

ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 17, 2014

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 17, 2014 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; Dana Hylan; Luigi Bartolomeo; Alternate, 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 **ADVENTURE AND ENTERTAINMENT PROPERTIES LLC** in regards to §147.13.14.3.4 of the Conway Zoning Ordinance **to allow the installation of sewer service and additional 8-foot wide gravel pathway to expand the camping area within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 5, 2014.

Josh McAllister of HEB Engineers appeared before the Board. Keith Wolters and Kevin Zins were in attendance. Mr. McAllister stated the property is located within the Highway Commercial and Floodplain Conservation Overlay Districts. Mr. McAllister explained other special exceptions that have been granted on this property, but subsequent to that they received approvals from the NHDOT and the Planning Board to construct 25 sites, which are complete.

Mr. McAllister stated that they are now looking to install the sewer infrastructure to go with the other utility infrastructure. Mr. McAllister stated that the owners wanted to review a season of camping before they decided on whether or not to install the sewer hookups and this is the preferred method of disposal for these campsites.

Mr. McAllister stated that the only land disturbances would be the trenching, the campground roads and pedestals at the back of each of the sites. Mr. Bartolomeo asked if each site would have an individual sewer hookup. Mr. McAllister answered in the affirmative. Mr. Bartolomeo asked about dumping stations. Mr. Wolters stated that most campers are there for multiple days and there camper cannot quite make it the whole time without dumping; they have to dismantle their campsite so they can move the camper to go to the dumping station. Mr. Wolter stated they provide a mobile dumping station, but their customers preferred way of dumping is a hook-up at the site.

Mr. Colbath asked if this would tie into the North Conway Water Precinct [NCWP] system. Mr. McAllister answered in the affirmative. Mr. Colbath asked if this would have to be approved the NCWP. Mr. McAllister answered in the affirmative and stated that it will need to be engineered and then reviewed and approved by the NCWP as well as the State.

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Mr. Bartolomeo asked if it was just one additional 8-foot wide gravel path over what has already been approved. Mr. McAllister answered in the affirmative. Mr. Irving stated that they are realigning some of the existing paths. Mr. McAllister agreed and stated that it is not shown on this application. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** Mr. Bartolomeo asked if they are complying with these regulations. Mr. McAllister answered in the affirmative. 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. Hylen, that item 2 is not applicable as there is no proposed development in the floodway.** 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. Hylen, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** 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 §147.13.14.3.4 of the Town of Conway Zoning Ordinance to allow the installation of sewer service and additional 8-foot wide gravel pathway to expand the camping area within the Floodplain Conservation Overlay District be granted. Motion unanimously carried.

A public hearing was opened at 7:18 pm to consider a **VARIANCE** requested by **ADVENTURE AND ENTERTAINMENT PROPERTIES LLC** in regards to §147.16 of the Conway Zoning Ordinance **to construct an ADA accessible pool, associated concrete pad, concrete pavilion, ADA accessible bathroom, ADA accessible multi-purpose building, and associated concrete walkways within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 5, 2014.

Josh McAllister of HEB Engineers appeared before the Board. Keith Wolters and Kevin Zins were in attendance. Mr. McAllister stated the owners would like to construct two buildings with a concrete pavilion between them; and an ADA accessible pool with walkways. Mr. McAllister stated they will be at grade and they will not be fully enclosed buildings to allow water to flow back and forth. Mr. McAllister stated one of the buildings will be an ADA bathroom. Mr. McAllister stated that none of the existing buildings are compliant with the ADA.

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Mr. McAllister stated that the other multipurpose building will be used for the campground store, pool mechanicals and camp registry for those who cannot gain access to the existing camp office. Mr. McAllister stated that the goal is to provide a long term solution to comply with the ADA regulations.

Mr. McAllister stated that they propose to remove the existing pool and construct a new pool that you can walk straight into. Mr. Bartolomeo asked if being more ADA compliant trumps the restrictions of the floodplain. Mr. Bartolomeo asked if it is possible to have an ADA pool without bathrooms as it would seem guests would have bathrooms in their campers. Mr. Wolters stated that with a pool you have to provide one shower for every 30 people, which is a State requirement, and whatever we construct must be ADA accessible.

Mr. McAllister stated that they have to make the best attempt to be ADA accessible. Ms. Sherman stated that you don't have to meet those requirements if you are not constructing anything. Mr. Wolters stated that is not the case; the pool is not grandfathered so we have to come up with a plan to make it ADA compliant. Mr. Wolters stated that this is going to happen to a lot of businesses and as a business trying to comply, which is a big system to try to buck.

Mr. Bartolomeo stated we considered in the past more sites at a campground would clearly be compatible with open space and the pool at grade would also be compatible with open space. Mr. Irving stated that a pool is considered a structure. Mr. Bartolomeo stated that they are changing one pool for another pool, that seems reasonable; but it is the other structures that are causing concern. Mr. Colbath stated that the Board had quite a discussion to allow the pool originally.

Mr. McAllister stated that it also does not have a single ADA bathroom and they need to provide ADA accessible showers and bathrooms for the entire facility. Mr. McAllister stated that the building is out of the floodway, but in the floodplain and will be a flow through structure. Ms. Sherman asked what the elevation of the proposed building is and what the 100-year elevation is. Mr. McAllister stated that the building will be approximately at 460 and he believes the floodplain is between 468 and 470.

Mr. Colbath asked how long the current owners have owned the property. Mr. Wolters answered December 2013. Mr. Colbath asked if there was any damage from Hurricane Irene. Mr. Wolters stated that they did not witness the storm, but doing the math it probably covered the entire site. Mr. Wolters stated that they are very aware of what the river can do and they plan around that; we don't live there and we are closed for six months of the year. Mr. Wolters stated that the bath house on the river has been there 40 years and does not meet today's construction standards and it was not damaged during Irene.

Mr. Bartolomeo asked what a flow through building is. Mr. Wolters stated you create louvers in your foundation so water can come in freely and leave freely. Mr. McAllister stated that this is not in the floodway so this is water that is rising and then lowering; it enters and exits freely. Ms. Sherman asked how it will be ADA compliant if it is not at ground level. Mr. McAllister stated that the proposed buildings would be at ground level.

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Mr. Bartolomeo stated don't we have a general policy that the stricter ordinance applies. Mr. Irving read §147.5, Interpretation; and stated that that the general policy is usually among our own codes and not extended that to State and Federal regulations. Ms. Sherman stated that the conflict here is between the ADA and the zoning ordinance; they are not required to have a pool so, therefore, and understand without a pool not as good a business, but that is the difference here, if you don't have a pool the ADA showers are not necessary

Mr. Wolters stated that they would still have to provide ADA bathrooms. Mr. McAllister stated that they cannot provide them out of the floodplain. Mr. McAllister stated there would be two buildings that has purpose required by the business and would be ADA compliant; they cannot provide these services without being in the floodplain. Mr. Bartolomeo stated if there was no pool they still would have to provide ADA compliant bathrooms. Mr. Bartolomeo stated that a campground would never be allowed in the Floodplain Conservation District again. Mr. Irving agreed.

Mr. Chalmers stated they have doubled the amount of sites and are now being required to be ADA compliant. Mr. McAllister stated they would still have to provide ADA bathrooms without the increased number of sites. Mr. Colbath asked if there is a better area on the site to construct these bathrooms. Mr. Wolters stated this is the best place. Mr. Colbath asked if the store unit has to be built. Mr. Wolters stated it is also for the pool mechanicals. Mr. Colbath stated he is trying to minimize the impact and asked if they could you live with only 1/3 of the building. Mr. Wolters stated he does not know how we would provide the services, as it is we are trying to keep it as small as we can as it is expensive to build. Mr. Wolters stated the problem is how to provide those services with the structures we have today. Mr. McAllister stated that ADA requires a certain proximity to the services.

Mr. Hylen stated that ADA restrictions are the highest standard so they would trump what are the restrictions are in the floodplain, but he is concerned with FEMA. Mr. Hylen read from page 2 of the Zoning Ordinance "Whenever any provision of this Ordinance is at variance with any other provision of the Ordinance, or with the requirements of any other lawfully adopted rule or regulation, the most restrictive, or that imposing the highest standard, shall govern". Mr. Chalmers stated but our ordinance says there shall be no building in the floodplain and that is more restrictive. Mr. Hylen stated restrictive to the highest standard.

Mr. McAllister stated they have an existing use that needs to be ADA compliant, so the higher standard would be the ADA. Mr. Wolters stated that they are required to provide showers without the pool. Mr. Chalmers stated that he would like to see more information for what is required; he understands the concept but he would like to see what is actually required. Mr. Wolters stated part of the problem with ADA is that it is vague for campgrounds; we don't want to delay because of the ability to be sued. Mr. Wolters stated that we have to show that we have made a reasonable effort with the means that we have to be code compliant; and what we are proposing is what we feel is the minimum impact for what we have been told.

Mr. Hylen stated there are so many variables in interpretation, how do we explain to the people of the Town of Conway, who we represent, that we have said no to everything in the floodplain, but explain to the people with disabilities that we said no to ADA compliance.

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Ms. Sherman asked is there any other campgrounds in Town that is ADA accessible. Mr. Wolters stated he did not know, but that has no bearing as far as ADA is concerned. Mr. Bartolomeo stated even if the finding is no you have met the law and then it is not enforceable until someone files a complaint. Mr. Wolters stated people will seek to create a lawsuit and the payout is large.

The Board agreed that they would like more information to clarify the ADA requirements for the existing development sites versus the proposed sites, NHDES and ADA requirements for the existing site to bring them into full compliance and what the requirements are from the State for the proposed improvements, floor plans; and the size of the existing pool versus the proposed pool; and they would like this information to be submitted by October 5, 2014.

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to continue the hearing for Adventure and Entertainment Properties LLC until October 15, 2014 at 7:00 pm. Motion unanimously carried.


REVIEW AND APPROVAL OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of July 16, 2014 as written. Motion carried with Mr. Hylan abstaining from voting.

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of August 20, 2014 as written. Motion carried with Mr. Hylan abstaining from voting.

Meeting adjourned at 8:34 pm.

Respectfully Submitted,



**Holly L. Meserve
Recording Secretary**