

ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 19, 2020

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 19, 2020 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **JARRETT AND JODY STERN** in regards to §190-13.K.(11) of the Conway Zoning Ordinance **to allow a kennel in the residential agricultural district** at 1519 Stark Road, Conway (PID 291-2.1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 7, 2020.

The applicant was not in attendance. Mr. Colbath read the application and the applicable section of the ordinance. The Board agreed to review the application without the applicant present.

Mr. Colbath read §190-13.K.(11)(a). Mr. Bartolomeo stated the information provided by the applicant indicates that the lot is 15 acres.

Mr. Colbath read §190-13.K.(11)(b). Mr. Bartolomeo stated the information provided by the applicant indicates there are no rights-of-ways on the property; and the pasture and barn are substantially set back from the neighbors. After a brief discussion, Mr. Irving stated they meet the setback requirements.

Mr. Colbath read §190-13.K.(11)(c). Mr. Bartolomeo read item (c) from the information provided by the applicant. Mr. Pierce stated we have nothing in writing from Karla's Rendezvous. Mr. Colbath stated it could be a condition of approval that a written agreement signed by both parties needs to be submitted.

Mr. Colbath read §190-13.K.(11)(d). Mr. Bartolomeo read item (d) from the information provided by the applicant. Mr. Chalmers stated it appears the applicant has addressed all the items for the special exception; the application indicates that it would be two dogs or one dam and her litter, but the ordinance doesn't limit the quantity of animals.

Mr. Pierce stated there is no limit to the number of animals they can have Mr. Pierce stated he has a concern with the waste disposal plan, and would like to see an agreement signed by both parties.

Mr. Colbath asked for Board comment; Cheryl Cote of 1457 Stark Road read a statement to the Board [in file].

Adopted: May 20, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 19, 2020

Nathan Boothby of 1444 Stark Road stated they purchased their property in 1997 and have lived there since. Mr. Boothby stated they would not have purchased this property if they knew there would be a kennel next door. Mr. Boothby stated he has been in law enforcement for 26 years, he's still employed; he has been a K-9 handler and he can attest to not just the noise, but too the waste. Mr. Boothby stated to indicate that they are going to pick up all the waste and transport it to Karla's is a pipe dream.

Mr. Boothby stated the big thing about barking is that it carries and it is a discord in a neighborhood. Mr. Boothby stated it is a big concern. Mr. Boothby stated twice their dogs have been in his yard; no collar and no tags. Mr. Boothby stated the concern is safety and noise.

Phil Jones of Eaton Road stated he and his wife, Vicki, have volunteered, fostered, adopted and worked in a shelter facility; the two facilities in Massachusetts are on the main drag where there is no residential around it. Mr. Jones stated having a kennel in the residential agricultural district is beyond him. He stated he is also representing another abutter who could not be here this evening, Ron and Liz Horton.

Mr. Jones stated on the applicant's website, it indicates that they have 44 dogs. Mr. Jones stated the barn the applicant is proposing to use was constructed in 2010, and when it was completed, they installed an irrigation system. Mr. Jones stated this irrigation system ran their well dry as well as the abutters well. Mr. Jones submitted invoices [in file] from Hartley Well Company for the repairs to the abutter's wells.

Mr. Jones asked what is it going to take to keep a facility like this clean, lots and lots of water; and what if we lose our water again. Mr. Jones stated property values are a concern. Mr. Jones stated there was a complaint filed with the Town of Conway regarding barking dogs as well.

Mr. Bartolomeo asked if the applicant has a water easement on an abutter's property. Mr. Jones answered in the negative, and stated the well on abutting properties were drawn dry. Mr. Steiner asked how do you know if it was the irrigation system, was there a draught that year. Mr. Jones answered in the negative.

Mr. Jones read a letter [in file] from Ron and Liz Horton who own 1477 Eaton Road. Mr. Jones asked why is the applicant not here this evening; and stated they should be denied based on the fact that they are not here. Henry Cote asked how do they change the zoning to protect their interests. Mr. Irving explained the procedure for the amendment to a zoning ordinance.

Josh McAllister stated there is a maximum amount of days within the ordinance; no more than 30 days for transient. Mr. McAllister stated there is not enough information in the applicant's response in regard to the litter as those animals cannot be adopted for a certain amount of time. Mr. McAllister stated he doesn't know how the Board can make that determination without the applicant here to express some sort of operation plan.

Mr. McAllister stated he was on the Board for the Conway Area Humane Society for 10 years and there are strict guidelines on what can be done with litters, and it is longer than 30 days. Mr. McAllister stated he doesn't think there is enough information for this application for the Board to say their operation plan is less than 30 days.

Adopted: May 20, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 19, 2020

Mr. Colbath stated he doesn't know what required quarantine means. Mr. McAllister stated speaking from his experience with the Humane Society, if a transport comes from Alabama to the Conway Humane Society, they are required, he thinks, a seven-day quarantine, but he is not sure of the exact number of days that are required. Mr. McAllister stated that they cannot be adopted or seen by anyone other than visually through a barrier for a period of time when transitioning from one facility to another site.

Vicki Jones stated we are very compassionate animal lovers; we have fostered for years and have 7 to 8 years' experience volunteering at a local shelter. Ms. Jones stated she has questions regarding the waste removal; it is not as simple as picking up some fecal matter and disposing of it in a bucket. Ms. Jones stated they are stressed and there is fecal matter all over walls, there is vomit and there is blood.

Ms. Jones stated by law they have to use KennelSol; it has to sit in the kennel for 20 minutes and then be sprayed down endlessly. Ms. Jones asked where does that go; the places she's been at have underground septic systems. Ms. Jones stated they have huge concerns, and this does not sound like a proper kennel.

Ms. Jones asked about the adoption process. Ms. Jones asked how is it monitored, what are the hours. Ms. Jones stated there is no way that they will be bringing a dog to someone's home, people are going to be coming to them. Ms. Jones asked about funding and fundraisers; will they be holding them at this property.

Mr. McAllister stated with this being a commercial use would they be subject to site plan review. Mr. Irving stated not necessarily, they might qualify under the non-applicable clause.

Mr. Chalmers stated he is very empathetic to everyone's position, but what the Board is tasked with are the criteria posed by our zoning ordinance. Mr. Chalmers stated if they meet the criteria the Board does not have the option to deny it. Mr. Chalmers stated when looking at what they have submitted, all looks good with the exception of the waste disposal plan.

Mr. Chalmers stated these are very valid concerns, and he has witnessed the cleanup process and the amount of water used. Mr. Chalmers stated it doesn't seem that the waste can be scooped up and taken to Karla's. Mr. Chalmers stated that is an area of concern for him and without the applicant here to answer that concern he doesn't see how the board, in his opinion, can act on this in a positive manner.

Mr. Boothby stated they have not given a thorough explanation on how they are going to dispose of the waste. Mr. Colbath closed the public hearing at 8:03 pm.

Mr. Steiner stated there is not enough information on item 3. Mr. Chalmers stated it is not an acceptable plan for a professional facility, and he doesn't see how the Board can approve it; it is not an appropriate method. Mr. Chalmers stated there is no verbiage limiting the quantity of animals in our ordinance.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the property meets the minimum two acres lot size.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that indoor animal housing area are set back 40-feet from side and rear property lines and 60-feet from rights-of-way. Pastures/Outdoor exercise areas are set back 15-feet from any property line.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated it is implied that they are fenced in. Mr. Colbath stated they could be on runs. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that a written plan for the disposal/removal of animal waste has been submitted along with the application requesting the special exception from the Zoning Board of Adjustment. This plan is approved by the Board.** Mr. Colbath asked for Board comment; Mr. Chalmers stated based on testimony from the audience, and his own personal witness of how these types of facilities run, he would suggest that the waste disposal plan is not appropriate. Mr. Steiner stated there is not enough information. Mr. Pierce agreed with Mr. Steiner. Mr. Colbath stated the plan is not sufficient. **Motion defeated with Mr. Chalmers, Mr. Steiner, Mr. Pierce and Mr. Colbath voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Mr. Colbath read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that all animals shall be kept in an indoor area between the hours of 6:00 pm and 8:00 am.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.K.(11) of the Town of Conway Zoning Ordinance to allow a kennel in the residential agricultural district be granted. Motion defeated unanimously.

A public hearing was opened at 8:26 pm to consider a **SPECIAL EXCEPTION** requested by **MOUNT WASHINGTON VALLEY ECONOMIC COUNCIL/AVESTA HOUSING DEVELOPMENT CORP.** in regards to §190-13.K.(10) of the Conway Zoning Ordinance to **remove 37.3 acres from the business development park** on Technology Lane, Conway (PID 262-86.26). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 7, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Sherman left at this time. Mr. McAllister stated they are looking to reduce the size of the business park boundary. Mr. McAllister stated they would like to maintain the business park use, just remove 37± acres. Mr. McAllister stated they are proposing to maintain the recreational trail on the acreage being removed.

Mr. McAllister read his letter dated January 29, 2020 [in file]. Mr. Irving asked Mr. McAllister to read the note on the plan regarding trails. Mr. McAllister stated it states “proposed trails as shown on previous Technology Village subdivision plans. Trail access from business development park to Conway Rec Path is to be preserved via easement”. Mr. Irving stated that was integral to the original part being granted, was to connect to those trails. Mr. Irving stated the applicants have indicated that they are going to preserve that.

Mr. Colbath asked for Board comment; there was none.

Adopted: May 20, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 19, 2020

Mr. Colbath asked for public comment; Joanne Gorman stated there is not going to be enough room for those trails with the development. Mr. McAllister stated the trails are outlined in an approximate location showing a connection with the 12-foot wide trail easement. Mr. McAllister stated the area is 37 acres leaving plenty of room for development. Mr. McAllister stated the trails are anticipated, and they are not going to be roadways, they are going to be walking trails. Mr. McAllister stated the details will be coming with the planning aspects.

Mr. Steiner asked what is the proposed development. Mr. McAllister stated there is a residential development coming; Avesta Housing does affordable housing development or senior housing. Mr. McAllister stated we don't have a layout or design; this is the first step.

Mr. Colbath asked if the trail system is intended for motorized vehicles. Jac Cuddy of the Economic Council stated currently there are no restrictions; there are old logging trails on the property and those are the trails that have been utilized by walkers and mountain bikers. Mr. Cuddy stated we haven't had any motorized vehicles.

Tom Moughan, Board of Director at Black Bear Coop that owns Lamplighter Park, stated on plans they have regarding the trail system they are designated as non-motorized.

Kathleen Gilligan, resident of Evergreens on the Saco, asked if they are pulling out of the tech village a piece of property that abuts Evergreens on the Saco. Mr. McAllister answered in the affirmative. Ms. Gilligan stated this has nothing to do with Avesta's plans to date. Mr. McAllister agreed and stated they are looking to revert the land back to the underlying zoning, which is mostly residential agricultural.

Ms. Gilligan asked when plans are developed will there be another meeting here. Mr. McAllister stated an application would be submitted to the Planning Board. Ms. Gilligan asked if they would need another access to Route 16. Mr. McAllister stated as part of the reduction in size of the business development park and reverting 37 acres back to residential we are committing to providing a right-of-way connection at the end of Technology Lane to the southern access point of this property.

Ms. Gilligan asked what impact does the power line have on subsequent plans. Mr. McAllister stated that is unknown at this time. Ms. Gilligan asked if this will be an apartment building, or condominiums. Mr. McAllister stated he is not sure at this time. Ms. Gilligan asked if Avesta is only interested in affordable housing, or senior housing. Mr. McAllister stated they are a non-profit organization that provides for affordable housing, but it does not mean that every unit is affordable.

Mr. Irving stated until such time that we know what is being proposed for the property, he cannot say which Boards will be approached; they could seek one of the special exceptions provided in the zoning ordinance that would require the ZBA to get involved, but they may not. Mr. Irving stated any multi-unit development or subdivision would require Planning Board review.

Mr. Colbath closed the public hearing at 9:00 pm.

Adopted: May 20, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 19, 2020

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the subject property has some of its boundary within or contiguous with the boundary of a Commercial District.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the business development park fronts on and accesses an existing arterial road.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the minimum front, side and rear setback of one hundred (100) feet from all adjacent properties and roads is satisfied.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the parking lots do not exceed 20,000 square feet in gross area.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the operations of the business development park, including noise, odors and any other expected hazards associated with the development are consistent with that of a residential neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has provided a comprehensive report, by an appraiser licensed by the State of New Hampshire, which demonstrates that there will be no negative impact on abutting properties. The Town Assessor has reviewed this report provided comments.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has provided a traffic study, certified by a qualified engineer licensed by the State of New Hampshire, which clearly indicates the traffic impacts that would result from the project and improvements to the existing transportation infrastructure that would be necessary to ensure appropriate access and level of service. The Town Engineer has reviewed this report provided comments.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that a perimeter buffer area of at least one hundred (100) feet in depth adjacent to all abutting properties and streets to be left in its undisturbed natural state or if disturbed shall be replanted with indigenous species has been satisfied.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 9. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that they will construct a passive and active recreation trail system within the project for use by tenants of the business development park and the public. The trail system shall provide links to other existing or future publicly accessible**

trails adjacent to the property. The rate of trail system construction shall be, at least, consistent with the rate of development of the business development park. The recreation trails may cross the buffer only to connect with existing or future publicly accessible trails on adjacent properties and if they do not impair the effectiveness of the buffer. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 10. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the requirement that green space shall comprise not less than thirty-five (35) percent of the total lot area, exclusive of wetlands, water bodies, the 100-year floodplain and slopes over 25% has been satisfied.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.K.(10) of the Town of Conway Zoning Ordinance to remove 37.3 acres from the business development park be granted. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the minutes of January 15, 2020 as written. Motion carried unanimously.

Meeting adjourned at 9:18 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant