

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 21, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 21, 2021 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Planning Consultant, Will Haskell; and Planning Assistant, Holly Whitelaw. Alternates, Phyllis Sherman and Jon Hebert were in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **GREP WMH II, LLC** [FILE #21-25] in regards to §190-20.M.(2) of the Conway Zoning Ordinance **to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property** at 1657 White Mountain Highway, North Conway (PID 235-87). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 8, 2021.

Mr. Colbath appointed Ms. Sherman as a voting member. Randy Miron of Bohler Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Miron stated this is the Friendly's site, which they would like to redevelop with a restaurant with a drive-thru, a bank with a drive-thru in the back and an office building. Mr. Miron stated the Friendly's building would be demolished. Mr. Miron stated there are residential properties across the street and are within that 600-foot distance. Mr. Miron stated Taco Bell has a drive-thru that is quite a bit closer to the residential property.

Mr. Miron stated due to the separation of development to the residential properties by Route 16 the speaker system and drive-ups will not have a negative effect on those residential properties. Mr. Miron stated any noise generated from the drive-thru's would be very minimal, certainly less than the noise generated from the traffic on Route 16. Mr. Miron stated the Taco Bell drive-thru is a lot closer, and the use itself fits in the highway commercial area.

Mr. Colbath asked for Board comment; Mr. Colbath asked on what side of the building is the drive-up. Mr. Miron stated it is on the left side. Mr. Colbath stated then it is remote from the building. Mr. Miron stated there is a drive-up window that is attached to the building, and there are some menu-boards that are in the back. Mr. Colbath asked if the speaker system would be back there. Mr. Miron stated that is correct. Mr. Colbath asked if there would be a speaker system at the window itself. Mr. Miron stated there would not be a speaker system at the window itself.

Mr. Bartolomeo stated there are two message boards. Mr. Miron stated that is correct. Mr. Bartolomeo asked if there was any data on decibel output. Mr. Miron stated they don't, and they are not sure who the tenants will be at this point. Mr. Miron stated its certainly going to be less than the noise generated from the traffic on Route 16. Mr. Steiner suggested limiting it to a certain decibel.

Mr. Colbath asked for public comment; there was none. Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** 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 spirit of the ordinance is observed.** 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 substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated Taco Bell has one and they are even closer to the residential area; not granting would be an injustice. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a. ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 5.b. is not applicable.** **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.M.(2) of the Town of Conway Zoning Ordinance to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property be granted. **Motion carried unanimously.**

A public hearing was opened at 7:15 pm to consider a **SPECIAL EXCEPTION** requested by **SALLY MARR** [FILE #21-26] in regards to §190-30.A.(2) of the Conway Zoning Ordinance to **change a non-conforming use, retail sales, light industry/manufacturing, storage and the sale and repair of outdoor off-highway recreational vehicles, to another non-conforming use, retail sales, light industry/and manufacturing of collars, leads and related products, indoor storage and hobbyist workshop space,** at 2928 East Conway Road, East Conway (PID 240-25).

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Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 8, 2021. Ms. Sherman stepped down at this time. Mr. Colbath appointed Mr. Hebert as a voting member. Shawn Bergeron of Bergeron Technical Services appeared before the Board. Robin Crocker was in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Bergeron stated the former Town & Country property has been a nonconforming, grandfathered use for many years. Mr. Bergeron stated the proposed uses that are being requested under this special exception are retail sales, manufacturing of collars, leads and related products, manufacturing of other types of materials, indoor storage available to others and hobbyist workshop space.

Mr. Bergeron stated Mr. Marr for quite some time had a company Country Cupolas and a woodworking business that manufactured cupolas. Mr. Bergeron stated the possible new owners are interested in possibly providing workshop space to other people. Mr. Bergeron stated that is the extent of the application.

Mr. Colbath asked for Board comment; Mr. Hebert asked what were the hours of operation; was it confined during its history to daytime hours and asked if there was anything going on in this nonconforming use as it existed that went into the evening. Mr. Bergeron stated he believes they operated general business hours. Mr. Hebert asked if construction/production was a night time noise generating activity. Mr. Bergeron stated he cannot speak to that.

Mr. Colbath asked for public comment; Linda DiBrandi asked if the production is going to be 24/7 or will it be daytime only. Ms. Crocker stated production would be daytime only, and currently none of our production involves any machinery; all of the sewing is shipped out. Ms. Crocker stated it is primarily shipping and light assembly; assembling products by hand and then preparing them to be shipped.

Keith DeLuca stated it was indicated that there possibly could be other light manufacturing by a third party. Mr. DeLuca asked what would limit anyone from hammering on duck work. Mr. Bergeron stated in the event there is leased space to others, it would have to be something that works in conjunction with what she is looking to do on the property herself.

Steven Poulin stated he thought if a non-conforming use ceases to operate for any length of time that nonconformity ends and has to be reapplied for. Phyllis Sherman stated it is not the stoppage of use, it is abandonment of it; this property did not abandon it. Mr. Poulin stated a change of use is a very big decision as you are asking a residential agricultural neighborhood to put up with a commercial operation. Mr. Bergeron stated Town and Country has existed there for at least 40 years; and this is a reduction in comparison to what was there previously.

Jeff Cathcart stated it does not look like the light manufacturing/commercial aspect was ever acted upon when the property was rebuilt after the fire; it has been dormant for at least 20 years. Mr. Cathcart stated this is boot strapping a new use into the property; it was never exercised and then decided to pull it out of the banks and develop as a new commercial operation. Mr. Cathcart stated this is not a natural evolution of the current business.

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Mr. Bartolomeo stated if he remembers correctly this property was first a wood stove shop, and it did go through a change-of-use when it wanted to rent snowmobiles. Mr. Bergeron stated there is a history of the property in the packet, but in its inception, back in the 1960's, Mr. Marr was a contractor and went into the retail business selling building materials. Mr. Bergeron stated overtime various other business entities developed.

Mr. Bergeron stated after the fire he was the Code Enforcement Officer for the Town of Conway and he was in that building several times. Mr. Bergeron stated one of the things that was reconstructed in that building was the wood working shop; as to what magnitude it was used, he cannot speak to that. Mr. Bergeron stated there was no conscious obvious intent of abandonment of any of these commercial uses. Mr. Bergeron stated there was no legitimate attempt to abandon.

There was a brief discussion regarding the closure and/or abandonment of a nonconforming/grandfathered store on the corner of Birch Hill Road and West Side Road that was located in the residential agricultural district.

Alex Drummond stated this is a nonconforming use, and back in the day when this was permitted as a nonconforming use he can interpret the zoning to say you can produce materials if you are on site and if you are a residential owner. Mr. Drummond stated in this case he believes the property is being subdivided from the Marr's residence and asked does that weigh into the Board's consideration that now there is a business use that now does not have an onsite owner. Mr. Bergeron stated Mr. Drummond is combining the requirements for a home occupation, which is very separate and distinct from this special exception request. Mr. Bergeron stated this is a nonconforming existing grandfathered use that we are asking to be changed to a lesser impactful use.

Robert Patnode stated he has lived across the street for 45-years. Mr. Patnode stated it looks like the applicant is going to do light retailing, which is what John and Sally Marr have done there for 40 plus years. Mr. Patnode stated his question is what do we call light manufacturing. Mr. Patnode stated if they were producing dog collars inside the building, he doesn't see any of us having a problem with that; the retailing would be fine. Mr. Patnode stated John made cupolas on the property and then they were moved into the building, and then that business pretty much went away. Mr. Patnode stated he bought and sold them, but the business pretty much went away as he stopped manufacturing them.

Mr. Patnode stated the snowmobile business was just an add-on; it was a retailing type business. Mr. Patnode stated if approved would this be allowed to be used for any type of manufacturing. Mr. Patnode stated if this is going to dog collars and a retail store for that, that would be a beautiful operation; it is not a nighttime operation. Mr. Patnode stated it would be much quieter than what was there. Mr. Patnode stated we are hoping to get a good tenant.

Mr. Hebert asked for a clarification from the applicant on the actual intended use; the facility is going to be a training center. Mr. Bergeron stated that is another application. Mr. Hebert stated we are only dealing with the light manufacturing now. Mr. Bergeron stated the uses being discussed at this time are retail sales, manufacturing of collars, leads and related products, indoor storage available to others, and hobbyist workshop space.

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Mr. Bergeron stated hobbyist workshop space is just that, this is for someone who does not have a workshop space in their own home and can rent space.

Cherie Norton of 2936 East Conway Road stated looking out her living room window she looks straight at this building, which is maybe 50-feet away. Ms. Norton stated her backyard from the second building is maybe 65-feet away. Ms. Norton stated has far as light manufacturing, if they are open 8:00 am to 6:00 pm and closed on Sundays then we have the opportunity to get a good night's sleep.

Ms. Norton stated if someone stays until 9:00 pm or 10:00 pm banging on stuff into the evening, that could be disturbing. Ms. Norton stated in the summer time she likes her windows open and they are right there. Ms. Norton stated she is concerned with delivery trucks arriving at the wee hours of the morning and sit there running. Mr. Colbath stated the Town voted in a noise ordinance in April 2021.

Mr. Cathcart stated when weighing this request for a special exception part of the weight needs to be put on not just what we are hearing here tonight on what the intention is, but what the potential is. Mr. Cathcart stated there is nothing to restrict the hours and the manufacturing capacity; there is nothing to restrict a chainsaw carver renting space. Mr. Cathcart stated this is a residential area with potential increased activity, it will change the character of the neighborhood. Mr. Cathcart stated that might not be the intention, but it has the potential; there is nothing to legally prohibit that once that exception is granted.

Mr. Haskell stated there is not a definition in the ordinance for light manufacturing, but there is a definition for light industry and asked would this essentially be the same thing. Mr. Bergeron answered in the negative. Mr. Bergeron stated the applicant on behalf of the Marr's is willing to strike potential use #4 as indicated on the drawing from the request. Mr. Hebert asked if that is the hobbyist workshop. Mr. Bergeron answered in the affirmative.

Mr. Hebert stated that does not seem to be the issue that is bringing the most questions. Mr. Hebert stated that most concern that he is hearing is the manufacturing down the road. Mr. Bergeron stated he is hearing that people are concerned with renting spaces to others; Ms. Crocker can control her own business hours, but more difficult to control those of tenants.

Teena Kulakowski stated it was indicated that she would not be sewing dog collars, so what is the proposed light manufacturing. Ms. Kulakowski stated this is just leaving the door open for whatever as there is no definition of light manufacturing. Ms. Kulakowski stated she would rather have someone making jewelry than having obnoxious gas.

Ms. Kulakowski stated there is a thing called peaceful enjoyment of our property, we are all home owners; we want to make sure that we can continue a substantially degraded peaceful enjoyment as we already have to deal with kids flying in front of our houses and now have to be worried about light manufacturing in a residential agricultural zone.

Mr. Bartolomeo stated the plans reads "...manufacturing of collars, leads and related products". Mr. Bartolomeo stated the Board, at their discretion, has the ability to attach reasonable conditions to the approval.

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Mr. Bartolomeo stated in regard to abandonment, if you have a nonconforming sign, nonconforming due to setback, and the sign was torn down, but left the concrete foundation in the ground the sign has not been abandoned. Mr. Bartolomeo stated someone could go back and re-erect that sign; that is his understanding of abandonment. Mr. Bartolomeo stated if the foundation was removed, then that is abandonment; not lack of use for many years.

Ms. Norton stated she worked at Lupine for many years, it is not a loud process; the fumes that are created by sealing the nylon is just that fumes, but they can be handled with an air cleaner. Ms. Norton stated if they were to have some stipulations and never grow to the point of adding on or creating a monster, and was normal business hours and closed on Sundays; she would rather have that then someone banging on metal or using a chainsaw.

Mr. Poulin stated if this exception is granted you will lose control of what is going on there. Mr. Poulin stated years ago they started selling snowmobiles when they were really making cupolas; how did that happen. Mr. Poulin stated things happened, things changed and were overlooked. Mr. Poulin stated home occupations are very controlled by the zoning ordinance. Mr. Colbath stated there is a difference between an already established nonconforming business and a home occupation. Mr. Poulin stated those rules are there to protect the residential area; if this exception is granted, you will lose control.

Kevin Howard stated he is concerned with property values if it is not successful or degrades the neighborhood. Mr. Bergeron stated in regard to the concern of losing control, the application before the Board is very specific, and this is the most control the Town of Conway has ever had over this property. Mr. Bergeron stated what is being asked for this evening is a move toward compliance, not to move further out of compliance.

Mr. Steiner stated this is like any other building in the Town, if you have a neighbor that does not maintain their house it will hurt property values. Mr. Steiner stated Town and Country looks fine, there should not be any problems. Mr. Bergeron stated when considering impact on property values one of the worse things that can happen to any property is for it to be abandoned. Mr. Bergeron stated having a use next door that is a non-use is more of a diminution of values then having a successful use next door that is compatible or accepted by the neighborhood. Mr. Bergeron stated even in its condition today as wonderful as the property is, it is probably more of a threat to property values then if it were a successful entity like has been there previously; let's not have another abandonment of a building in Conway.

Mr. Chalmers asked if the impact on traffic to the neighborhood, noise and nighttime lighting could be addressed. Mr. Bergeron stated the existing nighttime lighting would remain, and he cannot see traffic generated by the uses being proposed could possibly be any greater than what was there before, probably less traffic.

After a brief discussion, the applicant removed indoor storage by others from the application. Mr. Colbath clarified that there will be some storage related to what the applicant is doing.

Mr. Colbath closed public comment.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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 carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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; Mr. Bartolomeo stated he thinks it is a lesser impact. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** 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 proposed use has the same or lesser impact on the neighborhood relative to traffic.** 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 proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** 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 proposed use has the same or lesser impact on the neighborhood relative to noise.** 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 proposed use has the same or lesser impact on the neighborhood relative to nighttime lighting.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-30.A.(2) of the Town of Conway Zoning Ordinance to change a non-conforming use, retail sales, light industry/manufacturing, storage and the sale and repair of outdoor off-highway recreational vehicles, to another non-conforming use, retail sales and manufacturing of collars, leads and related products be granted subject to the condition that all shipping and receiving vehicles arrive and leave during regular business hours. Motion carried with Mr. Hebert, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Steiner voting in the negative.

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A public hearing was opened at 8:15 pm to consider a **SPECIAL EXCEPTION** requested by **SALLY MARR** [FILE #21-27] in regards to §190-13.K.(11) of the Conway Zoning Ordinance **to allow a kennel in the residential agricultural district** at 2928 East Conway Road, East Conway (PID 240-25). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 8, 2021.

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 some of the uses shown on the plan were stricken from the original application; hobbyist workshop and indoor storage for others. Mr. Bergeron stated #1 and #2 were approved under the previous application. Mr. Bergeron stated this application is dealing with item #3, indoor dog kennels, item #4, dog training classes, and item #5, indoor whelping area.

Mr. Bergeron referred to a letter to the Board dated July 8, 2021 [in the file]. Mr. Bergeron stated the kennel that is being proposed is not a boarding kennel where lots of pet owners leave their dogs while vacationing but instead this is a working kennel, a facility where dogs are brought for specific training. Mr. Bergeron stated at present, the plan is for 8 to 12 kennels.

Mr. Bergeron stated what is being proposed is very different from a boarding kennel; they tend to be loud, boisterous and unattractive for the neighborhood and the pets. Mr. Bergeron stated a dog that goes to a kennel such as what is being proposed, and unfortunately, they have the same name, is for professional training. Mr. Bergeron stated it is very important to understand that this is not a general use boarding kennel.

Mr. Bergeron stated the lot is at least two acres; the boarding of any dogs will be in the main building, and the main building meets all of the setbacks; they do not pasture dogs and if they are outside, they are not independent, there is someone with them; a written plan for disposal/removal of animal waste has been submitted; and they will follow the criteria of animals being kept indoors between the hours of 6:00 pm and 8:00 am. Mr. Bartolomeo read the letter to the Board from Shawn Bergeron dated July 8, 2021.

Mr. Colbath asked for Board comment; Mr. Hebert asked does the Town think the plan for disposal of animal waste is adequate. Mr. Haskell answered in the affirmative.

Mr. Colbath asked for public comment; Pam DeLuca asked what type of dog breeding will be taking place and will there be a large number of dogs being brought and sold there. Mr. Bergeron stated it would be two to three litters annually, and these would be primarily service dog puppies.

Keith DeLuca asked if they would have those dogs there as well as boarding other training dogs; that seems like a lot of dogs. Mr. Bergeron stated during those two to three litters a year the female/mother dog and the litter would be there, plus eight to twelve kennels, plus Ms. Crocker's two personal dogs would be the worst-case scenario. Mr. Bergeron stated this would also be taking place indoors.

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Teena Kulakowski stated there could be up to 50 dogs on the property at one time; they are only promising to keep them indoors from 6:00 pm to 8:00 am. Ms. Kulakowski stated we are a neighborhood; if this is a kennel, it is a kennel and they can do as they please. Ms. Kulakowski stated this is a large building, and this is not the spot for 50 dogs or even 20 dogs.

Gary Cazeault stated he has three dogs himself, and these dogs are going to be barking; he is not going to have any peace and quiet. Mr. Cazeault stated there are 12 dogs in the neighborhood and they all get along; now were going to have these strange dogs across the street barking. Mr. Cazeault stated the noise pollution is going to be insane. Mr. Cazeault stated who is going to police this on Sunday when we are listening to a bunch of barking dogs.

Josh McAllister stated the special exception does not outline the limit to the number of kennels allowed, but there is a mechanism to limit that through the next step. Mr. McAllister stated this is a change-of-use to the property, correct. Mr. Bergeron stated it is not, it has to obtain the special exception, but does not need to go to site plan review.

Mr. McAllister stated when the application is for 8 to 12 kennels, that is the definition of what you receive, you don't receive approval for 50 kennels. Mr. McAllister stated it is a use special exception, you are gaining a special exception for the use in the amount requested not for in an indefinite amount. Mr. McAllister stated for clarification this Board is hearing an application for 8 to 12 kennels. Mr. Bergeron agreed.

Mr. Bartolomeo stated so there is no need to limit to that number of kennels because they have already applied for that. Mr. Bergeron stated that is why the application was put together the way it was. Mr. McAllister stated they would have to reapply to have greater than 12 kennels. Mr. Bergeron stated the Board grants or denies an application based upon the information that was provided, not based on what someone thinks the use can be. Mr. Bergeron stated the applicant has represented 8 to 12 kennels.

Mr. Colbath asked what does 8 to 12 kennels mean. Mr. Bergeron stated one kennel one dog to be indoors. Mr. Bartolomeo stated he does not see a delineated outdoor exercise area. Mr. Bergeron stated when these dogs are in training they are being trained by a trainer; they are not generally allowed to go outside and run. Mr. Bergeron stated there may be a dog on a lead anywhere on this property. Mr. Bartolomeo stated so it is not a run free in a fenced in yard. Mr. Bergeron stated that is correct.

Maurice Dennery stated there might be some dogs outside with a trainer, but he is not clear if there will be actual fenced in areas or areas where dogs may be without a trainer; and how many will be outside at the same time. Dr. Dennery asked what would that do for property values; even indoor kennels can make a lot of noise. Mr. Bergeron stated the fire wood shed shown as accessory structure #2 is a dog training area; it is a pole barn with a roof, but no sides. Mr. Bergeron stated there will be a small fenced in area between the main building and the pole barn, but dogs will not be allowed to hang out there.

