

## ZONING BOARD OF ADJUSTMENT

### MINUTES

DECEMBER 20, 2017

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 20, 2017 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **JOURNEY CHURCH/SHERI DUBOIS** in regards to §190-30.A.(2) of the Conway Zoning Ordinance **to change one non-conforming use, a church with a daycare, to another non-conforming use, a veterinary hospital and a daycare**, at 296 East Main Street, Conway (PID 265-202). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 8, 2017.

Sheri Dubois and Bayard Kennett appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Dubois stated she would like to operate her veterinarian business on the first floor and have a daycare below. Mr. Irving stated another applicant came before the Board to operate a veterinarian clinic at this same location, but Ms. Dubois is also proposing a child day care at this site. Mr. Irving stated that is the difference between this application and the application you have already approved.

Mr. Irving stated there was a daycare at this site that was accessory to the church and that had a maximum of 35 persons. Mr. Bartolomeo stated in this case the daycare is a tenant. Mr. Irving answered in the affirmative. Mr. Kennett stated there are no plans to enlarge the daycare operation. Mr. Kennett stated there is a playground that exists at the back of the building and a grassed area; both meet life safety codes.

Ms. Sherman asked for Board comment; Ms. Sherman stated the traffic for a veterinarian's clinic will be spaced throughout the day. Ms. Dubois agreed and stated most of our traffic will not be during the day cares pick up and drop off times. Mr. Bartolomeo asked if there would be a crematorium. Ms. Dubois answered in the negative and stated we outsource that. Ms. Dubois stated there would also be no housing of animals outside nor would there be any type of day care for animals.

Mr. Colbath asked if there would be any impact on property values. Mr. Kennett answered in the negative and stated this road is more commercially trafficked then residentially trafficked. Mr. Kennett stated there have been no problems with the two churches that are there now, and the only residence nearby is the Pastor's residence for the abutting church. Mr. Kennett stated we spoke with him and he had no concerns.

Ms. Sherman asked for public comment; Tracy McCarthy asked the district this property was located in. Mr. Kennett answered Village Residential.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to noise.** Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if all dogs would be housed inside. Ms. Dubois answered in the affirmative and stated other than to go out to do their business. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to nighttime lighting.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-30.A.(2) of the Town of Conway Zoning Ordinance to change one non-conforming use, a church with a daycare, to another non-conforming use, a veterinary hospital and a daycare with a maximum capacity of 35 persons, be granted. Motion unanimously carried.**

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**Adopted: January 17, 2018 – As Written**

**CONWAY ZONING BOARD OF ADJUSTMENT – DECEMBER 20, 2017**

A public hearing was opened at 7:11 pm to consider a **SPECIAL EXCEPTION** requested by **STEPHEN AND OLGA MORRILL/BRADFORD AND MARGARET MORRILL/BRUCE DAVID MORRILL/GARY AND CAROLINE FOLLMER AND ADC FUNDING TRUST** in regards to §190-13.K.4 of the Conway Zoning Ordinance **to allow an adult day center facility in the Residential/Agricultural district** on East Main Street, Center Conway (PID 261-52). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 8, 2017.

Josh McAllister of HEB Engineers and Ken Cargill of ADC Funding Trust appeared before the Board. Mr. McAllister stated they are proposing an adult day center. Mr. McAllister stated they are proposing a 13,500-square foot facility with associated infrastructure. Mr. McAllister stated the lot is currently open pasture land that was cut over the last couple of years; it's 74-acres of vacant open space. Mr. McAllister stated inside the tree-line is 10-acres that is surrounded by land owned by the State of New Hampshire for the bypass, Saco Woods condominiums and the new Journey Church. Mr. McAllister stated there are wetland areas and this will be sandwiched in between them.

Mr. McAllister stated that the traffic access should not alter the neighborhood; it will use the existing logging driveway location and the vehicle trips will be in the morning and in the evening. Mr. McAllister stated most of the users will not be driving themselves, they will be arriving by vans. Mr. McAllister stated an architectural rendering has been submitted. Mr. McAllister stated this will require site plan approval. Mr. McAllister stated of the 74-acres they are looking to develop 10-acres, which more than exceeds the greenspace requirement. Mr. McAllister stated the recreational area is in the back and is more than adequate for the users.

Ms. Sherman asked for Board comment; Mr. Bartolomeo stated the ordinance doesn't differentiate between child daycares and adult daycares. Mr. Chalmers stated state law is the same thing, it addresses child daycares, but not adult daycares. Mr. Bartolomeo asked if this is a boarding facility. Mr. McAllister answered in the negative. Mr. Bartolomeo asked the hours of operation. Mr. McAllister stated Monday through Friday, 8:00 am to 5:00 pm. Mr. Colbath asked if this is for dementia patients. Mr. Cargill answered in the affirmative and stated but not exclusively.

Mr. Colbath stated this facility would require more parking for staff than a regular child daycare. Mr. McAllister agreed. Mr. Chalmers stated this lot is within the Residential Agricultural district, but it is not a variance request. Mr. Irving stated this is allowed under a special exception. Mr. Chalmers stated we are looking at a commercial enterprise in the residential agricultural district. Mr. Irving stated which is allowed by special exception. Mr. Cargill stated this is a public charity and not a business.

Mr. McAllister stated that the driveway is in a non-precinct area covered by Conway Village, however, the building is within the Center Conway Fire Precinct. Mr. Colbath stated the Board of Selectmen voted on that at their meeting last night that Center Conway Fire Precinct will be doing the reviews. Mr. McAllister stated he received an email today. Mr. Bartolomeo asked if this lot was a land locked property before the boundary line adjustment with the Journey Church lot. Mr. McAllister answered in the affirmative and stated it was a deeded right-of-way before.

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Mr. Colbath stated there is additional acreage and asked if there are any plans for that remaining acreage. Mr. McAllister stated most of it is held in a preservation easement; what is not taken up by building area will be taken by drainage. Mr. Colbath asked when they plan on opening. Mr. Cargill stated they hope to break ground this spring and it would be a 10-month construction period. Mr. Cargill stated their clientele will build over years, it will not be at capacity when they first open.

Mr. Steiner asked if they looked at other sites that may be more suitable. Mr. Cargill stated they did, but settled on this site as it is an optimal location. Mr. Colbath asked the capacity. Mr. McAllister answered 25 to 75 users. Mr. Cargill stated the startup time is considerable, it takes years and it is seasonal, people are more likely to venture out in the warmer months than in winter. Mr. Cargill stated this is to provide help to the healthy spouse or caregiver for respite. Mr. Colbath asked who regulates this, who is the licensing through. Mr. Cargill stated it is not licensed through the same division that licenses child daycares, but it is licensed. Mr. Cargill stated adult day centers do not integrate well with hospitals or nursing homes, they are better off to have a standalone entity.

Ms. Sherman asked for public comment; Paula Shappell of 19 Saco Street Unit #89 stated she is concerned with noise, construction noise, and lighting. Mr. McAllister stated those items will be addressed through design, and they will need to meet the site plan review regulations. Mr. McAllister stated there will be noise during construction, it is construction. Mr. McAllister stated the goal of this facility is to have a serene environment for these individuals; it will be a quiet facility. Mr. McAllister stated we will be providing some light and will meet the no spillage of lighting onto other properties requirement through the site plan review process.

Ms. Shappell stated for three years now we have dealt with the stripping of the land and then we dealt with the construction noise of the church. Ms. Shappell stated the lighting is not bad at the church, but there is noise. Ms. Shappell stated they have taken every tree down to their property line; if this is going to be allowed then there should be trees and a fence along the property lines. Ms. Shappell stated if the lighting is going to be 24-7 that will affect us. Ms. Shappell stated she thinks there will be more cars going in there than you think. Ms. Sherman stated the lighting is up to the Planning Board and not us, we don't have any say in that.

Tracy McCarthy stated this project is definitely being looked at with a vested interest, in light of the Journey Church; that place made a big difference to the tone to the neighborhood and this one is going to as well. Ms. McCarthy stated if there is skepticism to the things being said it is with valid reason. Ms. McCarthy stated this particular project is set back so far, and setting aside personal feelings, the thing that is of immediate concern is traffic.

Ms. McCarthy stated she has lived here for 30 years. Ms. McCarthy stated it is a congested intersection, she has to wait to pull out of her driveway due to traffic. Ms. McCarthy stated the idea of adding a commercial facility that close to the intersection, there will be 75 users along with staff and vendors. Ms. McCarthy asked if the State will be requiring a traffic study. Mr. McAllister stated we have not applied for a driveway permit yet as that will be through the site plan review process, however, the State might require one. Mr. McAllister stated one was required for the Journey Church.

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Ms. McCarthy stated the lights from the Journey Church are a constant thorn for her family, the lights are on all night long and if you add another bank of them it is just going to be a bigger source of light pollution. Ms. McCarthy asked if the people embarking on this project have done this type of project before. Mr. Cargill answered in the affirmative. Ms. McCarthy asked if they will be paying taxes on this project. Mr. Cargill stated we don't know yet. Ms. McCarthy stated this is a lot of misery for the abutters for not a lot of gain.

Raelene McClellan stated we need an adult day center in this area, however, she is afraid of what has happened with the Journey Church is going to effect how people are going to accept this change. Ms. McClellan stated they took all the trees, people who live in Saco Woods these are their homes. Ms. McClellan stated there was noise, noise, noise and it will affect how they see this development. Ms. McCarthy stated this Board is clearly doing their job and are good people; she didn't really comprehend what the plan represented during the Journey Church process.

Eva Love stated a facility like this is awesome, but will this now be zoned commercial. Ms. Sherman answered in the negative. Ms. Love asked how can it remain residential. Mr. Colbath stated this will still be in the residential agricultural district, the ordinance allows this type of facility in this district by way of a special exception.

Mr. Chalmers asked about the site plan exemption. Mr. Irving stated this project will require a site plan review and this Board could make that a condition of this approval. Mr. Cargill stated that he thinks it will be worthwhile for the abutters to show up at the site plan hearing. Mr. Cargill stated part of the background was reviewing other similar facilities and these facilities are built around keeping a quiet profile, the users of this facility require a serene atmosphere. Mr. Cargill stated there is a landscaping plan; this facility is different from the church and is being constructed by different developers.

Mr. Chalmers stated he thinks the Board should discuss item 1. Mr. Chalmers stated he does not see how this facility would not alter the character of the residential neighborhood. Mr. Bartolomeo stated the Gibson Center has a bus service and there is the Blue Loon bus service, you're not talking about 75 individual cars. Mr. Chalmers asked the number of staff members required for 75 attendees. Mr. Cargill stated it is six or less. Mr. Cargill stated these individuals cannot have intense medical needs, and they are divided by rooms that can be overseen by staff. Mr. Cargill stated van trips are paced throughout the day. Mr. McAllister stated approximately one-third of the users will be transported by vans and the other chunk will come on their own or come another way.

Mr. Colbath asked how large is Saco Woods. Ms. Shappell answered 96 units. Mr. Irving stated the ITE Trip Generation manual indicates that a residential use creates six to ten trip ends per residence per day. Mr. Irving stated this site could support another condominium development that could generate a similar amount of traffic and that use is permitted by right. Mr. Irving stated the intent of this requirement for the special exception was to ensure that the development doesn't exceed what could be developed otherwise we wouldn't be able to develop anything. Mr. Irving stated there has to be some sort of fair equity.

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Mr. Irving stated the New Hampshire DOT will look at the trips in and look at the peak hour and if it is over a certain number they will require a traffic study and then determine if there are any road improvements required.

Mr. Irving stated the real question is, does this development, by granting the special exception, going to impact the traffic more than a use that is allowed by a right. Mr. Bartolomeo stated that the abutters can ask the Planning Board to restrict lighting. Ms. McCarthy stated the intersection itself is pretty full, your talking about a lot of cars where there are already a lot of cars.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, that traffic access to and from the development does not alter the character of the abutting residential neighborhood.** Ms. Sherman asked for Board comment; Mr. Chalmers stated based on Mr. Irving's testimony, if this site was developed as a residential use it could potentially see more traffic than this facility is alleging. Mr. Bartolomeo stated he would agree. **Motion carried with Mr. Steiner voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the development is architecturally compatible with the height, scale, color and detail of the surrounding residential neighborhood.** Ms. Sherman asked for Board comment; Mr. Chalmers stated we have an elevation, but we don't have a color. Mr. Bartolomeo asked if they will have it for the Planning Board. Mr. McAllister answered in the affirmative. **Motion carried with Mr. Steiner voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Steiner, that site plan approval is required as a condition of this approval.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the size of the lot is appropriate to provide greenspace and play areas.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated there is a great deal of space dedicated to outdoor recreation. **Motion carried unanimously.**

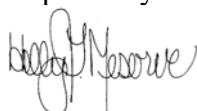
**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.K.4 of the Town of Conway Zoning Ordinance to allow an adult day center facility in the Residential/Agricultural district be granted. Motion carried with Mr. Steiner voting in the negative.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of November 15, 2017 as written. Motion carried with Mr. Steiner abstaining from voting.**

Meeting adjourned at 8:27 pm.

Respectfully Submitted,



Holly L. Meserve, Recording Secretary