

ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 15, 2023

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 15, 2023 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Acting Chair, Andrew Chalmers; Luigi Bartolomeo; Richard Pierce; Jonathan Hebert; Code Enforcement Officer, Jeremy Gibbs; and Planning Assistant, Holly Whitelaw. Alternates Steven Steiner and Jac Cuddy were in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Chalmers appointed Mr. Cuddy as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **GARY SHACKFORD** [FILE #23-01] in regards to §190-30.A.(2) of the Conway Zoning Ordinance **to quantify the number of RVs allowed on site for repairs to be up to twenty (20) in addition to the previously approved twenty-five (25) RVs allowed in storage** at 100 Burbank Road, Center Conway (PID 260-9). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 3, 2023.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Gary Shackford was in attendance. Mr. Chalmers read the application and the applicable section of the ordinance.

Mr. Bergeron stated he would like to present this to the Board almost as a housekeeping matter; the use that exists on the property today, recreational vehicle repair and storage, started back in the mid-1990's when he was the Code Enforcement Officer for the Town of Conway. Mr. Bergeron stated in 1995 Mr. Shackford was granted a special exception to change one non-conforming use to another non-conforming use.

Mr. Bergeron stated the special exception was for recreational RV repair and storage. Mr. Bergeron stated in the minutes from back then he asked the Board if they should set a maximum number for RVs allowed for storage and Mr. Shackford stated he would have no more than 25 RVs and that is how the Board voted. Mr. Bergeron stated the only thing quantified at that time was the number of RVs for storage.

Mr. Bergeron stated Mr. Gibbs had to go out to the site and there were 43 RVs on the site at that time; Mr. Gibbs brought that to Mr. Shackford's attention. Mr. Bergeron stated collectively between his office and this office we reached an agreement that they should come in and modify that past special exception, leave the 25 RVs in storage but definitively quantify the number of RVs that can be on-site in addition for repair. Mr. Bergeron stated Mr. Shackford has agreed that there will not be more than 25 RVs in storage or perhaps as many as 20 there to be maintained.

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Mr. Chalmers asked for Board comment; Mr. Hebert stated this is not a change of a non-conforming use, but an expansion. Mr. Bergeron stated it is really unfortunate looking back at his own experience in 1995 that he didn't say to the Board let's put a number on storage and let's put a number on repairs. Mr. Hebert stated the use of what is going on is the same, nothing has changed in the operation other than the numbers of what is being repaired and what is being stored. Mr. Bergeron agreed.

Mr. Gibbs stated part of his concern was with some of the language in the minutes; he felt this needed to be revisited by the Board because it was granted by special exception and he didn't feel he had the authority to negotiate, he felt it needed to go to the Board.

Mr. Gibbs stated the minutes state "Mr. Bergeron stated that Mr. Shackford can return to the Board to increase the number of RVs allowed. Mr. Burdette amended the motion, seconded by Mr. Howe, to allow a maximum of 25 RVs on the site." Mr. Gibbs stated it was his interpretation that they had discussed the storage and repairing, but they amended the motion to allow a maximum of 25 RVs on the site.

Mr. Cuddy stated that's the way he read it because the minutes always talked about repair and storage, and he thought they were smart to make a maximum of 25, that they weren't deciding how many had to be repair or how many could be storage, but it could be 10 for repair and 15 for storage, or it could be 20 for storage and 5 for repair; the way he read it they made it the decision of the owner on the maximum on which one would be what.

Mr. Bergeron stated he asked the Board in 1995 "...if they should set a maximum number of RVs allowed for storage." Mr. Bergeron stated that is the only quantity that was discussed. Mr. Chalmers stated on page 3, the second paragraph it was to allow a maximum of 25 RVs on the site. Mr. Bergeron stated the question was what are we going to do about the number of RVs allowed for storage because the historical use of the property had been automotive repair and before that it was agricultural equipment repair; none of that had been quantified.

Mr. Bergeron stated at that point in time the greater concern was how many units were going to be sitting on the site throughout the course of the winter. Mr. Bergeron stated that is why it was brought to 25 that would be allowed for storage because we knew the units beyond that would be in and out. Mr. Bartolomeo asked of the 43 vehicles there now how many are stored for the winter and how many are for repair. Mr. Shackford stated as of today there are 25 for storage and 16 for service and 3 units were scheduled to be dismantled; 41 units' total.

Mr. Bartolomeo asked if these vehicles are primarily stored throughout the winter for the owners. Mr. Shackford answered in the affirmative. Mr. Hebert stated he is hung up on the minutes and the detail of that. Mr. Hebert stated a business can still come to this Board regardless of what their approval was 30 years ago; the law allows them to ask to expand a non-conforming use. Mr. Hebert stated he is not necessarily looking at this as a housekeeping issue; he wasn't there so they have to go by the record that was laid and the foundation that was put.

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Mr. Cuddy stated it is a non-conforming property. Mr. Hebert stated it has a right to expand if it meets the criteria. Mr. Gibbs asked how large do you allow a non-conforming business in a residential neighborhood get before it needs to be moved to a commercial area. Mr. Hebert stated he is not saying it would be granted, but they have the right to ask. Mr. Gibbs agreed.

Mr. Bartolomeo asked if an abutter complained. Mr. Gibbs stated he received an anonymous complaint so he went to the site and confirmed the violation. Mr. Bartolomeo asked if the complaint was regarding noise, or just number of vehicles. Mr. Gibbs answered number of vehicles.

Mr. Bergeron stated they are here this evening to amend the application to increase the number of units allowed being repaired and the consideration of this application by this Board does not negate the 1995 decision. Mr. Bergeron stated one non-conforming use can be changed to a different non-conforming use if granted a special exception, so if were saying the different non-conforming use is the difference being the addition or inclusion of 20 units for repair, we can proceed along those lines and to do so he could speak to the criteria of the ordinance.

Mr. Bergeron stated the use is confined to the same lot of record, and that was confirmed back in 1995. Mr. Bergeron stated in regard to public health, safety and/or welfare, it is a licensed facility, it has been in business in this location close to three decades and in that time there hasn't been any issues relative to health, safety and/or welfare. Mr. Bergeron stated he is not aware of any impacts on adjacent property values; an abutting property sold in the summer of 2022.

Mr. Bergeron submitted a map [in file] of the neighborhood to the Board with the subject parcel outlined in yellow, and a map [in file] from google earth with imagery from the summer of 2019. Mr. Bergeron stated it clearly shows recreational vehicles stored and the maintenance facility. Mr. Bergeron stated there is an overview of the neighborhood and a more accurate view of the site itself. Mr. Bergeron stated the home that sold in the summer of 2022 sold for \$685,000.

Mr. Bergeron stated in regards to the lot owned by the Whitaker Family, Harold Whitaker was concerned about this quite some time ago, but now as of February 2023 he has a letter [in file] from Mr. Whitaker. Mr. Bergeron read the letter from Mr. Whitaker to the Board.

Mr. Bergeron stated in regards to traffic we are not increasing what has taken place on this property over the years. Mr. Bergeron stated in regard to nuisance to the neighbors the Board has heard from the Whitaker's. Mr. Bergeron stated in regard to noise, he can't speak that there is any. Mr. Bergeron stated in regards to lighting, there is lighting, but they are off at night.

Mr. Cuddy stated we had a non-conforming use back in 1995 which was granted by special exception and they added 25 vehicles 30-years ago; that seemed to be the number that probably worked back then. Mr. Cuddy stated they are coming in today to amend the special exception for a non-conforming property; his question is wouldn't it be better to add 20 to the existing numbers rather than be specific as to how many are repair and how many are storage. Mr. Bergeron stated it might make it easier for the Town from an enforcement standpoint if it was just 45-units.

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Mr. Gibbs stated that is the conversation Mr. Bergeron and he had; if the Board allows the expansion it should have a number on it no matter what it is so if you go out and count it's easy to tell if they are in violation. Mr. Shackford and Mr. Bergeron stated that was acceptable. Mr. Pierce asked if this is residentially zoned. Mr. Bergeron answered in the affirmative.

Mr. Pierce asked if in 1995 they were granted a special exception for a home business. Mr. Bergeron answered in the negative and stated there had been a grandfathered use of agricultural equipment sales and repair and then automotive repairs. Mr. Pierce stated this is a full-blown enterprise in a neighborhood. Mr. Bergeron stated the neighborhood is not small lots on top of each other; the neighborhood has existed in its present form for decades. Mr. Bergeron stated if the purpose of zoning was to not to allow this to happen it wouldn't have the opportunity to request it.

Mr. Chalmers asked for public comment; Taylor Lucy, one of the abutters, submitted a letter and three photos [in file] to the Board. Mr. Lucy stated there was a special exception granted in 1995, and he reads it that it defines 25 on premises completely, and clearly by pictures it has never been kept to 25 except during the summer potentially when the storage campers are no longer there.

Mr. Lucy stated it was denied in 2012, and at one point there was potentially 90 units on the property in 2012 which is why there was a complaint then. Mr. Lucy stated he would like the current special exception upheld; it is zoned residential agricultural, not commercial and 100% that property values are diminished by this many, certainly ours or the Whitakers.

Mr. Lucy stated our house is certainly not worth what it was during the summer; it is a year-round thing even though it fluctuates. Mr. Lucy stated storing and working on RVs could potentially contaminate the soil and drinking water with oil and sewage spillage from units. Mr. Lucy stated Burbank Road is a gravel town road up to the train tracks, there is barely 8-inches of gravel over a sand base and he would say this road is not engineered for large vehicles. Mr. Lucy stated the road is narrow, especially the entrance onto Route 302, and it is difficult for two cars to pass and virtually impossible if you meet an RV at that junction.

Mr. Lucy stated when this is denied maybe we should talk about the current special exception and how it has never been adhered, and in addition if the property is being treated as commercial it should have to adhere to other commercial rules; setbacks, greenspace, density, water runoff, and erosion control like any other commercial property in Town has to.

Mr. Hebert asked if it is true that lighting is not an issue. Mr. Lucy stated lighting is not an issue. Mr. Hebert asked if there is noise, when is it. Mr. Lucy stated during the day sometimes Mr. Hebert asked if it is disruptive at night. Mr. Lucy answered in the negative. Mr. Hebert asked in regard to traffic how often on a daily basis or weekly basis, when are things coming in and out of there. Mr. Lucy stated not so much in the winter as it is mostly storage, there is a surge in the spring and fall when they are moving them in and out, and throughout the summer there is probably six a week.

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Mr. Hebert asked when they are moving in is it at a reasonable time. Mr. Lucy answered in the affirmative. Mr. Hebert asked if he has anything specifically that he has seen or can articulate a potential hazard; have you seen stuff leaking. Mr. Lucy answered in the negative. Mr. Hebert stated so you haven't seen any problem, just that it could be a problem. Mr. Lucy agreed.

Mr. Bergeron stated Mr. Lucy indicated that there was a surge of traffic in the spring and fall, according to the tax records he purchased the property in June 2022 so he was not there in the spring. Mr. Lucy stated that is correct. Mr. Bergeron stated that Mr. Lucy indicated that the road is not constructed to reasonable standards yet we know have 30-years of experience with RVs back and forth over it and before that it was all agricultural equipment.

Mr. Bergeron asked Mr. Shackford if he maintains the road after the tracks because it is private. Mr. Shackford answered in the affirmative. Mr. Bergeron stated it is a town road up to the tracks and we are not familiar with any history of problems on that road in terms of town maintenance. Mr. Bergeron stated in terms of environmental concerns, he has been to Mr. Shackford's shop and if you are a licensed business you need to maintain appropriate standards for waste and so on.

Mr. Bartolomeo asked if he has a dump station for sewage on this property. Mr. Shackford answered in the negative and stated that he does not change oil and he doesn't dump waste. Mr. Bartolomeo asked if he asks people who are storing to take care of their waste. Mr. Shackford stated before they leave the campground they will usually dump, but as a rule the time they are sitting there they are empty.

Mr. Bartolomeo stated in regard to the diminution of property values, it is hard to prove. Mr. Bergeron stated the property sold in June 2022, the valuations shown for properties is generally not where the selling price is going to be. Mr. Bergeron stated the Town's total assessed value of this property is \$346,400 and it sold \$685,000. Mr. Bergeron stated it is hard to say that there is a diminution in value; the Town of Conway's values are not at less than 50%.

Mr. Bergeron stated he thinks it is fair to say that Mr. and Mrs. Lucy drove back and forth, he would guess, past this property of Mr. Shackford's a couple times when considering purchasing their home. Mr. Lucy stated we did, but we also had an understanding that there were only 25 allowed on the premises. Mr. Lucy stated as far as property values, they paid \$685,000, but potentially if it wasn't there that same property we would have paid a \$1 million for. Mr. Chalmers stated you did your due diligence and your expectation was that there was only 25. Mr. Lucy agreed. Mr. Chalmers closed public comment.

Mr. Bergeron asked what is the Board voting on. Mr. Chalmers stated the Board discussed setting an all-inclusive number versus repair or storage. Mr. Bartolomeo stated a not to exceed number. Mr. Chalmers stated he thinks it will make it a lot cleaner for the Town and the applicant. Mr. Hebert stated some people interpret that as it was 25 period, but that is not your interpretation. Mr. Bergeron stated that is correct. Mr. Bergeron stated his original thought was that it was 25 for storage and the number for repair had never been quantified. Mr. Cuddy stated that is Mr. Bergeron's interpretation, and not what the minutes really reflect.

Mr. Chalmers read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Hebert, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** Mr. Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers read item 2. **Mr. Bartolomeo 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. Chalmers asked for Board comment; Mr. Pierce asked how do you define welfare. Mr. Bartolomeo stated he thinks it would be easier to identify something that was deleterious to the public's welfare then to say what is welfare. Mr. Hebert stated he tried to pull that out in discussion when he asked if there were any specific hazards that had been seen or encountered or if it was that it could happen; there was nothing that was brought up that was a welfare issue. **Motion carried unanimously.**

Mr. Chalmers read item 3. **Mr. Bartolomeo made a motion, seconded by Mr. Hebert, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** Mr. Chalmers asked for Board comment; Mr. Pierce stated he thinks it has a huge effect on values. **Motion carried with Mr. Hebert, Mr. Cuddy and Mr. Bartolomeo voting in the affirmative and Mr. Pierce and Mr. Chalmers voting in the negative.**

Mr. Chalmers read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Hebert, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Mr. Chalmers asked for Board comment; Mr. Chalmers stated there was testimony that there is approximately six per week. **Motion carried with Mr. Hebert, Mr. Cuddy and Mr. Bartolomeo voting in the affirmative and Mr. Pierce and Mr. Chalmers voting in the negative.**

Mr. Chalmers read item 5. **Mr. Hebert made a motion, seconded by Mr. Bartolomeo, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated there is already one neighbor that doesn't like it; nuisance is pretty broad. **Motion defeated with Mr. Hebert, Mr. Cuddy, and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Chalmers voting in the affirmative.**

Mr. Chalmers read item 6. **Mr. Hebert made a motion, seconded by Mr. Bartolomeo, that the proposed use has the same or lesser impact on the neighborhood relative to noise.** Mr. Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers read item 7. **Mr. Hebert made a motion, seconded by Mr. Bartolomeo, that the proposed use has the same or lesser impact on the neighborhood relative to nighttime lighting.** Mr. Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Bartolomeo made a motion, seconded by Mr. Hebert, 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 allow an additional 20 RV vehicles on this property with a not to exceed total number of 45 be granted. Motion defeated with Mr. Pierce, Mr. Chalmers and Mr. Hebert voting in the negative and Mr. Bartolomeo and Mr. Cuddy voting in the affirmative.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Hebert, to approve the Minutes of December 21, 2022 as written. Motion carried unanimously.

Meeting adjourned at 8:25 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant