

## ZONING BOARD OF ADJUSTMENT

### MINUTES

APRIL 21, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 21, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Acting Chair, John Colbath; Andrew Chalmers; Alternate, Cynthia Briggs; Alternate, Dana Hylen; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

#### APPOINTMENT OF ALTERNATE MEMBERS

Mr. Colbath appointed Ms. Briggs, Ms. Tobin and Mr. Hylen as voting members.

#### PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **RED JACKET MOUNTAIN VIEW, LLC/DEWITT DAVENPORT** in regard to §147.13.8.6.1 of the Conway Zoning Ordinance **to appeal the Administrative Decision that the subject signage exceeds the provisions of the Zoning Ordinance** at 2251 White Mountain Highway, North Conway (PID 230-51). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2010.

Ken Smith, Operations Director, appeared before the Board. James Yeager, Code Compliant Officer, was in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Smith stated that the marks are there for safety purposes. Mr. Smith stated that a pickup truck backed into the wall soon after it was installed, so he had 13 RJ marks installed for safety purposes. Mr. Smith stated he interpreted §147.13.8.6.8.3 as the wall delineates two aisles. Mr. Smith stated he thought he met the requirements of the setback and that a permit was not necessary. Mr. Smith stated he was told by Mr. Yeager that a permit was necessary and the sign permit was denied. Mr. Smith stated that he is asking to keep them for safety purposes as it is a white wall and he is trying to protect their investment.

Mr. Chalmers asked if the marks are on both sides of fence. Mr. Smith answered in the negative and stated they are on the side of the parking lot only and not on the side of the fire lane. Mr. Colbath asked if this is the sound barrier wall. Mr. Smith answered in the affirmative. Ms. Briggs asked if she heard him say that this is their logo. Mr. Smith stated it is part of the logo, but he didn't say it was the logo. Mr. Smith stated that it is one piece of the entire process; not the entire logo. Mr. Irving stated that it falls under the definition of a sign and they already have two freestanding signs.

Mr. Yeager stated that we don't have any regulations regarding safety markers. Mr. Yeager stated, however, they could have used something other than their logo. Mr. Colbath asked for public comment; there was none from the audience. Mr. Colbath stated that there was one abutter, Catherine Reddington, who emailed her oppositions and pictures from her property.

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Ms. Tobin stated there are other ways to mark it without using a portion of the logo. Mr. Smith stated that he used the mark for aesthetics and he thought it was in his right to use the logo. Mr. Smith stated that he didn't want to use stop signs. Mr. Irving stated small caution or a red band would have been less likely to attract attention and be considered a sign. Mr. Irving stated the key is the literal definition of the ordinance. Mr. Irving stated we have many parking spots that abut walls which may find a lot of signage and clearly that is not the intent. Mr. Irving stated that this signage is seen off-site.

Mr. Irving stated that eventually the arborvitaes along the property line will grow and eventually cover the signs, but these signs are not permissible under the ordinance as it stands. Ms. Briggs stated those of us who know the Red Jacket know that is a portion of the logo. Mr. Irving stated that this is an appeal of an administrative decision and not a variance.

**Ms. Briggs made a motion, seconded by Mr. Chalmers, to grant the Administrative Appeal. Motion unanimously defeated.** Mr. Colbath explained the appeal process. Mr. Smith asked if caution signs were acceptable. Mr. Irving stated as long as it does not meet the definition of signage. Mr. Yeager stated cautionary signage doesn't need to be read 200-feet away.

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A public hearing was opened at 7:45 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **GERALD AND ELIZABETH HUGHES** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow an existing concrete slab to remain within the side setback** at 47 Crestwood Drive, North Conway (PID 202-61). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2010.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bergeron stated sometime previous to February of this year a concrete patio was constructed. Mr. Bergeron stated that it is 11-feet from the property line. Mr. Bergeron stated that the Kearsarge Lighting Precinct has approved a variance for this patio.

Mr. Bergeron stated that he was not a part of the permitting or of the construction, but he believes it was a misunderstanding of the ordinance; specifically that it was a structure. Mr. Bergeron submitted a copy of an agreement between Kearsarge Lighting Precinct and the Hughes.

Mr. Colbath asked how big the pad is. Mr. Bergeron answered 14' x 25'. Mr. Colbath asked if the use is for a patio. Mr. Bergeron answered in the affirmative. Ms. Briggs asked when the patio was constructed. Mr. Bergeron answered before February, but sometime within the year.

Mr. Irving stated that the map submitted with the application "says for building permit", however, the shaded area was not on the application for a Town of Conway building permit. Mr. Irving stated what was submitted says the encroachment is as close as 8-feet. Mr. Bergeron stated that he has not surveyed the property and he was told 11-feet, but it could be 8-feet.

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Ms. Briggs stated that this pad appeared without anyone at Town hall knowing. Mr. Bergeron stated that he believes it was discovered by a Commissioner of the Kearsarge Lighting Precinct who happens to live next door. Mr. Chalmers asked how tall the pad is. Mr. Bergeron stated that it is at grade. Mr. Chalmers asked how thick. Mr. Bergeron answered 4 to 6 inches.

Mr. Colbath asked for public comment; John Sachetti of 61 Crestwood Drive stated that he is a direct abutter and he is in opposition of this. Mr. Sachetti stated that the construction has been poorly done, all the trees were taken down, it has been a disgrace and it has stayed that way. Mr. Sachetti stated that he contacted the Code Enforcement Officer and he sympathized with us, but he couldn't do anything.

Mr. Sachetti stated that this Board has the opportunity to abide by the Town rules, which the applicant has violated at every single turn. Mr. Sachetti stated that he knew nothing about this and they were cutting trees on our property. Mr. Sachetti stated that they are in strong opposition to this.

Mr. Bergeron stated that this is not the most attractive of yards in the neighborhood at this time. Mr. Bergeron stated that the home is finished and occupied, but the landscaping and the cleanup as not been finished. Mr. Bergeron stated there could be a walkway or a driveway there; the use on this space is going to occur. Mr. Sachetti stated that it should have been stopped at the Kearsarge Lighting Precinct. Mr. Sachetti stated that the applicant has over 100-feet on the other side.

Mr. Chalmers asked the cost to remove the slab. Mr. Bergeron stated to break it up and dispose of it will be approximately \$1,500 or we could fill over that slab and other permeable materials could be put there. Mr. Irving stated that the entire slab does not have to be removed, only that which is within the setback. Mr. Irving stated that a poured concrete slab is considered a structure, but pavers could be installed as they are not considered a structure. Mr. Bergeron stated that there are arborvitaes to be planted to create a buffer. Mr. Colbath asked for any other public comment; there was none.

**Ms. Briggs made a motion, seconded by Mr. Chalmers, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Ms. Tobin voting in the negative.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously defeated.**

**Mr. Chalmers made a motion, seconded by Ms. Tobin, that in lieu of the findings required by the board under subparagraphs 1 and 2 (above), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected. Mr. Colbath asked for Board comment; there was none. Motion unanimously defeated.**

**Mr. Hylen made a motion, seconded by Ms. Tobin, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. Mr. Colbath asked for Board comment; there was none. Motion carried with Ms. Tobin and Ms. Briggs voting in the negative.**

**Ms. Tobin made a motion, seconded by Mr. Chalmers, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. Mr. Colbath asked for Board comment; there was none. Motion unanimously defeated.**

**Ms. Briggs made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow an existing concrete slab to remain within the side setback be granted. Motion unanimously defeated.**

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A public hearing was opened at 8:10 pm to consider a **SPECIAL EXCEPTION** requested by **ADAM AND JENNIFER GORHAM** in regard to §147.13.2.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 34 Mill Street, Center Conway (PID 260-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2010.

Adam Gorham and Lindell Gorham appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Gorham stated that they are proposing an 800 square foot accessory apartment in the garage. Mr. Gorham stated that a new septic design will be done by the end of the week. Mr. Colbath asked if the architecture of the building will be changed. Mr. Gorham answered in the negative. Mr. Gorham stated the existing garage and workshop will be converted to an 800 square foot apartment and the workshop will remain. Mr. Irving stated that this is consistent with the Master Plan and the ordinance. Mr. Colbath asked for public comment; there was none.

Ms. Tobin stated that she has been friends with Mrs. Gorham since 1989 so she will have to step down on this application. Mr. Colbath stated only four members are present and the applicant has the right to a five member Board. Mr. Colbath asked if Mr. Gorham would like to proceed with four members or continue until a five member Board is present. Mr. Gorham agreed to proceed with four members.

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**Ms. Briggs made a motion, seconded by Mr. Chalmers, that the apartment is accessory to an owner-occupied single family dwelling.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylen made a motion, seconded by Mr. Chalmers, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Briggs made a motion, seconded by Mr. Chalmers, that the New Hampshire Department of Environmental Services shall issue a permit for construction for sewerage or waste disposal system.** Mr. Colbath asked for Board comment; there was none. Mr. Irving stated that this could be a subsequent condition of the approval. **Motion unanimously carried.**

**Ms. Briggs made a motion, seconded by Mr. Chalmers, that the apartment is architecturally compatibility with the neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Briggs made a motion, seconded by Mr. Hylen, that sufficient parking is located on site.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Briggs made a motion, seconded by Mr. Chalmers, that an Accessory Apartment Application was submitted for the ZBA review.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylen made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.2.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted with a subsequent condition that an NHDES Septic Construction Approval is obtained.** **Motion unanimously carried.**

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A public hearing was opened at 7:52 pm to consider a **SPECIAL EXCEPTION** requested by **ERIC LABBE** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 55 Ash Street, Conway (PID 202-212). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2010.

Eric Labbe appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Labbe stated that he will not be changing the structure, it will be a one bedroom apartment, the property has municipal water and sewer is being laid out now. Mr. Colbath asked how many bedrooms exist. Mr. Labbe answered three bedrooms.

Mr. Irving stated that the previous home owner had a home occupation and if this is converted to a two family, the property will no longer qualify for a home occupation. Mr. Labbe stated that he is okay with that.

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Mr. Irving stated that the application indicates a driveway onto Maple Street. Mr. Irving stated that the Town has no authority or restrictions to Maple Street. Mr. Irving stated access to this street would be addressed through the Association or who owns the road and the Town Engineer, but it is not this Board's purview. Mr. Irving stated access is a private, civil matter or with the Town Engineer. Mr. Irving stated that this application is not approving any driveway access because it is not the purview of the Board.

Mr. Colbath asked for public comment; Sharon Lind of 39 Maple Street stated she is concerned with the driveway onto Maple Street, however, Mr. Labbe didn't know it was a private road; he thought it was a Town Road. Ms. Lind stated that she is concerned with more traffic and who is going to help maintain that road. Mr. Colbath asked if there is an association. Keith McClellan answered in the negative.

Mr. McClellan stated that his parents purchased the property in 1976. Mr. McClellan stated that we have all agreed verbally, as he doesn't remember signing any document, and everyone has chipped in maintaining and plowing it.

Mr. McClellan stated it is a private road and Mr. Labbe's property is not part of Maple Street. Mr. McClellan stated that he is concerned with accessing a road that we have to maintain. Ms. Briggs asked who owns the road bed; whoever owns the road bed has control over the road. Mr. McClellan asked for a postponement so they could speak with Karla Badger, who would know the answer to that question as she has lived on that road for a lot longer than us. Mr. Irving stated the access to that road is not the purview of this Board and the applicant will have to work something out with them.

Jean Furlong of Maple Street asked if this would affect their appraisals. Mr. Colbath stated that they do not have the expertise to answer that. Mr. McClellan stated that he would still like to ask for a postponement until he can speak with Karla Badger as she knows the real estate market and how it could affect us.

Ken Rokes stated he has no ill will toward this property owner, but he objects to this proposal. Mr. Rokes stated that the property itself has had its issues and there are a couple of other rental properties in the area and he thinks it would add detriment to our property values. Mr. Rokes stated that he would like to ask the Board to decline this application. Mr. Irving stated this is a request for a Special Exceptions and under NH law if the applicant satisfies the list of exceptions it has to be granted.

Mr. Labbe stated that he will be living in the residence and the apartment will be for his father. Ms. Tobin asked if it will always have to be owner occupied. Mr. Irving answered in the affirmative. Mr. Rokes stated since it has to be owner occupied, which he did not realize before, then he does not oppose to this application any longer.

**Ms. Briggs made a motion, seconded by Mr. Chalmers, that the apartment is accessory to an owner-occupied single family dwelling.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylen made a motion, seconded by Ms. Tobin, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylen made a motion, seconded by Ms. Tobin, that the subject property is serviced by precinct water and sewer.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylen made a motion, seconded by Ms. Briggs, that the apartment is architecturally compatibility with the neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylen made a motion, seconded by Mr. Chalmers, that sufficient parking is located on site.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 6. **Mr. Hylen made a motion, seconded by Ms. Tobin, that an Accessory Apartment Application was submitted for the ZBA review.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Chalmers made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted.** **Motion unanimously carried.**

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A public hearing was opened at 8:48 pm to consider a **SPECIAL EXCEPTION** requested by **JOSEPH MOSCA** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change the existing non-conforming use, a ski club, to a duplex (two unit) residential use** at 38 Dinsmore Road, North Conway (PID 202-163). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2010.

Joseph Mosca appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Mosca stated that he purchased the Weymouth Ski Club on Dinsmore Road. Mr. Irving stated the existing non-conformity is the ski club and the proposed non-conformity would be the lot size as it does not meet the lot size requirements for two units.

Mr. Colbath asked if this lot is serviced by municipal sewer. Mr. Mosca stated he hooked up to municipal sewer in October. Ms. Tobin asked the number of bedrooms. Mr. Mosca answered two bedrooms. Ms. Tobin asked how many people are sleeping there. Mr. Mosca answered four. Ms. Tobin asked how many people were sleeping there when it was a ski club. Mr. Mosca answered 50 people.

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

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

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

**Ms. Briggs made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact relative to traffic.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Briggs made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact relative to nuisance to neighbors.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Briggs made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact relative to noise.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Tobin made a motion, seconded by Ms. Briggs, that the proposed use has the same or lesser impact relative to nighttime lighting.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. Tobin made a motion, seconded by Mr. Hylan, 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 existing non-conforming use, a ski club, to a duplex (two unit) residential use, be granted.** **Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Chalmers made a motion, seconded by Mr. Hylan, to approve the Minutes of March 17, 2010 as written.** **Motion carried with Ms. Briggs and Mr. Colbath abstaining from voting.**

Meeting adjourned at 9:00 pm.

Respectfully Submitted,



Holly L. Meserve  
Planning Assistant