Ms. DeLuca stated without fencing around the property many dogs that are very well trained can easily slip collars; what if that dog is dog aggressive and breaks out into one of their yards.

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Steve Poulin stated under the last application the Board was concerned with the noise trucks made and added that deliveries have to be made during business hours a restriction, here the Board is maybe approving a situation allowing dogs, but there is no way to say that those dogs cannot create ruckus anytime they want. Mr. Poulin stated there is no way to say that noise can't be controlled and only there during normal business hours.

Mr. Bartolomeo stated the first application has to have the same or lesser impact on the neighborhood relative to noise, but the second application is dealing with dogs. Mr. Bartolomeo stated if one dog is barking, they all start barking and it can be deafening. Mr. Bartolomeo stated what he finds curious is that we are dealing with noise in the first application, but not addressed at all in the second.

Mr. Bergeron stated there is never a perfect ordinance, or a perfect code or standard. Mr. Bergeron stated if that is something that should have been considered by the authors then it should have been considered, and if it should have been modified then it should have been modified; this has been in the Conway ordinance since the mid-1990's as written.

Cherie Norton stated there will be dogs there 24/7 with no one to monitor them, or anyone to quiet them. Ms. Norton stated if they have a number of dogs in this building, even if the doors are shut, she is going to hear them. Mr. Bartolomeo asked if the owner would be agreeable to sound attenuation measures. Mr. Bergeron stated there is no reason not to, Ms. Crocker wants to be a good neighborhood. Mr. Bergeron stated Ms. Crocker works specifically with very specific types of dogs, there is one in this room right now and hasn't been heard from at all tonight. Mr. Bergeron stated you have to give some value and credence to the applicant.

Robert Patnode stated this is a total change of venue, the other was manufacturing; this is a kennel and they have never had a kennel before. Alex Drummond stated if we're all concerned about our general health and welfare living in a neighborhood with the additional stress of potentially managing numbers of dogs and potentially that being stressful for us, the Board cannot evaluate that because the Board simply has to abide by the four criteria. Mr. Colbath stated if granted and allowed and the applicant has stated they would provide noise reduction and there is still noise there is a noise ordinance that can be applied.

Dr. Dennery asked if the plan for the disposal of animal waste is adequate. Mr. Bergeron stated in talking with an array of veterinarians, other kennels and State of New Hampshire agencies, this is how it is done. Mr. Bergeron stated this is a responsible, respectful business owner that is not going to pile up large quantities of dog waste; approximately once a week it will be thrown out. Mr. Colbath stated he sits on the Northern Carroll County Solid Waste Disposal Committee and a tremendous amount of domestic animal waste goes into the Conway landfill.

Mr. DeLuca asked how this is not a change of use and not going to the Planning Board. Mr. Colbath stated the zoning ordinance allows a kennel via special exception.

Mr. Cathcart stated on average dog kennels or shelters produce over 100 decibels at any given time from dogs barking; a chainsaw is 65 decibels and a motorcycle is 85 decibels. Mr. Cathcart stated there is the potential in excess of 100 decibels being force fed into everyone's property surrounding this property. Mr. Cathcart stated if the Town is concerned with outside projection of a food

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ordering stand being in excess of 65 decibels why would we allow a business to open and operate that is routinely going to project over 100 decibels force fed into every surrounding property. Mr. Cathcart stated he understands that this is the statute, but the Board is going into this with the knowledge that this is going to be an issue going forward. Mr. Cathcart asked is this an acceptable use of that property; this Board can make the decision that it is not.

Mr. Bergeron stated this is not a kennel where pets get dropped off for the weekend; these animals are being professionally trained and controlled, and it is not good for a dog that is being developed into a working animal to allow it to bark incessantly. Mr. Bergeron stated barking is something as a professional trainer that is mitigated quickly; the likelihood of having 12 animals there barking incessantly at any given time is extremely unlikely.

Doug Swett stated this type of occupancy is a disaster. Ms. Norton stated she lives directly next door, there is no way to mitigate that amount of noise to her house. Ms. Norton stated there is not going to be someone there, they are not on the property; they go home at night. Mr. Bergeron stated it is 90-feet from the corner of her home to the corner of the building.

Mr. Hebert asked what is the definition by statute of a kennel. Mr. Haskell stated that the Town does not have a definition of a kennel. Mr. Chalmers stated our ordinance reads transient, fewer than 30 days, the housing of domestic animals or commercial breeding facilities for domestic animals. Mr. Chalmers stated that leads him to believe it is commercial.

Ms. Kulakowski asked if there will there be dog training classes. Mr. Bergeron answered in the affirmative and stated they would take place on the property, but will primarily be inside. There was discussion that animals must be inside during the hours of 6:00 pm and 8:00 am. Mr. Colbath stated the classes are taking place inside. Mr. Chalmers read a letter from Michael and Barbara O'Rourke.

Mr. Colbath closed public comment. Mr. Colbath read item. 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the property meets the minimum two acres lot size.** Mr. Colbath asked for Board comment; Mr. Hebert asked what the size of the lot is. Mr. Bergeron stated after a boundary line adjustment, which is conditionally approved through the Conway Planning Board, the lot will be 3.49 acres. **Motion carried unanimously.**

Mr. Colbath read item. 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that indoor animal housing areas are set back 40-feet from side and rear property lines and 60 feet from rights-of-way; and pastures/outdoor exercise areas are set back 15 feet from any property line.** Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if this requirement is met. Mr. Bergeron stated the corner of the building is approximately 47-feet from the closet property line and the other corner is approximately 51-feet from the closest property line. **Motion carried unanimously.**

Mr. Colbath read item. 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that a written plan for the disposal/removal of animal waste has been submitted along with the application requesting the special exception form the Zoning Board of Adjustment. This plan is approved by the Board.** 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 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 for 8 to 12 kennels. Motion carried unanimously. Mr. Colbath reviewed the process to request a rehearing.

A public hearing was opened at 9:29 pm to consider a **SPECIAL EXCEPTION** requested by **REDSTONE GROUP, LLC** [FILE #21-28] in regards to §190-13.K.(10) of the Conway Zoning Ordinance **to allow the construction of a 9,000 square foot office building within the business development park** on Technology Lane, Conway (PID 262-86.24). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 8, 2021.

Mr. Hebert stepped down at this time. Mr. Colbath appointed Ms. Sherman as a voting member. Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister gave an overview of the project.

Mr. Colbath asked what is the square footage of the parking lot. Mr. McAllister answered less than 20,000 square feet. Mr. McAllister stated five of the criteria are met by the actual business park itself. Mr. McAllister reviewed his letter to the Board dated June 30, 2021 [in file].

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Tom Eastman of the Conway Daily Sun asked where are the owners located. Mr. McAllister stated the person is local.

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 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, 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. Steiner made a motion, seconded by Mr. Chalmers, 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. Chalmers made a motion, seconded by Mr. Steiner, that the requirement that greenspace 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 allow the construction of a 9,000 square foot office building within the business development park be granted. Motion carried unanimously.

MOTION FOR REHEARING

A public meeting was opened 10:00 pm to consider a **MOTION FOR REHEARING** requested by **LOT 23 WMH, LLC** in regard to §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to allow a 40 square foot freestanding sign 10-feet from a platted right-of-way** at 1549 White Mountain Highway, North Conway (PID 246-35). Keith Wehmeyer of Lot 23 WMH, LLC was in attendance.

Ms. Sherman stepped down at this time. Mr. Colbath appointed Mr. Hebert as a voting member. The Board determined that there was neither a technical error nor new information available that was not available at the time of the first hearing. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant the Motion for Rehearing requested by Lot 23 WMH, LLC. Motion defeated with Mr. Bartolomeo, Mr. Steiner and Mr. Chalmers voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of June 16, 2021 as written. Motion carried unanimously.

Meeting adjourned at 10:16 p.m.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant