

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 17, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 17, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:35 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Sheila Duane; Alternate, Dana Hylan; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

Ms. Sherman appointed Ms. Tobin and Mr. Hylan as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:35 pm to consider a **VARIANCE** requested by **TIERNAN, LLC** in regard to §147.13.8 of the Conway Zoning Ordinance **to allow the use of a vacant lot as a parking lot as its primary use** at 3016 White Mountain Highway, North Conway (PID 215-30). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 5, 2010.

Faye Melendy of Melendy & Lee appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated that parking lots are considered an accessory use to a primary use.

Ms. Melendy stated the Zoning Ordinance is silent on a parking lot being a primary use. Ms. Melendy stated that the parcel in question has no primary use, it is a vacant lot. Ms. Melendy stated there is a rental agreement between the restaurant and the owner of this parcel to be used for parking purposes. Ms. Melendy stated that they are seeking a variance to allow parking on this vacant lot for the adjacent commercial property. Ms. Melendy stated that the uses in this district are specifically to accommodate mixed uses; this is an area that does not have an adequate parking area so this would provide safe parking for the restaurant.

Ms. Melendy stated that the spirit of the ordinance would be observed as the ordinance is to provide public health, safety and welfare. Ms. Melendy stated that this vacant lot serves an important purpose for the restaurant and the community so they are not parking where they shouldn't be parking. Ms. Melendy stated that substantial justice would be done, given the stated purposes of the zone, as this use would be appropriate to accommodate an existing non conforming use.

Ms. Melendy stated that the values of surrounding properties would not be diminished as this parking as been in existence for a number of years. Ms. Melendy stated that the literal enforcement of the ordinance would cause unnecessary hardship as the drafters of the ordinance thought parking would be on the same lot as the use it is provided for. Ms. Melendy stated no

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one thought that parking would occur where there was not any commercial purposes' going on. Ms. Melendy stated that we cannot treat this parking as accessory to the restaurant because the parcel with the restaurant is owned by a different company than the parcel in question. Ms. Melendy stated that the parking has to be primary as it is not accessory to anything.

Ms. Melendy stated that the way this parcel is to be used would be determined by the Planning Board during site plan review as there is nothing in the ordinance that specifically prohibits parking as a primary use, the ordinance is just silent. Ms. Melendy stated that it is a reasonable use, there is nothing else on this parcel, it is located in a mixed use district, and the parking lot benefits the adjacent property and the community as it provides parking to an existing non conforming site.

Mr. Irving stated that the parking would be the primary use, but it has been indicated that it is to be used by adjacent property owner. Mr. Irving asked Ms. Melendy if she wanted it to be restricted to the abutting property, as it would be impossible for staff to enforce. Ms. Melendy answered in the negative and stated that she does not want that restriction. Ms. Melendy stated that she wanted the Board to know that there is a current relationship and there is a lease holding interest for the purpose of parking.

Ms. Duane stated that she is not a direct abutter, but she does have an interest in the bagel property in the area. Ms. Melendy thanked Ms. Duane, but she does not believe that to be an issue. Mr. Chalmers asked if this site had been used for parking in the past. Mr. Irving stated the primary use was the Scottish Lion offices and there is currently no approval for a parking lot. Ms. Sherman asked for public comment; there was none. Mr. Chalmers asked if there would be a change in the curb cuts. Mr. Irving stated they are not proposing any, but this will be required to go through site plan review.

Ms. Sherman read item 1. **Ms. Duane made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. Duane made a motion, seconded by Ms. Tobin, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Ms. Tobin, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. Duane made a motion, seconded by Ms. Tobin, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Ms. Duane made a motion, seconded by Mr. Chalmers, that no fair and substantial relationship exists between the general public purposes of the**

ordinance provision and the specific application of that provision to the property. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Ms. Duane made a motion, seconded by Ms. Tobin, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Duane made a motion, seconded by Ms. Tobin, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Duane made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.8 of the Town of Conway Zoning Ordinance to allow the use of a vacant lot as a parking lot as its primary use be granted. Motion unanimously carried.

A public hearing was opened at 7:52 pm to consider a **SPECIAL EXCEPTION** requested by **ROUTE 112 REALTY, LLC** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change two non-conforming uses, a machine shop and a rug cleaner, to two other non-conforming uses, an internet sales distribution facility and a motor vehicle repair facility** at 175 Kancamagus Highway, Conway (PID 264-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 5, 2010.

Stan Szetela, owner, and Chris Meier of Cooper Cargill Chant appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Meserve submitted a letter from Stephen DeMasi dated March 17, 2010 to the Board and the applicant.

Mr. Meier stated that this is a pre-existing non-conforming building currently used as a machine shop. Mr. Meier stated that there are four units and the owner would like to change two of the units. Mr. Meier stated that they would like to have a retail car facility for passenger cars and an internet sales distribution facility. Mr. Meier stated that it is on the same lot, the use is still confined to the same structure, there is no change to the structure, and the new uses both have the same or lesser impact on the neighborhood.

Mr. Meier stated that the machine shop is an industrial use; the cars used for the machine shop will be the same for the repair shop outside the facility. Mr. Meier stated that any activity inside is fairly the same. Mr. Meier stated that there has been one objection received today; the only objector so far is not an abutter and does not have standing to this application. Mr. Meier stated that they will take his concerns in operating the use into consideration.

Mr. Szetela stated that the Internet Sales Distribution Facility buys products overseas, assembles them and then ships them out. Mr. Szetela stated that it is a Monday through Friday operation and it is a pretty quiet operation. Mr. Szetela stated that this area is just less than 1,500 square feet. Mr. Szetela stated in the summer time the doors would be open and you really didn't know

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he was there. Mr. Szetela stated that the auto repair guy is currently located behind Lindsey's Paint [on East Side Road], Covered Bridge Motor Works. Mr. Szetela stated that he is looking to occupy a smaller space and reduce his cost. Mr. Szetela stated that he works on import cars, is a one man operation, has a couple cars inside and a couple outside, and he is not like a dealership. Mr. Meier asked how many employees were employed at the machine shop. Mr. Szetela answered six to eight employees. Mr. Meier asked if there were any changes in lighting proposed. Mr. Szetela answered in the negative.

Mr. Meier stated that the auto repair will be on the other side of the lot away from the person objecting. Mr. Irving asked if there would be auto sales. Mr. Meier answered in the negative and stated only repair. Mr. Irving asked where and how many vehicles will be stored outside the building waiting for repair or to be picked up. Mr. Meier stated it is a small operation, but he doesn't know the operation. Mr. Szetela stated that that was his concern as well as he does not want an abundance of vehicles there either. Mr. Szetela stated cannot speak for him; maybe four to six vehicles.

Mr. Chalmers stated there would be no increase in lighting. Mr. Szetela agreed. Mr. Chalmers asked if there would be an increase in noise. Mr. Szetela stated not over the machine shop. Mr. Hylen stated auto repair shops are very loud, there would be a lot of cars there, usually small businesses have friends who come over to repair their own cars, there will be cars on tow trucks, and there will be noise and smells. Mr. Hylen stated being one person it will take a while to fix these cars and based on experience he doesn't think he can meet the requirements.

Mr. Meier stated that this is an industrial use being changed. Mr. Meier stated there was a machine shop there prior to, and the new use needs to be equal or lesser to a machine shop. Mr. Meier stated that a machine shop has the same impacts as the auto repair facility. Mr. Meier stated they are changing from one industrial use to another and there has been no evidence of having a greater impact.

Mr. Meier asked if Mr. Hylen works for a company that directly competes with the proposed auto repair facility. Mr. Hylen answered in the negative. Ms. Duane stated unless he worked for Importech, it wouldn't be a direct competition. Mr. Chalmers stated the previous use to this space is a rug cleaner. Mr. Szetela stated that it was previously a machine shop. Mr. Meier stated that the Board needs to look at the entire change of use. Mr. Hylen disagreed and stated this is not similar; the garage doors will be open in the summer, there will be loud music, there are air tools, and people coming and going. Mr. Meier stated that the machine shop had its doors open, but Mr. Hylen is assuming a lot of things. Mr. Szetela stated that they had the doors open, had the music and there haven't been any complaints.

Ms. Tobin stated that the parking spaces don't add up. Mr. Irving stated that parking is a Planning Board issue; he just wanted to make the Board aware that there would be cars parked outside. Ms. Duane stated they are expanding the non-conformity of the lot with the expansion of parking lot.

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Mr. Meier stated this Board is looking at the use, the two previous uses and the proposed uses, not at what the Planning Board might or might not do. Mr. Irving stated parking is allowed, the parking area itself is not the issue; the issue is the activity taking place. Mr. Irving stated that they are legitimate concerns, but they are Planning Board issues.

Mr. Chalmers stated that the lot is not fenced off and you have the area for a perfect storm. Mr. Chalmers stated that this is next to the Habitat for Humanity development and there are a lot of kids from those homes. Ms. Duane stated she is concerned with the noise. Mr. Chalmers stated that he lives next to a machine shop, Green Mountain Rifle Barrel, and he doesn't hear it at all. Mr. Meier stated the only evidence before the Board is that it would not be any louder than the machine shop; there is no evidence that it would be greater. Mr. Meier stated that the overall impact is the same or less.

Mr. Hylan stated music was his opinion. Mr. Hylan stated in the ten years he has been working in this business, it is a certainty that it will be very loud. Mr. Irving stated that this will be subject to site plan review.

Ms. Sherman read item 1. **Ms. Duane 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. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the proposed has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** Ms. Sherman asked for Board comment; Ms. Tobin stated their increasing the amount of noise over the rug cleaner and the machine shop. Ms. Tobin stated machine shops can be quiet, but she has never known car repair facilities to be quiet. Ms. Tobin stated that this particular repair facility has had several complaints. Ms. Sherman stated that she thinks it will have a greater impact on the neighborhood. **Motion defeated unanimously.**

Ms. Sherman read item 3. **Ms. Duane 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; Ms. Sherman stated that there is not any testimony that it would. Mr. Chalmers stated that this application would have an impact on the public health, safety and welfare and there would be a greater noise to the neighborhood and that would have a negative effect on the property values. **Motion defeated with Mr. Hylan, Mr. Chalmers, Ms. Duane and Ms. Tobin voting in the negative and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 4. **Ms. Duane 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 defeated with Mr. Hylan, Mr. Chalmers and Ms. Duane voting in the negative and Ms. Tobin and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 5. **Ms. Duane 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 defeated unanimously.**

Ms. Sherman read item 6. **Ms. Duane 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; there was none. **Motion defeated unanimously.**

Ms. Sherman read item 7. **Ms. Duane made a motion, seconded by Ms. Tobin, 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 unanimously carried.**

Ms. Duane made a motion, seconded by Ms. Tobin, 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 two non-conforming uses, a machine shop and a rug cleaner, to two other non-conforming uses, an internet sales distribution facility and a motor vehicle repair facility be granted. Motion defeated unanimously.

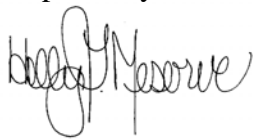
Ms. Sherman reviewed the appeal process.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Mr. Hylen, to approve the Minutes of February 17, 2010 as written. Motion unanimously carried.

Meeting adjourned at 8:47 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant