



ZONING BOARD OF ADJUSTMENT BELMONT, NH

Wednesday, June 28, 2023
Belmont Mill & Zoom
Belmont, NH 03220

Members Present: Chairman Peter Harris, Vice Chair John Froumy, Members David Dunham. Mark Mastenbrook and Sharon Ciampi

Staff: Karen Santoro, Town Planner, Rod Cameron, Land Use Tech, and Susan Austin, Land Use Administrative Assistant (via Zoom)

Public on Zoom: Stephan Condodemetraky

6:00 Public Meeting

The Chairman opened the meeting at 6:00 pm and welcomed those in attendance and announced that as Chairman of the Belmont Zoning Board of Adjustment, this public body is authorized to meet using electronic means. He said that the Board gave notice to the public of the necessary information for accessing the meeting using Zoom or telephone, and he announced that any party experiencing any difficulty in accessing the meeting at any point, should call 603-267-8300 x 101, and the meeting will be recessed until access can be restored for all parties.

Chairman Harris stated that he would like to remind everyone to be respectful to each other and the Board members and to please direct all questions and comments to the Board. The public will be allowed the opportunity to address the Board during the public hearing.

MOTION: M. Mastenbrook moved to appoint Reese Grey as an alternate member of the Town of Belmont Zoning Board of Adjustment.
S. Ciampi seconded the motion.
Vote: All in favor, Motion carried (5-0)

Town Clerk Cynthia DeRoy swore Reese Grey in.

Plan Submission and Public Hearing: Tradz, LLC: Request for a Special Exception of Article 5, Table 1 of the Zoning Ordinance to allow expansion of an existing contractor's yard in the Rural Zone. Property is located at 194 Gilmanton Road, Tax Lot 241-019-000-000, ZBA Case # 11-23.

Chairman Harris appointed Reese Grey as a full member for this application.

Chairman Harris recused himself per RSA 673:14 and left the table. Vice Chairman Froumy stepped in as acting Chairman.

Christopher Condodemetraky and Ethan Wood, Esq. were present for the application.

The Vice Chairman stated the following definition will be used to determine if the applications before the Board tonight have a regional impact. He explained that in order to provide timely notice, provide opportunities for input and consider the interests of other municipalities, the Board shall act to determine if the development has a potential regional impact as defined by RSA 36:55. Impacts may include, but are not limited to: relative size or number of dwelling units as compared with existing stock; proximity to the borders of a neighboring community; transportation networks; anticipated emissions such as light, noise, smoke, odors, or particles; proximity to aquifers or surface waters which transcend municipal boundaries; shared facilities such as schools and solid waste disposal facilities.

MOTION: M. Mastenbrook moved that the proposal does not have a potential regional impact. The motion was seconded by S. Ciampi

Vote: All in favor, motion carried. (5-0)

E. Wood stated that his client is requesting an expansion of an existing contractor's yard that existed prior to the adoption of the zoning ordinance. Since the early 1980's, this property has been used as a contractor's yard. The applicant is proposing that in addition to the existing farm equipment and construction equipment and supplies that are being stored and moved from the property on a regular basis, he asks that now abandoned or other non-owned vehicles be brought to the premises and then removed about 10 days later. The sales of these will not occur on this site. These vehicles will be brought to this site, stored for a period of time, and then removed and sold in another location. The Town's definition of a contractor's yard as a place where things are stored and that definition includes vehicles. It doesn't specify what vehicles, so this fits within that definition. It is permitted within this location with a special exception, so it does not require a variance. This will require a site plan review, and they are working with a surveyor right now so that a site plan is submitted to the Planning Board pending approval of this application.

E. Wood read the following criteria as testimony for the application:

1. The first criteria of the special exception is that the use is authorized as a special exception by the ordinance. Article 5, Table 1 of the Belmont Zoning Ordinance permits a Contractor's Yard by special exception in the Rural Zone. The storage of motor vehicles is permitted as a Conditional Use in this zone which would be part of a site plan submitted to the Planning Board.

2. The proposal satisfies the applicable Special Exception criteria set forth in Ordinance Article 13F. Article 13F requires that the ZBA find that the application meets the following additional requirements regarding treated soils. Article 15 defines treated soils as "soils decontaminated by treatment process and certified for distribution and use as soil under NH ENV-Wm 3203, having originally been contaminated with liquids not regulated by the State of NH as hazardous waste defined under NH Env-WM 2603.01." There are no soils on the property which meet these criteria and therefore the Applicant is in compliance with the criteria set forth in Article 13F.

3. The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust odor, lighting, smoke, or other impacts. This is a natural and limited expansion of a pre-existing

use. The towing and storage of a limited number of vehicles is not materially different than the towing and storage of construction and farm equipment that is an existing use of this site and not subject to review in this application. The towing and storage of cars on a limited basis will not create additional noise beyond any existing noise. No additional lighting is being requested as the proposed expansion of the existing use will all occur during the hours of 10AM and 6PM during the work week. There is not expected to be any impact to traffic on Gilmanton Road as no truck will be entering onto Gilmanton Road in reverse and the sightlines from the existing driveway are sufficient to enable this minor expansion of the use without impact. There is sufficient room in the drive to have trucks enter the driveway completely. The potential additional noise created by this limited expansion is not a significant increase to the existing noise on Route 140 and once the truck is on the property, it will be difficult to hear from outside the property, given the current layout of the property.

4. The proposed location is of adequate size. There are over 60 acres of land in this parcel. The total amount used by all of the structures and vehicle storage do not exceed 5 acres. All of the activity is occurring on the property, is shielded from view of the neighbors and abutters, and is limited in scope to usually three flatbed trucks owned by Applicant entering and exiting the property between two and four times during the work week. There is sufficient area to ensure that the flatbed trucks will be able to enter the property unload the cargo, load cargo, and exit the property without impact. All of the activity, other than the exiting and entering, will be completely contained on the premises and will be screened from view of the neighbors and abutters.

5. The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety. The limited scope of this use and the hours of operation are designed to ameliorate any impact to either traffic or pedestrian safety. This expansion permits the Applicant's trucks to make between six and sixteen trips per day. All of the flatbed trucks are scheduled to enter and exit the premises between the hours 10AM and 6PM, but there may be an occasional, unexpected situation where a truck is delayed and arrives after 6 PM. Trucks will not be lined up on the roadway and will not be visible from the road once they enter the premises. There are no sidewalks in the area and pedestrian traffic in the area is low to non-existent so there is no expected impact to pedestrian safety .

6. The proposal does not overload any existing water, drainage, sewer, or other system, nor will there be any significant increase in stormwater runoff on to adjacent properties. The proposed expansion does not require any new water, drainage, sewer, or other systems. The impact, to the extent there is any, to the existing water, drainage, drainage, sewer and other systems will be negligible as the proposal is to have vehicles towed to this location and then towed to from this location, which is something that currently exists with farm and construction equipment. Given the location of the proposed activity, there will be no runoff to the adjacent properties near this location and the existing contours of the land are such that any runoff that does occur will be confined to the site.

7. The proposal does not create excessive demand for municipal services or facilities. The proposal does not envision any demand for municipal services or facilities beyond that which is required for the existing use.

8. The proposal does not create hazards to the health, safety, or general welfare of the public. The proposal is limited in scope and nature and is a minor expansion of the preexisting use. The towing of vehicles to and from the premises will not create any hazards to the health, safety and general welfare of the public, especially given the limited scope of this expansion. This proposal envisions only a limited number of additional entries from and exits to Route 140. All other activities are wholly contained within the lot and set back substantially from the public way and abutters. There is no hazard created by the towing and storage of vehicles as this use substantially exists for construction equipment and farm equipment.

E. Wood stated that this covers the exceptions under the special exception criteria. He stated that he would be happy to answer any questions that the Board may have.

K. Santoro asked that the Board confirm that at least 3 members have viewed the site. Vice Chair Froumy stated that they have.

D. Dunham stated that he continues to be bothered considerably by the Applicant allowing vehicular traffic to come and go at anytime. This is an access to this property that can be controlled. There is no reason why he shouldn't be able to prevent traffic that he is not expecting. It's been stated over and over that that this is traffic that he is not expecting. Controlling access to his land will stop one of the basic complaints from the neighbors in and around Route 140.

E. Wood stated that the discussions he's had with the Applicant, he is undertaking efforts to make sure that the hours stated in this application are adhered to. With regard to his employees, which would be the only potential situation where hours would be different than the stated hours, this is not expected to be a frequent and common occurrence. On the rare occasion where it occurs, it occurs when a truck is coming from a distance and been delayed in some sort of traffic event.

D. Dunham stated that the Applicant's track record does not support that. He stated that he finds it hard to believe that he will adhere to the stated hours.

E. Wood stated that with regard to outside trucks, he will adhere to the stated hours. In regard to his own employees, there might be that rare instance where they are outside the hours. The Planning Board will have the opportunity to impose additional conditions when this goes in front of them for Site Plan approval.

D. Dunham stated that he was thinking more along the lines of a physical gate on the entrance. E. Wood stated that there is a gate.

M. Mastenbrook asked how they would know the difference between the existing contractor's yard and the expansion.

E. Wood stated that the difference between what is being proposed and what exists is that what is being proposed is being proposed under certain conditions, which is that the flatbed trucks will only come between 10 AM and 6PM. With regard to the existing contractor's yard, there are no specific regulations as it existed before the adoption of zoning. As far as that goes, this Board does not have the jurisdiction to deal with the existing use. That does not mean that the Planning Board cannot impose certain conditions upon this expansion. With regard to the existing contractor's yard, if it were to expand beyond its current use, that would be an expansion that would require some additional approval.

K. Santoro stated that Attorney Wood keeps referring to the grandfathered use, Staff's opinion is that grandfathered use has been abandoned because the Town does not have consistent records that continued operations of a contractor's yard on site since 1986. She noted that even if the use was

grandfathered for construction equipment, this is an intensification of the use, which brings it to the ZBA.

E. Wood stated with regard to that, the Applicant has previously supplied the town with information that this lot has been used in this manner since the early 1980's. His client has never ceased operations during that period. The fact that the Town is unaware of it, doesn't mean that it isn't occurring. One of the things that Town Counsel specifically noted that the Town had agreed that there had been a contractor's yard on this property since the 1980's. He does not feel that this Board can take a position that is contrary to that. There has been a representation by Town Counsel with regard to recognizing the long standing use of this property predating zoning. With regard to records, his client is happy to provide those to the Town.

M. Mastenbrook stated that part of the special exception is meeting all of the criteria. He stated that he does not think criterias 3, 5 and 8 are being met. It still comes down to the reason that the applicant walked out of the ZBA meeting last year. There was an abutter or neighbor that presented a video showing car haulers and how they went in and out of the site, backing out and crossing the entire road. That is undue safety issues. According to the Police Department they stated that "Traffic concerns: Vehicles entering or leaving the location can cause obstruction or safety hazards." Safety is everything they do with special exceptions. The impact of the noise on the neighbors...you keep saying that it is rare or only every so often. He stated that he doesn't want to be sitting across the street from a contractor's yard at 8PM at night listening to back up beeping. It may be rare, but it would still be aggravating. He asked if the Applicant had improved the entrance to the contractor's yard? If they did, he would like to see the DOT permit. If they didn't, then they still have the same problem as they did before, where the trucks have to stop before they can pull in, and that stops traffic both ways. The sight lines, which Attorney Wood states is adequate, is not. People drive too fast up that road and it could be a possible accident. What it comes down to is safety, and he doesn't think the applicant addressed the issues that he had last year. It was very clear on film what the congestion is like on Route 140. That, along with the Police saying that they are concerned about it as well. With this expansion, the Applicant is proposing 19 more trucks a day, in addition to the trips taken by the Applicant's own trucks. As a property owner, you would think that he would respect the neighbors and not want to create more traffic hazards and noise.

E. Wood clarified that it was not 19 additional trucks, rather 19 additional trips. M. Mastenbrook stated that 19 trips is still 100 more a week, if they didn't occur on the weekend.

E. Wood stated that with this proposal, the maximum is 19 a day. With regard to the speed limit, his client has no control whatsoever over how people drive on Route 140.

M. Mastenbrook stated that he understands that, but what this proposal is doing is creating another undue safety issue, on top of people speeding. When they saw the video at the last meeting, there were trucks sitting on the side of the road.

E. Wood stated that with this application, they are not proposing that.

J. Froumy asked if this application was a change in proposal from last year. E. Wood stated that it was a change from what was proposed prior to him being there. He stated that they are proposing that the trucks will be able to pull completely into the driveway up to the gate. They will not be in the street.

J. Froumy asked if Attorney Wood had seen the video that Mr. Mastenbrook was referring to. E. Wood stated that he has not. J. Froumy stated that the Town has possession of the video, and he thinks it would be important after input from the public to view it.

E. Wood stated that respectfully, he doesn't feel that it is appropriate because it occurred in the past, it does not apply to what they are proposing now. What they are proposing is far more limited in scope than whatever was proposed in the past.

R. Grey asked if the Applicant could remediate the issues with the road and the access. E. Wood stated they were not proposing to upgrade the driveway. They may discuss alternate entrances with the Planning Board, but that is not what is being discussed here. What is being discussed here is the special exception.

He stated that in regard to this application, there is sufficient room for a flatbed truck to pull in so that it is not on the road.

J. Froumy stated that there was the same amount of room when they viewed the video last year as well. A remedy for this problem, using the alternate driveway, was discussed last year. The Applicant said it would be done in a few years, but then the Board denied the application without prejudice in order to leave the door open. There is a remedy, and the remedy was because the Applicant made a statement that there is a different entrance not near the curve, something that the trucks can pull directly into. Attorney Wood has stated that this application is different from the last one, but he doesn't hear much of a difference. The difference could be another entrance. He'd like to hear something like that.

E. Wood stated that what they are proposing right now is simply the expansion of the existing use.

J. Froumy stated that they don't do expansions of special exception. It is highly unusual.

E. Wood stated that it was unusual for him as well. The reason they are proposing this is because the Town of Belmont has said that there is a difference between what is on the back of the truck. The Town has recognized that this is an existing contractor's yard. The issue that the Vice Chair is bringing up is one that is also on the forefront of his mind.

M. Mastenbrook stated that the original proposal had a second entrance from Old Belmont Road that would fix all of the complaints that the neighbors have brought forward. Is that off the table now?

E. Wood approached the table to see where the proposed second entrance was located. He stated that it may be something that they could discuss at the Planning Board. But in regards to this application, it is not part of the special exception.

M. Mastenbrook stated that it was, because it would eliminate the safety issues that are part of the criteria.

J. Froumy stated it might not be part of the special exception, but it is a part of the approval. In fact, he thought that a separate entrance was going to be part of this application because of the issues brought up by the abutters last year.

E. Wood stated that the Town of Belmont's zoning ordinance with regard to contractor's yard, this activity fits that criteria.

J. Froumy stated that it was the intensity of the use because the character of what is going on is changing dramatically. They don't have videos of farm equipment going into the site, it's videos of trailers backing in from the wrong lane. That is what they are trying to avoid, not what is on the back of the truck. That's what they are trying to address, and they could address that problem with a different entrance. That isn't his words, it's the applicant's words.

E. Wood stated that a different entrance is not within the purview of this Board. Because that is a Planning Board issue.

J. Froumy stated that it doesn't have to be. It's an escape mechanism so that the applicant can get this Board to agree with him. There is a remedy and they are not talking about it.

J. Froumy called for a short recess, and when they returned he stated that the public would have an opportunity to speak, and he'd like to watch the video from the prior meeting.

E. Wood stated that he would object to the use of the video.

The Board took a 10 minute recess.

The Board returned from recess at 7:38 PM

Vice Chair Froumy stated that he would honor Attorney Wood's objection to viewing the video.

Vice Chair Froumy opened the public comment.

Ms. Katherine McGlynn, 189 Gilmanton Road stated that she lives directly across the street from the Applicant. She has lived there for 21 year, 20 of those years were wonderful. This past year there have been multiple flatbed trucks carrying cars and pickup trucks dragging cars. Not only is there noise from the beeping of the trucks backing up, but there are car alarms going off from the cars that are parked on the property. Sight distance is not just the sight coming and going, but the cars that are coming down 140, they can't see what they are coming up on. A year ago, she spoke of the same issues. It's not ending at 6 PM. it's 7:30, 9:30...11 o'clock at night. She doesn't feel she should have to police what is going on at night there. She is concerned about accidents. You can't guarantee that a truck driver who is not from the area will know to pull into the driveway. They will pull to the side of the road to try to figure out where they are going.

Jon Pike stated that he has lived in Belmont most of his life. He finds a real indifference in a few things here. He realizes that the Board are in a tough position. However, this is an automobile dealership. We

forget how we got here today. We got here because there was a fire on the property. A car was inside what used to be a chicken coop and it had a battery problem and caught fire. The fire department showed up and they couldn't get to it because of the excess of cars on the lot. The Applicant is in the automobile business. Tradz, LLC is a company that buys and sells automobiles. He stated that he was in the same business. The oil is leaking onto impervious surfaces. When he expanded his business to add two more bays to his garage, he had to asphalt his yard, he had to put a drainage system in and have a federally licensed contractor do the work. This is an automobile dealership. A used car lot. If you don't see it now, watch the Laconia Daily Sun. Every so often, Tradz has an auction. Yes, it's out of Londonderry, but it's the same people. It's a rural area, and maybe changing the entrance will help. But by allowing this, they will be opening up an area that is residential. Where does it end? A gas station next to the high school? He realizes that it falls on the shoulders of the elected officials, but this is an unwanted use as far as he is concerned.

Chris Gilbert, 209 Gilmanton Road. He stated that for the first two years that they lived there, the house sat 20 feet from Route 140. In 2001, they moved the house 500 hundred feet back. They went through all of the proper channels. They have lived their lives quietly, and always considered the Condodemetrakys good neighbors. The last two years, it has been a zoo of vehicles going in and out of that property. It has not been farm equipment. He understands what it takes to run a small business. What they are doing is not what is allowed in that zone. George Condodemetraky helped write the zoning ordinance, and now he is going against those laws to do what he wants. What he is doing now is not a contractor's yard. It is an automobile lot. He has more videos that he has taken since this new application. Including one at 9:15 at night of a flatbed backing out. As well as one backing out and stopping traffic. They have no control over what is going on. He watched as a flatbed backed out across Route 140 and damaged Ms. McGlynn's property. It's still damaged. A year ago, they told them that they never backed out. It's not true. It's not a matter of whether they think it's right or not, it's just not safe.

E. Wood stated that one thing he keeps hearing is that Route 140 is not safe. That occurs regardless of how this property is used.

Chris Gilbert stated that it's not just about the road. Part of the special exception is about safety. Flatbeds pulling out onto that road is not safe.

Vice Chair Froumy closed the public comment.

MOTION: M. Mastenbrook moved to deny the application for a Special Exception of Article 5, Table 1 of the Zoning Ordinance to allow expansion of an existing contractor's yard in the Rural Zone based on the following criteria:

1. The proposal is specifically authorized as a Special Exception by the ordinance. This is true.
2. The Special Exception criteria set forth in Ordinance Article 13.F. does not apply.

3. The proposal is not incompatible to other uses in the area through the creation of noise, fumes, dust odor, lighting, smoke, or other impacts. Most of this is true, however noise is an issue because there are no restrictions on trucks coming in at all hours of the night, and testimony from abutters that trucks have arrived as late as 10:30 at night, and they hear the noise from the back up alerts.
4. The proposed location is of adequate size. The lot is approximately 60 acres; however the problem is in the entering and exiting of the property.
5. The proposal does not create undue traffic congestion or unduly impair vehicular or pedestrian safety. This proposal does. The reason this does is that based on testimony from abutters, there are trucks backing out onto Route 140 as they exit and block both lanes. This also has occurred as the enter the site. Sight line around the curve on a 55 mile an hour road is not safe and may create an accident. Based on the number of additional trips this expansion will create, it will cause even more congestion on that road.
6. The proposal does not overload any existing water, drainage, sewer, or other system, nor will there be any significant increase in stormwater runoff onto adjacent property or street. This may be true, but it is unknown if any of these vehicles will leak oil or other fluids.
7. The proposal does not create excessive demand for municipal services and facilities because there is no usage change. This is true.
8. The proposal does not create hazards to the health, safety, or general welfare of the public because the criteria of the location is not changing its format. Yes, it does. Abutter testimony has shown that the trucks backing up across two lanes of a 55 MPH highway cause a safety issue and have damaged one abutters property.

D. Dunham seconded the motion

Vote: All in favor, motion carried (5-0)

Chairman Harris returned to the table.

Minutes of April 24, 2023

MOTION: M. Mastenbrook moved to approve the minutes of May 24, 2023 as amended to correct the first name of the applicant present.

S. Ciampi seconded the motion.

Vote: All in favor, motion carried (6-0.)

Staff report:

K. Santoro introduced Rod Cameron, the new Land Use Tech, to the Board.

MOTION: M. Mastenbrook moved to adjourn at 8:44 PM.

S. Ciampi seconded.

Vote: All in favor, motion carried (5/0)

Respectfully Submitted,

A handwritten signature in black ink that reads "Susan Austin". The signature is written in a cursive, flowing style.

Susan M. Austin
Land Use Assistant