

## ZONING BOARD OF ADJUSTMENT

Monday, October 31, 2005  
Belmont Corner Meeting House  
Belmont, N.H.03220

Members Present: Chairman J. Olmstead; N. Patten, P. Harris, B. Paquette and P. Oberhausen.  
Alternates Present: E. Hawkins and Linda Couture.  
Staff: C. Daigle and E. Murphy.

The chairman opened the meeting at 7p.m.

**Abutters' Hearing – Phillip Harker:** Continuation of a request for a Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow an outdoor recreation facility (trails for OHRV use including organized events, parking for 800 vehicles, 2 events tracks motocross and scramble, 250 rider capacity) in the industrial zone. Property is located on Depot Street, Tax Lot 234-004, ZBA # 1405.

Members J. Olmstead, P. Harris, N. Patten, B. Paquette and E. Hawkins will be the voting members for this application as they are the original voting members on this application. P. Oberhausen stepped down from the Board.

At least three members have viewed the site.

Mr. Harker and Mr. Tom Duffield presented the application.

Mr. Harker stated that at the last meeting he submitted an in-depth packet to the Board and tonight he will answer any questions the Board has.

Mr. Duffield explained that this situation is unique because you have to start with a use special exception before moving forward with a site specific plan and obtaining Planning Board approval. The proposal will not create a nuisance or reduce surrounding property values. Mr. Harker and their wetland scientist were on the site today and redid the wetland delineation. They were also on site to determine where they will need long term wetland crossings to bring the site into compliance. The restoration work is different from long term permitting. There will be minimal wetland crossings. The remaining land between 80 and 100 acres will be kept in a conservation easement.

P. Harris stated that the criterion for no nuisance or hazard involved has been addressed in the packet but there is no reference to the wetlands and aquifer. Mr. Duffield stated that Mr. Harker is working on restoring the wetlands that have been disturbed. They are proposing portable toilets so no sewage will go into the aquifer. There is a small area where a septic system could be put in but they are not sure if it is worth it or if

they should wait until they are able to tie into the sewer system. Mr. Harker had Mr. Duffield explain the provisions they will have in place to protect the aquifer from contamination. Mr. Duffield stated that the participants will only be allowed to refuel on the fueling pad and will be allowed only two gallon fuel tanks per participant. The racers use only ½ to 1 gallon of fuel per race. Best management practices will be used and they will have a non point discharge system. The owner must monitor the site if there is more than ½" of rain in a 24 hour period. They have to go out and check the site. They are trying to get back on the right track and clean up the wetland violations and get back in good standing with the Wetland Board. He stated that people are concerned about the pollutants from motorcycles but they have improved over the years and have fewer pollutants than they used to.

N. Patten asked that the department comments be addressed. Mr. Harker stated that they will have security on site during the events. They will either hire the local police department or have private security. There will be security at the gate and police on Rte 140 for traffic. There will also be a security system to keep people off the site during non event days. They will have security cameras or alarms to make sure the site does not become a nuisance. They will also have a local maintenance staff on call so that if the alarms are triggered it doesn't become a burden to the local police department. There will be fences and the area will be posted "no trespassing". He addressed the fire department's concern about the trails being available for emergency vehicles by stating that the fire department/ambulances will be on call during a race and they will provide access and a staging area for the vehicles during events. J. Olmstead stated that he thinks that the fire department's concern is more if something happens when there is no race. Mr. Duffield stated that keys will be provided to the police and fire departments for access to the site. He stated that after they get the Special Exception they will continue the process by going to the Planning Board and the State for the needed approvals. He addressed the issue of sanitary facilities by explaining that initially they will be having portable toilets and eventually they will either put in a septic system or tie into the sewer system. He plans to do this as soon as possible as part of Phase 2 when he puts in the permanent structures.

Mr. Pleasant Oberhausen, tax payer, stated that a racetrack can be put in the industrial zone but do they want it at this location? As a resident and long time racer he has safety concerns about people entering the site when there are no personnel on site. This is the aquifer for three towns and he is concerned about potential contamination. Another concern is the traffic on Rte 140 with 200 cars entering a two lane road there is potential for traffic accidents. As a taxpayer he is against the proposal.

