

## ZONING BOARD OF ADJUSTMENT

### MINUTES

JUNE 16, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 16, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Sheila Duane; Dana Hysten; Alternate, Cynthia Briggs; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

#### OTHER BUSINESS

**Cordell Johnston – Acting Government Affairs Counsel – Variance Criteria:** Cordell Johnston appeared before the Board and reviewed the variance criteria's with the Board.

#### ELECTION OF OFFICERS

**Ms. Duane made a motion, seconded by Mr. Chalmers, to nominate Ms. Sherman as Chair. Motion unanimously carried.**

**Ms. Duane made a motion, seconded by Ms. Tobin, to nominate John Colbath as Vice Chair. Motion unanimously carried.**

#### APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Briggs as a voting member.

#### PUBLIC HEARINGS

A public hearing was opened at 8:23 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **DENNIS AND PATRICIA HILLER** in regard to §147.14.1 of the Conway Zoning Ordinance **to overturn the Code Compliance Officer's denial of a zoning permit application requesting that the garage be permitted as an independent commercial unit resulting in a total of four units** at 137 Main Street, Conway (PID 276-287). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 4, 2010.

Randy Cooper of Cooper Cargill Chant PA appeared before the Board. James Yeager, Code Compliance Officer, was in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Irving asked if the applicant is proposing two commercial businesses and one residential unit in the main house and one commercial business in the garage. Mr. Cooper stated answered in the negative and referred to the March 31<sup>st</sup> letter from Josh McAllister. Mr. Irving stated there are three density units; one commercial unit in the garage; one commercial unit in the main house and one residential unit in the main house. Mr. Irving stated the issue is with the fourth unit in the garage.

**Adopted: August 18, 2010 – As Written**

**CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 16, 2010**

Mr. Irving stated at this point there are one separate residential unit independent from the businesses and one commercial unit with a caretakers unit in the main house. Mr. Yeager stated there was going to be two residential units in the main house.

Mr. Irving stated they are proposing one commercial unit in the garage. Mr. Cooper stated that the density is two density units in the main house and one density unit in the garage. Mr. Cooper stated there will be a density of three units; two units in the main house and one unit in the garage. Mr. Irving agreed.

Russell Kennett stated that he is a co owner of the building across the street and they have some concerns with the use of this property. Mr. Kennett stated there have been some noise issues with previous tenants and a motorcycle shop that creates many of the issues. Mr. Kennett asked how you can allow a freestanding business with no sanitary facilities; how can it be considered an individual unit.

Mr. Irving stated that this Board is dealing with a density issue; the Planning Board will be dealing with the design of the site. Mr. Irving stated there never was a legally existing motorcycle repair shop and this type of use is not permitted in that District, but doesn't mean they cannot use that space commercially. Mr. Irving stated that this will be required to have a Site Plan Review by the Planning Board and he would certainly be able to speak during that process; this Board is only dealing with density.

Mr. Cooper stated that staff and the applicant have reached an agreement and the application is moot. **This was resolved administratively and no decision was rendered.**

\*\*\*\*\*

A public hearing was opened at 8:37 pm to consider a **SPECIAL EXCEPTION** requested by **NORTH CONWAY AMUSEMENTS, LLC** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change one non-conforming use, a waterslide, to another non-conforming use, batting cages**, at 2129 White Mountain Highway, North Conway (PID 230-107). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 4, 2010.

Peter Gagne and Larry Manson of North Conway Amusements, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Gagne stated that the waterslide was constructed in 1987 and they would like to remove it and replace with four batting cages. Mr. Gagne stated that the batting cages would be 13-feet below grade from the existing parking lot. Mr. Gagne stated that the batting cages would be open from 10:00 am to 8:00 pm and they would be utilizing wooden bats. Mr. Gagne stated that they anticipate the season to be late March until October. Mr. Irving asked if any lighting would be installed. Mr. Gagne stated there is existing lighting. Mr. Manson stated they think there is already adequate lighting.

**Adopted: August 18, 2010 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 16, 2010**

Ms. Sherman asked if they had any idea in the difference in traffic. Mr. Gagne stated there can be four people at a time in the batting cages and he doesn't see much difference. Mr. Gagne stated there were over 2,000 people from July 1 to Labor Day that used the waterslides. Mr. Manson stated the batting cages can be utilized longer so you will have more people. Mr. Chalmers stated you can have more people on the water slide then 4 at the time. Ms. Briggs asked how the batting cages are rented. Mr. Gagne stated it is three minutes per cycle; so worse case would be 80 people per hour.

Ms. Sherman asked about noise. Mr. Manson stated the noise from the water slide was created by people. Mr. Manson stated wooden bats will reduce the noise, but there will be some noise when the ball makes contact with the bat. Mr. Manson stated that the batting cages will be facing Route 16. Mr. Irving stated with the noise being the primary concern, he would like to suggest a comparative study of wooden bats versus aluminum bats or a sound study. Mr. Gagne stated the one facility that is closest to what they want to install is in Laconia and they are not open yet; the noise is insignificant as they are rubber coated balls and not a typical baseball. Mr. Irving stated the phone calls he has received the primary concern is noise.

Thomas Dethlefs asked how you can enforce that. Mr. Irving stated that it would be difficult to enforce wooden bats as well as the hours of operation. Ms. Duane stated there is a difference in elevation from the platform where they entered the waterslide to where they exited the water slide. Ms. Duane stated that noise will deflect rather than go out. Mr. Dethlefs stated that you can hear the traffic and noise is the main concern of the neighborhood.

Ms. Briggs asked how it will be constructed. Mr. Gagne stated that it is already cut into the hillside, and they can use the existing slab. Mr. Chalmers asked if the pool is remaining. Mr. Gagne stated the pool will be removed. Mr. Gagne stated that they are looking at putting a roof over them, but not enclosing them. Mr. Manson stated that it would be a sound barrier wall with a roof over them; don't think it is going to be as noisy as the waterslide. Mr. Manson stated we are sensitive to the neighbors and would like to help with the noise.

Mr. Irving stated that he would like to have an acoustic engineer design something to mitigate the noise. Mr. Dethlefs stated he does not have a problem with the application, but he wants to make sure the noise is mitigated. Mr. Manson stated it would be the same type of noise wall they use on highways; we are sensitive to the noise and would like to mitigate. Mr. Irving stated he would like to see a design.

Ms. Duane stated the applicants are sensitive to the noise; it is a non-conforming use changing to another non conforming use. Stuart Sayre stated that this could reduce our property values. Ms. Duane stated that they are sensitive to people's noise and when she moved into her home near Cranmore she knew it was there. Mr. Dethlefs stated people on a waterslide are different than hitting balls. Monica Belkin stated the noise from the bats is one thing; there is the language as well, rather than a woo hoo from going down a waterslide you could get some foul language.

Lynn Sayre asked for a clarification on the hours of operation. Mr. Gagne stated in the summer months it would be open from 10:00 am to 8:00 pm. Ms. Sayre asked what is considered summer months. Mr. Gagne answered Memorial Day to Labor Day. Mr. Gagne stated the batting cages

**Adopted: August 18, 2010 – As Written**  
**CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 16, 2010**

would not be open after 10:00 pm. Ms. Sayre asked if they would be open seven days a week. Mr. Gagne answered in the affirmative.

Mr. Chalmers stated the batting cages are going to be lower and to the front of the building; moving it down is going to lower that noise, plus you have the berm and the building blocking it versus the screaming kids at the top on the platform. Mr. Chalmers stated the applicant is also trying to mitigate some of that noise.

Cara Rudio asked if there was any consideration given to the frequency of the noise; the waterslide is an occasional scream, but a batting cage has a constant hitting of the bat. Mr. Manson stated in regard to the foul language, people miss on the mini golf course as well and it is hard to control the decibel level of people's voices.

Ms. Tobin asked what is involved in a full audio study. Mr. Irving stated that it measures the type of facility proposed, the sound levels and the frequency. Mr. Irving stated that it compares the existing conditions and provides a comparative analysis to a batting facility that they are proposing. Mr. Irving stated that it also takes into consideration the geographic features of the site.

Mr. Hysten stated wooden bats and rubber balls do not ping. Mr. Hysten asked if we are assuming they will not use what they say they are going to use. Mr. Gagne asked if there is a noise ordinance in Conway. Mr. Irving answered in the negative and stated we would be comparing that the proposed use is not noisier than the existing use. Mr. Manson stated we are here for the long haul and they have no reason to go back on their word.

Ms. Rudio stated from her experience most people bring their own bats. Mr. Gagne stated that we will provide the bats and we will post that no aluminum bats are allowed. Mr. Manson stated they can restrict the bat use. Ms. Rudio asked at what point during the process the applicant has to commit to these items. Mr. Irving stated the ZBA can approve, deny or approve the application with conditions; so at the time of decision.

Mr. Irving stated that the ZBA can put restrictions on their decision, the Planning Board cannot. Mr. Irving stated when it comes to the enforcement; we don't have anyone on staff at 8:00 pm. Mr. Irving stated we would have to respond to complaints. Mr. Irving stated that it is not something that would happen immediately we would have to gather information.

Mr. Irving stated that zoning restrictions are difficult to enforce in a timely manner; however, they can be put on, but will be no immediate solutions. Mr. Manson stated between the two of us we operate four businesses in the Town and we abide by the rules; just based on our history, we are business people who will do what we say we will do. Mr. Gagne stated baseball leagues start in the spring and end by summer and then there is the tourist market.

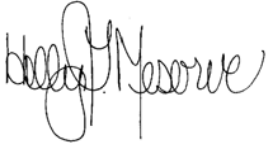
**Ms. Briggs made a motion, seconded by Ms. Duane, to continue the hearing for North Conway Amusements until 6:30 pm to convene at the Conway Town Hall and then have a site visit at the Conway Community Building for a demonstration and then reconvene at the Conway Town Office for the public hearing. Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Chalmers made a motion, seconded by Ms. Duane, to approve the Minutes of May 19, 2010 as written. Motion carried with Ms. Briggs abstaining from voting.**

Meeting adjourned at 9:35 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve  
Planning Assistant