they are grandfathered and have been there for a number of years. C. Daigle stated that they would never be compliant to today's standards.

Mr. Dudek wanted to know if it is a welding shop without the repair shop would that be allowed. C. Daigle stated that it is not part of this application. It would be a different use and they would have to renotice.

M. Ford stated that it is a great idea to start a business but the building was a storage building when they bought it and they should have known that at the time they bought it. Mr. Crumb stated they did but they bought it with the idea of converting it. It is in the village zone and is allowed by special exception. M. Ford stated that if it is a welding shop there will be stringent fire code that would be a consideration. Mr. Crumb stated that it is an investment and they want to use the space as best they can. There is no reason to have a four car garage with nothing in it.

Mr. Tom Fogg stated that he is currently purchasing 13 School Street and School Street is a busy street. He understands the need for zoning because of the noise in a residential area. It does not make sense to add more congestion to an already congested street.

C. Daigle address Mr. Dudek's inquiry about having a welding shop by explaining that there is one on Rte 106 and one question that would need to be addressed would be the noise.

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

BOARD ACTION – CASEY & JAMIE CRUMB FOR NO LIMIT MOTORSPORTS:

MOTION: N. Patten moved to deny a Special Exception of Article 5 Table 1 of the Zoning Ordinance for an auto repair business in the village zone as it meets the criteria.

1. The Ordinance specially allows the use when a Special Exception is granted and this Special Exception is denied.
2. The specific site is not appropriate for the use because of the noise, fumes, parking on the road and pollution.
3. Property values in the district could be reduced.
4. There are valid objections from abutter.
5. Nuisance and hazards are involved. Including noise, traffic and congestion for school buses.

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

N. Patten stated that it is not a proper place for this business because of the noise, fumes and school bus congestion. She stated that it was a storage facility and they might want to use it for that again.

HAPPY TAILS DOG PARK OF THE LAKES REGION:

P. Harris rejoined the Board as a voting member and opened the public hearing for Happy Tails Dog Park of the Lakes Region as Ms. Clutter returned to the meeting and paid the fees.

Ms. Clutters wanted to know how many Board members have been to a dog park. No members have been to one. She explained that it is an off leash recreational area for dogs that will be safe and secure. She explained that Mr. Tom Marks owns the property and has a potential buyer for it. The buyer intends to have a 60' x 100' auto body shop, office space and a house on the property and has agreed to lease the dog park some of the land for a three season park and associated parking.

N. Patten wanted to know if there would be someone at the park to oversee the dogs. Ms. Clutters stated that the park will be manned by volunteers. N. Patten wanted to know how they could guarantee that there would always be someone there. Ms Clutters stated that if there are no volunteers then the park would be closed until there is a volunteer on site.

Ms. Clutter stated that they will have liability insurance but if something should happen as result of the dogs being at the park the liability is between the pet owners, the same as anything that happens off site.

M. Ford stated that this is a commercial industrial zone and in the past there have been commercial and industrial applications that have not been acted on and the approvals are no long good. He explained that he read in the Daily Sun Newspaper that they are asking the Board of Selectmen to take the property off the tax roll. Ms. Clutter stated that Mr. Clough is going to be the new owner and he will be paying the taxes on the property. It is not coming off the tax roll. M. Ford state that he read the letter that Ms. Clutters provided and that dog parks in other States usually are set over landfill or undeveloped areas. He stated to fence in the area could be expensive, as well as having a waste disposal for dogs and a porta potty for humans. Ms. Clutter explained that she has worked with the Board of Selectmen and R. Ball and there is no Town land available for their use. This property will remain on the tax roll so it will not affect the taxes. She also stated that someone will be donating the fencing.

P. Oberhausen wanted to know who will be using the park. Ms. Clutters stated that it is open to everyone. People using the park must fill out an application; their dog must be vaccination, licensed and must have participated in a dog training course.

M. Ford stated that Ms. Clutter lives on School Street on a small lot and should have considered having a small dog if she wants to live on a small lot. It is not fair to ask the taxpayers to help pay for a dog park because she has a big dog and no place for it to run. Ms. Clutter reiterated the fact that the

proposed location will remain on the tax roll so it is not costing the taxpayers anything. M. Ford wanted to know if someone is going to oversee the park. Ms. Clutter stated that there will be someone monitoring the site. There will be bathroom facilities available. Mr. Marks is selling the property and they are proposing an automotive repair business on site and the dog park can use those sanitary facilities. C. Daigle stated that the other proposed use of the property is not relevant to this application. The Board is looking at a Special Exception for the use.

M. Mastenbrook stated that they will be having volunteers on site and wanted to know if there will be any structures for them to get out of the sun. Ms. Clutter stated that there will be a shelter but if it is 90° people would not be taking their dogs to the park. There will be trees for shade. C. Daigle wanted to know if there will be a person on site from dawn to dusk even if there are no dogs there. Ms. Clutter stated that if there is no volunteer on site then the park will be closed. They are making sure they know who is in the park. They will have an entry code card to enter the park so if there is an incident they will know who is in the park.

P. Oberhausen stated that Ms. Clutter's handout stated that a good park should not be close to a busy street. This is a rural town and people who have dogs walk them. He wanted to know how many people are going to use the park. Ms. Clutters stated that they already have 100 applications. C. Daigle stated the applicant has to meet the Special Exception requirements. The Zoning Board cannot regulate on whether or not they will be paying taxes.

P. Harris commended Ms. Clutter for going forward and taking a stand for the dogs. Her efforts are good. She recognized the need for this entity and has moved forward with it. Ms. Clutters stated that this is not a new thing in the United States. P. Harris stated that they have to look at the big picture and the effect the park would have on abutting businesses. He stated that the surrounding businesses don't have any issues with the park. Ms. Clutter stated that she has no problems with the abutters. The park will have fencing around it, a structure, bathroom and no massive building. P. Harris stated that the site had previously been approved for an auto body shop and landscaping business but the approvals were not acted on. Ms. Clutter stated that the park is going to bring people to Belmont and bring business to other businesses such as Jordan's Ice Creamery. P. Oberhausen stated that the Recycling Committee wanted that property and stated that part of the property was condemned due to contamination.

M. Ford stated that the property is in a hunting area. Is the fencing going to be near the road? He is also concerned about the parking and wetlands. Ms. Clutters stated that the park will have a double fence so the dogs cannot jump the fence. There will be fencing in the area of the wetlands. She stated that she would never bring her dog to an unsafe place. P. Harris stated that they are approving the use; the Planning Board would be reviewing the fencing and safeguard design.

Ms. Debra Villain stated that she would love to have a place for dogs to run because the streets in her neighborhood are main roads and there is nowhere to let the dogs run unless you have a fenced in yard. Some tenants are allowed to have animals but they have no place for them to exercise. She has been to other dog parks and it is good for the animals to socialize. A well maintained area is what the dogs deserve.

Ms. Clutter stated that it would rejuvenate the neighborhood. P. Oberhausen wanted to know why they need to rejuvenate the area it is a wooded area. Ms. Clutter stated that it is a project close to her heart and it is a want. P. Oberhausen stated that he wanted a recycling center and you can't get everything you want. He doesn't feel that it is an appropriate use for the site. Ms Villain stated that the area is easy to find but it is not close to the road. They have a petition with over 190 signatures stating the need for a dog park. P. Harris stated that this is a commercial/industrial area and the use blends in with the area. Ms. Clutter stated that the park will help bring in business to the area. P. Harris stated that the area has a commercial tax base and the park is not taking much out of that tax base. M. Ford stated that a commercial/industrial use will provide jobs for local people. C. Daigle stated that it is an allowed use in the commercial zone.

L. Couture stated that there are no abutters present. There is no nuisance factor, there is adequate facilities for the dogs and the people. She wanted to know who is going to clean up the area. Ms. Clutter stated that it is the dog owner's responsibility. The fenced in 75' x75' area can be monitored by the onsite volunteer at all times to make sure that it is maintained. There will be a receptacle for dog waste.

P. Harris stated that if it works and maybe even grows it will be perfect for everyone. If it fails there will not be a lot of clean up to restore the property back to its original state. There will be no impact on the surrounding area.

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

BOARD ACTION – HAPPY TAILS DOG PARK OF THE LAKES REGION:

MOTION: P. Harris moved to grant a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow an outdoor recreational facility (dog park) in the commercial zone as it meets the criteria.

1. The use is allowed in the district.
2. The specific site is appropriate for the use. The area will be fenced and gated.
3. No factual evidence is found that property values in the district will be reduced. The values will remain the same and have a positive impact on the area.
4. There is no valid objection from abutters based on fact.
5. No nuisance or hazard is involved. It will be a safe and adequate facility.
6. Adequate and appropriate facilities will be provided.
7. There is adequate waste disposal.
8. Structures must otherwise meet all dimensional requirements of the Ordinance.

Additional Conditions:

1. Proposed use also requires Planning Board Site Plan approval.
2. Best management practices as described.

The motion was seconded by M. Ford and carried. (4-1) P. Oberhausen opposed.

Abutters' Hearing – Scott Chapman: Request for a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family residence closer (41.5') to the front property line (Gardner's Grove Road) than allowed (50'). Property is located at 21 Coons Point Road in an "RS" Zone, Tax Lot 119-048, ZBA #5110Z.

Mr. Scott Chapman presented the application.

Mr. Chapman stated that he owns the property that has a 1953 mobile home with add on that were done in the 1960s. The present structure now encroaches on two setbacks. It is 6' from the stream. He plans on tearing down the structure and replacing it with a manufactured/modular home further away from the stream and meeting the 50' setback from Coons Point Road. The side setback will be 13', the front setback to Gardners Grove Road will be 41' instead of the the required 50'. The hardship is being between two roads.

L. Couture wanted to know if Mr. Chapman had access to the lot from Gardners Grove Road. Mr. Chapman stated that he did not.

M. Ford stated that the proposal is more compliant than the existing structure. Mr. Chapman stated that there are neighbors that built before zoning that are closer than 50'.

P. Harris commended Mr. Chapman on his application explaining that the process is an important tool for future development. C. Daigle stated that Mr. Chapman needs a revised plan because the required setbacks are incorrect. Mr. Chapman does not need a side line variance because he meets the side setbacks. If the variance is approved he will need to provide an accurate survey.

Mr. Terry Murphy, an abutter, stated that Mr. Chapman is moving closer to his house and he thinks this proposal is great because the structure needs to be replaced for safety reasons. P. Harris stated that the new construction needs to meet current building codes. Mr. Chapman stated that it will. It is a manufactured/modular on a full foundation on town sewer.

Mr. Richard Hiller, an abutter, stated that he lives directly across from Mr. Chapman and stated that the lot is a home site and should remain a home site.

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

BOARD ACTION – SCOTT CHAPMAN:

MOTION: M. Ford moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to construct a single family residence closer (41.5') to the front property line (Gardner's Grove Road) than

allowed (50') as it meets the criteria.

1. The variance will not be contrary to the public interest because of the depth of the lot and enforcement would create a unnecessary hardship. It is an allowed use.
2. The spirit of the ordinance is observed because it provides adequate light and air flow and is not contrary to the ordinance.
3. Substantial justice will be done because of the close proximity of two roads and a brook. The proposal is more compliant than the existing building.
4. The variance would not diminish the value of surrounding properties because it is an improvement to the neighborhood and will give enjoyment to the applicant.
5. Owing to special conditions of the property that distinguish it from other properties in the area,
denial of the variance would result in unnecessary hardship because of the following:
 - a. no fair and substantial relationship exist between the general public purpose of the ordinance provision and the specific application of that provision to the property.
and
 - b. the proposed use is a reasonable one because adequate facilities are provided.

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. Certificate of Occupancy is required.
4. Submit 3 copies of a corrected survey showing correct side and brook setbacks.

The motion was seconded by P. Oberhausen and carried. (5-0)

OTHER BUSINESS:

BOARD'S ACTION - MINUTES:

P. Oberhausen made a motion to approve the minutes of September 22, 2010. P. Harris seconded. Carried (3-0-2) N. Patten and L. Couture abstained.

STAFF REPORT:

NOTICE OF DECISION:

The chairman signed the Notice of Decision for:

- Richard & Patricia Bernard, 39 Dutile Shore Road.
- Charles & Dianne Stewart, 17 Sleepy Hollow Lane.

BELMONT FIREARM SOUND TEST TAX LOT 210-005:

C. Daigle explained that the acoustical sound test was successful and reminded the Board that there will be no discussion until public hearing. M. Ford stated that he is not sure if the testing was successful because there was no communication between the test sites to let them know what was being shot and whether it was inside or outside the hut. He feels there should have been better communication so the members would have been more aware of what they were listening for. C. Daigle stated that if the Board feels that the testing was not successful then they need to let the applicant know so he can determine how to proceed. M. Mastenbrook stated that the report should give them the information they need to make an informed decision. It was the consensus of the Board that the testing was successful and they can proceed with the public hearing once the test results are submitted.

ADJOURNMENT:

MOTION: On a motion by P. Oberhausen, seconded by L. Couture, it was voted unanimously to adjourn at 9:20p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy
Administrative Assistant