Mr. Duffield addressed the Conservation Commission's concerns about being kept up to date on the progress of the development and the impact it will have on wildlife in the area. He stated that he will keep the Conservation Commission up to date and copy any additional correspondence from DES to them. He also stated that they are welcome to visit the site anytime. He stated that he will correct the current use maps to show the parcel taken out of current use. He stated that DOT will dictate what happens with the traffic and any additional comments will be addressed at the Planning Board. The proposal is good for the students because it encourages them to keep their grades up so they can participate in the races.

E. Hawkins stated that the applicant did a good job presenting information supporting the use. They need to establish the criteria for being in the aquifer protection zone. With 800 vehicles parking on an unpaved surface they have to consider the appropriateness of the site and the potential for petroleum being released into

the aquifer. Mr. Duffield stated they looked at where the parking is proposed and made sure it is a certain distance from the aquifer area. The parking area will be elevated. After each event they will have someone walk the site to see if there have been any leaks, if there is the soils could be removed and placed in a secure area until removed to a place that takes contaminated soils. NH DES will be concerned about contamination. He explained that Winchester has had a track on both sides of the road for 20 years. Four or five years ago the area was determined to be in the aquifer zone and about 3 years ago it was designated a flood zone. They have had no problem with that track or contamination. The Belmont track area has about a 2' depth of loose type soil. The tracks will be walked after each day of racing. E. Hawkins wanted to know if they have thought about paving the parking. Mr. Harker stated he thought about gravel and not sure how impervious gravel would be. Mr. Duffield stated that in the long term it would be beneficial to have it paved but it is not financially feasible at the beginning. They will have to monitor incoming vehicles at the gate and prohibit some vehicles that look like they might have leaks from entering the site. They will be having between 9"-12" of gravel for the parking surface.

Mr. Oberhausen stated that he still had concerns about the sanitary facilities. If snowmobiles are allowed to use track will portable toilets be supplied year round. They are not allowed in Belmont. In two or three years down the road will he put in the regular system or if it is not profitable will he keep the portable toilets? Mr. Harker stated that he will agree to have them for only two years. Mr. Oberhausen wanted to know if there will be people there during the week doing maintenance. Will there be facilities for them to use? Mr. Harker stated that they will pump the portable toilets and not remove them. Mr. Duffield stated that they will add more portable toilets for special events. Mr. Oberhausen stated that toilet facilities are needed. Mr. Duffield stated that an option would be to put a small sanity system for personal and portable toilets for events. Mr. Harker stated because the portable toilets are removed or pumped they won't leak into the aquifer.

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

P. Harris thanked the applicant for the amount of information they provided. There would be no nuisance or hazard on the site but this a regional issue because it abuts the well head protection area. That is their biggest concern. The recreation facility is a concern but the recreation facility out weighs an industrial use. A lot of the argument is it will be built if they come, and not if they build it they will come. The hardship is financial. The 800 vehicles are a concern. He is an avid race fan but is this an appropriate place because of the wetlands and the aquifer. E. Hawkins stated that they have to deal with the term about the appropriateness of the site. He wanted to know if they could put a condition on the special exception to require the parking area and the perimeter of parking area be paved. He stated that putting a facility in aquifer so close to ground water is a concern. Mr. Duffield wanted to know if it would it make difference to pave the parking area. When they reach the Planning Board level they will show Best Management practices and plans in more details. B. Paquette wanted to know if it the Planning Board's responsibility to require paving. P. Harris stated that tonight they are asking for parking for 800 vehicles, 2 events track and 250 riders. Do they minimize the use then come forward with maximum plan? C. Daigle stated that the applicant has the burden to provide the information to determine if it is an appropriate use and meets the special exception criteria. Mr. Duffield stated that the numbers should not scare the Board. They will have more information for the Planning Board. E. Hawkins stated that the information before them tonight shows the proposal is right in the heart of the Aquifer zone and it

is not an appropriate site and does not meet criteria because the site is primarily in the aquifer zone and because of the depth to the ground water.

**BOARD ACTION – PHILLIP HARKER:**

**MOTION:** E. Hawkins moved to deny the Special Exception of Article 5 Table 1 of the Zoning Ordinance to allow an outdoor recreation facility (trails for OHRV use including organized events, parking for 800 vehicles, 2 events tracks motocross and scramble, 250 rider capacity) in the industrial zone for the following reason:

The specific site is not appropriate for the use due to it being on the aquifer, the shallow depth of ground water and the possibility of contamination from such a use.

The motion was seconded by J. Olmstead and carried. (5-0)

**Abutters' Hearing – Andrew P. Sanborn Farm, LLC:** Request for an Appeal of Administrative Decision of the Planning Board's interpretation of Zoning Articles 10.c and 14 (frontage). Property is located on Durrell Mountain Road in an "R" Zone, Tax Lot 214-009, ZBA # 5505.

P. Oberhausen rejoined the Board and P. Harris stepped down from the Board for this application as he is a member of the Planning Board.

Atty. William Philpot Jr., Ms. Karen Feltham and Mr. Howard Warren presented the application.

Atty. Philpot used the subdivision plan to show the property and explained that a boundary line adjustment was done on the property. The boundary line adjustment was done to give at least 20' of frontage on a class 5 road. Beyond that point is a class 6 road and there is an existing driveway to the larger tract on the class 6 portion. He stated that as the law is defined the Zoning Board of Adjustment is limited to what they have in front of them. They cannot go beyond that. There are two ordinances. The first ordinance is with the preexisting nonconforming lot situation that if you have 20' of frontage as defined under Belmont's ordinance then you are allowed a building permit. He stated that frontage is also defined. Belmont has defined frontage as the distance along a lot line on a Class I or II State Highway, or a Class 5 Town Street, or an approved private street. He stated that the Planning Board placed a restriction on the plan that the nonconforming lot statute Article 10.c requires that the driveway access be through the 20'. The applicant is proposing to have access through the existing driveway on the class 6 portion of the road. They are saying the clear reading of the language under strict construction requires that you come to that interpretation. You can't add words to the ordinance. It is incumbent upon the voter to adopt that through the legislative process not the judicial process. The Board tonight is the judicial panel. The ordinance doesn't say specifically that you have to access the area through that the 20'. In this situation is not conducive because it is a beaver pond. They are not asking to rule on a permit on a class 6 road. That is the function of the Board of Selectmen. The applicants will have to go to the Board of Selectmen for issuance of a building permit on a class 6 road and meet the criteria of 674:1. In that process the Board of Selectmen will defer to the Planning Board for comments on the request. There is still oversight even if the Zoning Board agrees with the applicant. They are asking for a legal interpretation consistent with the existing case law that is out there.

Atty. Philpot presented the Board with copies of the *Trottier v City of Lebanon* case. He quoted “where the ordinance defines the term in issue, that definition will govern;”. When an appeal is made to the Board of Adjustment under this provision the Board must apply the strict letter of the law exactly the same way the building inspector must. It cannot alter the ordinance or wave any restriction under the device of interpreting the law. What you see is what you get. Atty. Philpot stated that he provided a memorandum to the application referring to the *Belluscio v Town of Westmorland* case. In that case the court says you must first consider the statute’s plain meaning. This is an interpretation of the statute, but the same rules apply to the Town’s ordinance. The decision states had the legislature intended to require frontage on a class 5 road or better highway it could have drafted the statute to include that provision. They have frontage defined under the ordinance and it does not say that frontage equals access. The definition is clear and non ambiguous, the language is clear and non ambiguous. What they could have, should have or would have done is not the issue, it is what the statute says. That is what the law is. The Board of Selectmen have jurisdiction over roads. The applicant still has to convince the Board of Selectmen that they are entitled to a building permit on a class 6 road. The ordinance in question was adopted in 2001 or 2002 and hasn’t been changed since. He used the plan to show property that has class 5 frontage and the Town issued a municipal waiver to allow access on a class 6 road. In the process when the Board of Selectmen make a decision as to whether or not to issue a building permit the statute requires the Planning Board be involved in the process but they are not the controlling authority but under 674:41 the Planning Board has the opportunity to voice a recommendation or not recommend. The decision of the Board of Selectmen is final. In 2003 they had a situation under the current ordinance and definition where the same people received a waiver. The Town didn’t say in 2003 that they have to access on a class 5 road. They said if they want to access on a class 6 road you have to comply with 674:41 and go to the Board of Selectmen. There is an interpretation consistent with what he is presenting tonight.

Mr. Philpot stated that in summary they are asking for a strict interpretation of the law based upon the law he provided and a ruling that the definition of the frontage does not require that the applicant place their driveway or the access point on the frontage however if they do not choose to do that and it involves 674:41 jurisdiction then they have to comply with that.

C. Daigle asked what year the lot was created that Atty. Philpot referred to that was granted the waiver for access from Rogers Road. Ms. Feltham stated it was in 1998. P. Oberhausen stated that Atty. Philpot goes back to 1985 when the Board of Selectmen issued a driveway cut and the ordinance requires 200’ frontage for Belmont. He can’t understand why they are asking for the 20’ to be used as a driveway when it could never be used as a driveway because it is a swamp and has water but they are saying that makes it frontage. The only way to the land is through Durrell Mountain Road which is a class 6 road. Atty. Philpot stated that the access through the class 6 road is a more desirable location. P. Oberhausen stated that the town’s ordinance states you need 200’ frontage and they are putting in only 20’. He can understand what the Planning Board did. They have access another way why should he be allowed frontage on a class 5 that won’t even be used. Atty. Philpot stated that P. Oberhausen is referring to an applicant coming in to subdivide property and they have to be in compliance with the regulations but he is referring to the nonconforming lot section of the ordinance which is Article 10.c which gives relief for a nonconforming lot. This is a nonconforming lot which does not comply with the frontage in the context of what would be required for a new subdivision. The applicants are seeking one building permit not subdividing this lot. It is a 17 acres and the last lot on the town line.

P. Oberhausen stated that they want to do a boundary line adjustment on the bottom lot and move acreage into the front lot. Atty. Philpot clarified that the lot are already subdivided. He used the plans to show the lot under discussion. He stated that there is a 131.4 acre lot and the other lot which is 12.5 acres. Ms. Feltham explained that they were two separate properties and they did a boundary line adjustment. They took some land from the two lots and reconfigured them. P. Oberhausen stated that they are taking a strip 1000' long by 20' wide to say they have frontage on a class 5 road. Mr. Howard Warren stated that this was 117 acres and they took 16 acres and added it to the 114 acres to make it 139 acres. They didn't just add a little strip of land. He used the plan to explain that Durrell Mountain Road LLC owned a piece of property that was subdivided and is not the lot they are talking about. Lot 214-012 had frontage on Old Rogers Road. Later on they purchased another piece of property and they wanted to give frontage to the property on Old Rogers Road and Durrell Mountain Road so they carved out 16.79 acres and created frontage on Old Rogers Road and Durrell Mountain Road. The frontage on Durrell Mountain Road is on the class 5 portion and the class 6 portion. Prior to them buying the property a driveway was built on the property for logging purposes. Subsequently there is a nice driveway going around the steep wet area so you don't have to cross the wet area. What they are asking is rather than having the driveway go through the beaver pond they want to have their driveway come off the class 6 road.

The Planning Board put a condition on the Boundary Line Adjustment that states access does equal frontage or access has to equal frontage therefore the lot is not buildable. Mr. Philpot has shown that access doesn't have to equal frontage. Case law is on their side. They are asking the Zoning Board to take that note off the plan that says it is not a buildable lot. Mr. Warren stated that you can drive your car down the class 6 road into the driveway onto the property. They don't want to build another driveway and go through the wetlands. It could be possible to get the permits but it would be ridiculous to do that when it already exists even if it is on a class 6 road. The Planning Board said if they don't have their driveway there they cannot build. They said that access has to equal frontage and they don't agree with that. E. Hawkins stated the Planning Board didn't really say that they couldn't build there they just put a note on the plan. The Zoning Board is here tonight to decide if the statement saying "20' of frontage on a class 5 portion of Durrell Mountain Road being created for lot 214-009 by this approval does not meet the ordinance definition of frontage because vehicle access to the lot will not be over said frontage." He stated that the applicant can interpret that to say it is a non buildable lot but that is not what the Planning Board said. It comes down to if the statement by the Planning Board is a real statement of the Town of Belmont's Zoning Ordinance. Mr. Warren stated that what the statement says is that access equals frontage. Atty. Philpot stated that the issue is does the ordinance say that frontage equals access or doesn't it.

Mr. Warren stated that when they bought the land it was assessed for tax purposes as buildable. The assessor called them and told them this is not a buildable lot because you do not have the class 5 road frontage. They have in fact said that we don't have a buildable lot and they are taxing them as such now. C. Daigle wanted to know if they filed an abatement to have them assess it as a buildable lot. Mr. Howard stated that they did not because that wasn't going to happen.

J. Olmstead stated that he is trying to understand the wording in 674: 41 "Shall have been accepted or opened as, or shall otherwise have received the legal status of, a class V or better highway prior to that time;" in

the Belluscio Case. Atty. Philpot explained the purpose of that case is the definition and interpretation case which says frontage doesn't equal access and goes on to discuss if that was the intent of the legislature then they should put it in there. Subsequently the legislature did and put the access component in. The proper thing to do with the Town is through a zoning amendment to their definition and put it to the voters. They don't have it now so it doesn't apply to the applicant. J. Olmstead wanted to know when this came into affect. Atty. Philpot stated that it has been over ten years. It was decided in 1994 by the Supreme Court and within less than a year the legislature addressed it and put access in 674:41. The purpose of the case is when you have a definition, which Belmont does, the town is not saying in its definition that frontage equals access. The Belluscio case is on point, the court said at the time 674:41 doesn't say frontage equals access. The court ruled against the town. The legislature then went back and changed 674:41 to say frontage equals access. Atty. Philpot stated that Belmont doesn't have access in their definition so the applicant wins. P. Oberhausen stated that Belmont does have a definition for frontage. Atty. Philpot agreed that they have a definition of frontage but it doesn't say frontage equals access. E. Hawkins stated that they need to address the definition of frontage. C. Daigle agreed and they have to interpret whether or not the Planning Board was correct in their interpretation of the ordinance given the facts and the ordinance they have to deal with.

C. Daigle stated that it is important to understand that the ordinance allows a buildable lot to have only 20' of frontage. If they are creating a new lot they need to have 180' of frontage but if it is a preexisting nonconforming lot Section 10.c specifically allows it to be a building lot with only 20' of frontage. The question is if frontage equals access.

E. Hawkins stated that Atty. Philpot pointed out in the case law of *Trottier v City of Lebanon* saying that the Zoning Board has to make a literal interpretation of the ordinance and the definition takes precedent. He stated that it is clear to him that the Planning Board and the Zoning Board need to get together before the March meeting and make an amendment to the Zoning Ordinance to make it more clear as to what frontage and access mean. They are here tonight to decide what the word frontage means in the Town of Belmont.

P. Harris, Planning Board Chairman, explained that the Board met with the applicant three or four times. The Board was confused on the issue so they consulted town counsel and chose to agree with town counsel on its interpretation. There is a definition in the American dictionary of frontage and it states that it is access. Another important criteria is what you can do on a class 6 road and what happens on those roads in the winter. Winter maintenance and accessibility for emergency vehicles are safety issues and a concern of the Planning Board. Atty. Philpot stated that what P. Harris said would apply if they were searching for the meaning of the term but the town has defined the term. If the town doesn't define the term you can use a dictionary for definition for the common uses.

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

E. Hawkins stated what it comes down to is that Article 10.c becomes less important based on the guidance given to them from the OEP manual as to what they need to do to address the ambiguous term. The term is defined in the ordinance and it comes down to that definition and it takes precedent so they have to look at Article 14 and see if that definition upholds the condition that the Planning Board put on the plan.

**BOARD ACTION – ANDREW P. SANBORN FARM, LLC:**

**MOTION:** P. Oberhausen moved to uphold the Planning Board’s interpretation of Zoning Articles 10.c and 14 (frontage). The 20’ of frontage on the class 5 portion of Durrell Mountain Road being created for lot 214-009 does not meet the ordinance definition of frontage because vehicle access will not be over such frontage.

The motion was seconded by N. Patten and carried. (3-2) E. Hawkins and J. Olmstead opposed

P. Harris rejoined the Board.

**Abutters' Hearing – June & Normand Champagne:** Request for

- A Special Exception of Article 10.A.3.c.of the Zoning Ordinance to replace a structure and add usable space in a preexisting nonconforming footprint with the addition of a basement and second floor.
- A Variance of Article 5 Table 2 of the Zoning Ordinance to replace a structure closer (41’) to the front property line than allowed (50’).

Property is located at 110 Elaine Drive in an “RS” Zone, Tax Lot 107-100, ZBA # 2905 & 4605.

At least three members have viewed the site.

Mr. Normand Champagne presented the application.

Mr. Champagne explained that they are tearing down the existing house and adding a second story to the new house. They will be moving closer to the road and increasing the setback from the water. The shed will be torn down.

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

**BOARD ACTION – JUNE & NORMAND CHAMPAGNE:**

**MOTION:** P. Harris moved to grant a Special Exception of Article 10.A.3.c.of the Zoning Ordinance to replace a structure and add usable space in a preexisting nonconforming footprint with the addition of a basement and second floor as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted. It is a residential use in a residential zone.
2.
  - a. The specific site is appropriate for the use.
  - b. No factual evidence is found that property values in the district will be reduced they should increase.
  - c. There is no valid objection from abutters based on fact. No abutters were present.

- d. No nuisance or hazard is involved. The use remains the same.
- e. Adequate and appropriate facilities will be provided.
- f. There is adequate sewage disposal.
- g. Structures must otherwise meet all dimensional requirements of the Ordinance.

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

E. Hawkins stated that they have to look at the application and the fact that the existing house vs the proposed new house is an increase of 20% with an encroachment on front setback. They could slide it to the west to avoid the encroachment on the front setback. This can be done with no encroachment. P. Harris stated that the houses in the surrounding area are approximately the same size. Mr. Champagne agreed that there are a few two story houses in the area. The houses surrounding his are around the same size.

**MOTION:** P. Oberhausen moved to grant a Variance of Article 5 Table 2 of the Zoning Ordinance to replace a structure closer (41') to the front property line than allowed (50') as it meets all the criteria.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it:
  - A. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property;
  - B. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. All property bounds/existing footprint certified during construction as required.
7. All required floodplain/Shoreland Protection documents to be submitted.
8. No structures or additions that do not meet setback, except for those approved herein are allowed.

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

**Abutters' Hearing – Gerald & Theresa Skaza for Mallard's Landing:** Request for

- A Special Exception of Article 10.A.3.c of the Zoning Ordinance to replace a structure and add useable space within a preexisting nonconforming structure with the addition of a second floor.
- A Special Exception of Article 10.A.3.d. of the Zoning Ordinance to replace a structure closer (0.7') to the rear property line than allowed (12.5').

Property is located at 63 Mallards Landing Road in an "RS" Zone, Tax Lot 110-002-000-524, ZBA # 4705 & 5205.

At least three members have viewed the site.

Mr. Gerald Skaza presented the application.

Mr. Skaza explained that the house consist of a manufactured unit with an attached stick build addition. One third of it is on the State's railroad property. The lot has a road in front and the railroad in the back so they will go with a smaller footprint and add a second story.

P. Oberhausen wanted to know about the 7" off the property line. C. Daigle explained that the land is leased from the railroad and the 7" is off that property line. This will move the house onto it own property instead of on the railroad's property. P. Harris wanted the applicant aware of the Code Enforcement Officer's concern for fire rating. Mr. Skaza noted that he is aware of them. P. Oberhausen noted that Mr. Skaza has made improvements over the last year. N. Patten wanted to know where the plastic shed will be located. Mr. Skaza stated that it will right in the back and will not be bigger than 3' wide. C. Daigle stated that they will need a permit for it. Mr. Skaza agreed to get a permit for it.

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

**BOARD ACTION – GERALD & THERESA SKAZA FOR MALLARD'S LANDING :**

**MOTION:** N. Patten moved to grant a Special Exception of Article 10.A.3.c of the Zoning Ordinance to replace a structure and add useable space within a preexisting nonconforming structure with the addition of a second floor as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.
2.
  - a. The specific site is appropriate for the use.
  - b. No factual evidence is found that property values in the district will be reduced.
  - c. There is no valid objection from abutters based on fact.
  - d. No nuisance or hazard is involved.
  - e. Adequate and appropriate facilities will be provided.
  - f. There is adequate sewage disposal.
  - g. Structures must otherwise meet all dimensional requirements of the Ordinance.
3. All property bounds/existing footprint certified during construction as required.
4. No structures or additions that do not meet setback, except for those approved herein are allowed.
5. Proper Fire rating must be achieved.

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

**MOTION:** N. Patten moved to grant for a Special Exception of Article 10.A.3.d.of the Zoning Ordinance to replace a structure closer (0.7') to the rear property line than allowed (12.5') as it meets all the criteria.

1. The Ordinance specifically allows the use when a Special Exception is granted.

2.
  - a. The specific site is appropriate for the use.
  - b. No factual evidence is found that property values in the district will be reduced.
  - c. There is no valid objection from abutters based on fact.
  - d. No nuisance or hazard is involved.
  - e. Adequate and appropriate facilities will be provided.
  - f. There is adequate sewage disposal.
  - g. Structures must otherwise meet all dimensional requirements of the Ordinance.
3. All property bounds/existing footprint certified during construction as required.
4. No structures or additions that do not meet setback, except for those approved herein are allowed.

The motion was seconded by B. Paquette and carried. (5-0)

**Abutters' Hearing – Marion & David Youtsey:** Request for a Variance of Article 5 Table 1 of the Zoning Ordinance to allow an in-law apartment in the commercial zone. Property is located at 785 Laconia Road, Tax Lot 237-022, ZBA # 5305.

Mr. David Youtsey presented the application.

Mr. Youtsey stated that they want to add additional space in the existing house to allow his daughter to move in and take care of him and his wife in the future. They purchased the property in 1972 before zoning.

P. Oberhausen stated that they have 200' of frontage and he wanted to know how far the brown house is away from Mr. Youtsey's house. Mr. Youtsey stated it is approximately 75'. P. Oberhausen wanted to know if that included the 24' addition. Mr. Youtsey explained that the addition only goes 6' beyond the existing house. C. Daigle explained that they have applied for an in-law apartment and setbacks are not an issue. P. Harris stated that this is a commercial zone and that means it is designed for businesses and they are asking for a house in an area approved for business use. The in-law apartment is not allowed but an expansion on the existing house is without an additional kitchen and bathroom. J. Olmstead stated that they could add a bedroom, den and bathroom but no cooking area. C. Daigle stated that it is up to the applicant to decide what he wants. If he just wants an addition then he does not need Zoning Board approval as it meets all the setbacks but if he wants to create a separate living area, in-law apartment, this is not an allowed use and needs a Use Variance. E. Hawkins stated that the application is to allow an in-law in the commercial zone the addition is not an issue. L. Couture wanted to know if the septic design comes into play. Mr. Youtsey stated that he has a new septic design at the State waiting for approval. It is a commercial designed so it is over designed for a house. He stated that they want a separate cooking unit for his daughter they don't want to add just a bedroom. P. Oberhausen stated that Mr. Youtsey has to record a covenant with the registry that restricts who lives in the apartment. C. Daigle stated that part of not allowing more residences in the commercial zone is a balance of growth. P. Oberhausen stated that here is a gentleman who bought a house in 1972 and in 1986 zoning was adopted and now his house is in the commercial zoning, this is a taking of his rights. C. Daigle stated that the voters decided that they wanted some areas for non residential use. P. Harris stated that he is concerned that allowing in-law apartments in the commercial would entitle abutting properties to have a residence in the commercial zone. They have provided an opportunity to allow home occupancy as an accessory use to a business. P. Oberhausen wanted to

know if the applicant would consider tabling the application until next month and they could decide if they want to leave it as an in-law apartment or just add on. If the variance is denied he could just add on a bedroom. The applicant does want the in-law apartment.

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

**BOARD ACTION – MARION & DAVID YOUTSEY:**

**MOTION:** P. Harris moved to table the request for a Variance of Article 5 Table 1 of the Zoning Ordinance to allow an in-law apartment in the commercial zone to the November meeting to allow the applicant to get more information.

The motion was seconded by N. Patten and carried. (4-1) B. Paquette opposed.

B. Paquette wanted to know what additional information the Board was looking for. The hardship is the family lived there forever. E. Hawkins stated that the applicant has the opportunity to expand the house and he is concerned what affect the in-law apartment would have in the future.

**MOTION:** P. Harris moved to bring the application back to the table.

The motion was seconded by B. Paquette and carried. (4-0-1) P. Oberhausen abstained.

B. Paquette stated that there are apartment complexes on both sides of that area that already exist. E. Hawkins wanted to know if there are any in-law apartments associated with those properties. B. Paquette stated that she did not know. N. Patten stated that the applicant has lived there since 1972 when there was no zoning and now that he is aging he wants to have his daughter live in the house with him. He wants to remain on his own for as long as possible that is the hardship since the house has been rezoned since he bought it.

**MOTION:** P. Oberhausen move to grant a Variance of Article 5 Table 1 of the Zoning Ordinance to allow an in-law apartment in the commercial zone as it meets the criteria.

1. The variance will not be contrary to the public interest.
2. Denial of the Variance would result in unnecessary hardship to the owner seeking it because it was a residential area before being rezoned commercial
  - A. A fair and substantial relationship does exist between the general purposes of the zoning ordinance and the specific restriction on the property; and
  - B. The variance would not injure the public or private rights of others.
3. The spirit of the ordinance is observed.
4. Substantial justice will be done.
5. The variance would not diminish the value of surrounding properties.
6. Require in-law covenant to be recorded at Registry at applicant's expense.

The motion was seconded by N. Patten and carried. (4-0-1) P. Harris abstained

**Abutters' Hearing – Gerald & Diane Tobeler:** Request for a Special Exception of Article 10.A.3.c. of the Zoning Ordinance to add useable space within a preexisting nonconforming structure with the addition of a full basement. Property is located at 23 Chestnut Street in an “RS” Zone, Tax Lot 113-002, ZBA # 5405.

Mr. Tobeler presented the application

At least three members have viewed the site.

Mr. Tobeler stated that he built the place in 1999 and now they want to retire here and there is not enough room to consolidate two houses into one. He wants to raise the house 5 ½’ for a full basement. P. Harris wanted to know if they were going down. Mr. Tobeler stated that they are raising it up on the existing footprint. P. Harris wanted to know what the total height is. Mr. Tobeler stated that it is 21’ now.

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

**BOARD ACTION – GERALD & DIANE TOBELER:**

**MOTION:** P. Harris moved to grant the Special Exception of Article 10.A.3.c. of the Zoning Ordinance to add useable space within a preexisting nonconforming structure with the addition of a full basement as meets all the criteria

1. The use is allowed in the district
2.
  - a. The specific site is appropriate for the use.
  - b. No factual evidence is found that property values in the district will be reduced. It will enhance the value.
  - c. There is no valid objection from abutters based on fact.
  - d. No nuisance or hazard is involved. They are just increasing preexisting living space.
  - e. Adequate and appropriate facilities will be provided.
  - f. There is adequate sewage disposal.
  - g. Structures must otherwise meet all dimensional requirements of the Ordinance.
3. All property bounds/existing footprint certified during construction as required.
4. All required floodplain/Shoreland Protection documents to be submitted.
5. No structures or additions that do not meet setback, except for those approved herein are allowed.

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

**OTHER BUSINESS:**

**A. BOARD'S ACTION - MINUTES:**

P. Oberhausen made a motion to approve the minutes of September 28, 2005. N. Patten seconded. Carried (4-0-1) P. Harris abstained.

**B. PLEDGE OF ALLEGIANCE:**

J. Olmstead stated that he would like to start each meeting with the Pledge of Allegiance.

**MOTION:** P. Oberhausen moved to start each meeting with the Pledge of Allegiance.

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

**ADJOURNMENT:**

**MOTION:** On a motion by P. Oberhausen, seconded by N. Patten, it was voted unanimously to adjourn at 9:55 p.m. (5-0).

Respectfully submitted,

Elaine M. Murphy