

ZONING BOARD OF ADJUSTMENT

MINUTES

JUNE 19, 2013

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 19, 2013 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Luigi Bartolomeo; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:33 pm to consider a **VARIANCE** requested by **HANCOCK WHITE MOUNTAIN LLC** in regard to §147.13.7.6.14.2 of the Conway Zoning Ordinance **to allow the sign incentive to apply to this property** at 2451 White Mountain Highway, North Conway (PID 219-228). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 8, 2013. This hearing was continued from March 20, 2013; April 17, 2013; and May 15, 2013.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron asked the Board approval to withdraw without prejudice at this time. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to accept the withdrawal of the variance requested by Hancock White Mountain LLC without prejudice. Motion unanimously carried.**

A public hearing was opened at 7:36 pm to consider a **SPECIAL EXCEPTION** requested by **BESSIE B. SHACKFORD REVOCABLE TRUST** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change the use from ZBA approved non-conforming RV repair and storage to non-conforming RV storage and repair, increasing the number of allowed stored units on site from 25 RV's to 75 RV's** at 100 Burbank Road, Center Conway (PID 260-9). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2013.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Gary Shackford was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron stated the applicant is looking to reconfigure and improve an approval granted by the ZBA in 1995. Mr. Bergeron stated in 1995 the applicant requested a special exception for RV repair and storage and during the hearing there was a limit on the number of vehicles to be stored on that site; 25 being acceptable. Mr. Bergeron stated since then the nature of his business has changed; repair is not as significant. Mr. Bergeron stated there have been more than 25 RV's stored on the site; the applicant is trying to change the nature of the business to allow more units to be stored on the site.

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 19, 2013

Mr. Irving asked if it would be simpler and easier to establish an area with a certain square footage and allow units to be stored in that area rather than limiting it to a number of units; may provide a little more flexibility. Mr. Bergeron stated with the application there is a sketch that depicts the storage area and that is the area the applicant wishes this land use to continue. Mr. Irving stated the area of impact is important, not necessarily the number of vehicles. Mr. Bergeron stated the applicant would be willing to use the areas depicted on the plan for storage and not necessarily limit it to 75 units. Mr. Irving stated this would be a change in the application and would require renotification.

Mr. Bartolomeo stated that he likes the approach of limiting the storage of units to an area rather than limiting the number of units. Mr. Bartolomeo stated that he went to google maps and it showed 45 units on the site; it will be unlikely that he will exceed 45 units. Mr. Bergeron stated that the applicant is fine with the 75 unit limit so the hearing does not have to be renotified.

Ms. Sherman asked for public comment; Annette Preece showed a photo to the Board showing 70 plus campers on the site. Ms. Preece stated that he only has approval to store 25 units and asked if he does not comply again who is going to enforce it. Ms. Preece stated that she is very concerned with her property value as her property was devalued when there were 90 + campers there.

Harold Whitaker stated that he cannot imagine why anyone would vote for is as it will devalue our property. Mr. Whitaker stated there is runoff from all the campers and the difficulty of snow removal. Colin Preece stated in the spring when cleaned the property is presentable. Mr. Preece stated when they purchased their property in 2002 there were 25 units on the site. Mr. Preece stated that he is increasing a commercial business in a residential area; however, he understands the change in the nature of the business.

Mr. Bartolomeo asked if the ordinance still allows a non-conforming use to expand. Mr. Irving stated that this was approved by a special exception, so it is a legally existing non-conforming use, and it certainly is in the Board's purview whether or not to grant the special exception tonight. Mr. Irving stated that the applicant is requesting to change the use from RV repair with accessory storage to RV storage with accessory repair. Mr. Bartolomeo stated that this is a change of use. Mr. Irving stated that it changes the intensity of the use. Mr. Bergeron stated that the application takes repair and makes it storage and the storage to repair.

Mr. Colbath asked if there is any noise or night time lighting. Mr. Bergeron stated there is no lighting nor will there be any noise. Mr. Bergeron stated that the site was approved for unlimited repair; storage will create less noise. Mr. Bartolomeo stated that he visited the site and was impressed how immaculate the site is kept and there are very few units there now. Mr. Bartolomeo stated he asked and was told that storage is more of a winter thing.

Mr. Bartolomeo stated there are two houses across the right of way; one belongs to Gary and the other to his mother. Mr. Bartolomeo stated that this is the storing of vehicles on a lawn, which is a low impact use. Mr. Bartolomeo stated vehicles sitting on a lawn all winter don't make any noise; this is a low impact use and he keeps the property immaculate.

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 19, 2013

Mr. Irving asked about the railroad crossing and if it was necessary to have the access agreements on file. Mr. Bergeron stated a 1919 deed grants a right-of-way and since 1984 and 1995 there has been no objection from the State of NH. Mr. Bergeron stated they were notified by certified mail of this hearing and did not send anyone here. Mr. Bergeron stated that it is not a requirement of the ordinance.

Mr. Preece stated this is New England and the leaves fall off the trees, but he looked ahead and planted 35 hemlock trees along his property to provide a screen. Mr. Chalmers asked if he could see the units from his property. Mr. Preece answered in the affirmative and stated that it doesn't bother him as he is inside more in the winter. Mr. Preece stated the business has grown since they purchased their property; there is now an abundance of them. Mr. Preece stated that he knows this will cause hard feelings between neighbors, but one day he will sell the property.

Mr. Bergeron stated the applicant was granted an approval in 1995 for RV repair and storage and the storage was limited, but not on repair, so he could have 25 there that he is repairing and 25 that are being stored. Mr. Bergeron stated that he is not trying to devalue anyone's property and he and his mother's home are there as well. Mr. Bergeron asked if any of the abutters had documentation showing that it would devalue their property. Mr. Bergeron stated this is going to be easier for the Town to police, it will have a lesser impact on the area, the traffic will be less frequent, and this generally will be a better situation than what is there today.

Mr. Irving asked if the applicant is asking for 75 units for storage and repair or just 75 units for storage. Mr. Bartolomeo stated that the application does not address the repair. Mr. Bergeron stated that the landowner agrees to a total of 75 units on the site in the areas depicted on the plan. Mr. Irving stated total being vehicles for storage and repair. Mr. Bergeron answered in the affirmative and stated not to exceed 75.

Mr. Hylen asked how big you can let a commercial business expand in a residential area. Mr. Hylen stated at some point you need to put a business somewhere else; how big do you let someone get. Mr. Bartolomeo asked how big the parcel is. Mr. Bergeron answered 7 acres. Mr. Bergeron stated that the ordinance speaks that the use must be confined to the original lot of record. Mr. Hylen stated the Board is to interpret the regulations, but still have to have common sense apply; how big and what is the purpose of a residential district.

Mr. Irving stated confined to the original property of record and it has to be accessory of the non-conforming use. Mr. Irving read the definition of accessory. Mr. Bartolomeo stated they have limited the use to the areas depicted on the plan; they cannot grow across the road. Mr. Chalmers stated there is a drainage ditch on the back of the property next to the State right-of-way, any concern with impact of ground water issues with that drainage ditch and the more intense storage use. Mr. Bergeron stated there is a license from the State and any vehicles stored there is not going to be junk or leaking fluids.

Ms. Sherman asked how the traffic impacts Mr. Whitaker. Mr. Whitaker stated that the traffic does not impact him. Ms. Sherman asked for any further public comment; Ms. Preece stated that she worries about fire danger with the propane tanks. Mr. Bergeron stated they would take that

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 19, 2013

into consideration. Mr. Bergeron asked Mr. Shackford if it is safe to say there is going to be some propane on the units. Mr. Shackford answered in the affirmative. Mr. Bergeron stated there are State regulations on how much and how they can be stored. Mr. Bergeron asked Mr. Shackford what an average RV has on it for propane. Mr. Shackford answered usually 2, 20 pounders, which would equal 13 gallons. Mr. Bergeron stated there is nothing to prevent any one of us to have a propane tank in our yard, so it is not necessarily unsafe.

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; Mr. Hylen stated if there are more RV's it cannot be the same or lesser. Mr. Chalmers agreed with Mr. Hylen. **Motion defeated Mr. Hylen, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Colbath and Mr. Bartolomeo voting in the affirmative.**

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; Mr. Hylen asked how we can vote on this when we don't know. Mr. Colbath stated that we can vote on the testimony heard. Mr. Bartolomeo stated it is easy to claim, but hard to prove. Mr. Irving stated that it is up to the applicant to demonstrate that they have satisfied the conditions. Mr. Colbath stated that public has testified that this would diminish their property values and we represent the public. **Motion defeated with Mr. Hylen, Mr. Colbath, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

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; Mr. Hylen stated there would be more traffic with getting more vehicles onto the site. Mr. Colbath stated it would have less traffic than the repairs and based on public testimony, traffic is not an issue. Mr. Bartolomeo stated that the abutters are all downstream from this site and never goes by an abutter's doorstep. Mr. Irving stated that they all share the same access. Mr. Bartolomeo asked what the limit on repairs set in 1995 was. Mr. Bergeron stated there was no number set for repairs. **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; Ms. Sherman stated there is going to be some nuisance to the neighbors just because there will be more vehicles there. **Motion carried with Mr. Hylen and Ms. Sherman voting in the negative.**

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 19, 2013

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 nuisance to noise.** Ms. Sherman asked for Board comment; there was none. **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 nuisance nighttime lighting.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

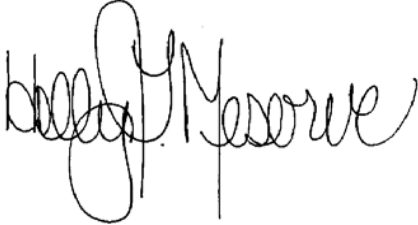
Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.14.1.2 of the Town of Conway Zoning Ordinance to change the use from ZBA approved non-conforming RV Repair and Storage to non-conforming RV storage and repair, increasing number of allowed units total on site from 25 RV's to 75 RV's in the area depicted on the plan be granted. Motion defeated with Mr. Hylan, Mr. Colbath, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative. Ms. Sherman reviewed the appeal process.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of May 15, 2013 as written. Motion unanimously carried.

Meeting adjourned at 8:30 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive, flowing style.

Holly L. Meserve
Recording Secretary