

**CONWAY ZONING BOARD  
OF ADJUSTMENT**

**MINUTES**

**AUGUST 22, 2007**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 22, 2007 at the Conway Town Office in Center Conway, NH, beginning at 7:36 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Alternate, Cynthia Briggs; Alternate, Sheila Duane; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**APPOINTMENT OF ALTERNATE MEMBER**

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

**PUBLIC HEARINGS**

A public hearing was opened at 7:36 pm to consider a **SPECIAL EXCEPTION** requested by **H. CAROL LYNCH** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow the existing driveway to remain in the wetland buffer to service three-lots and an existing commercial use at 539 Intervale Crossroad, North Conway (PID 214-42.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 10, 2007.

Mia Gannon of Thaddeus Thorne Surveys and Michael Lynch appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked which lot is the commercial use going to remain on. Ms. Gannon answered the commercial use would remain on the newly created lot. Mr. Colbath asked if it is the lot associated with the barn. Ms. Gannon answered in the affirmative. Mr. Irving asked if the commercial use is the landscaping business. Mr. Lynch answered in the affirmative. Mr. Irving asked if the commercial use is in the hatched area on the plan. Mr. Lynch stated that there may be a few piles of loam outside the hatched area at the moment, but the intent is to have it in the hatched area.

Mr. Bartolomeo asked other than the commercial use being noted on the plan, is there any difference from this application to the first application [File #07-28]. Mr. Irving stated that it indicates a more intensive use. Ms. Duane stated that it also documents the commercial use in case it is challenged later. Mr. Bartolomeo asked if this is a home occupation. Mr. Irving answered in the negative and stated that it is a grandfathered commercial use. Mr. Lynch stated that this business has been in operation since 1960. Mr. Irving stated that they would have a lot with a home and a second lot with a barn, a commercial use and a proposed dwelling. Mr. Irving stated that the business was never deemed a home occupation.

**ADOPTED: September 26, 2007 – As Written**  
**CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 22, 2007**

Ms. Gannon stated that the commercial use pre-dated the home. Ms. Duane stated that another business could not be added to the lot. Mr. Irving stated the only permitted use is the currently existing non-conforming use. Mr. Irving stated that this is documenting what legally exists and to change that would have to go through some other applications.

Mr. Bartolomeo asked if the occupant of the proposed house would have a relationship with the business. Mr. Lynch stated that it would be a home for his son, which works for the landscaping business. Carol Lynch stated that there have been several businesses starting with an excavation company, then a foundation company with snow plowing, haying and farm work and when her husband passed away in 1974, her sons took over and continued with the excavation company. Ms. Lynch stated that it is not just a landscaping company as they snow plow in the winter. Ms Sherman stated that it would be considered property maintenance.

Mr. Irving asked if there is any other commercial use on this property other than the landscaping business. Mr. Lynch answered in the negative. Mr. Irving stated that the only use is the landscaping business in the area shown on the plan. Mr. Lynch answered in the affirmative.

Harold Shaw asked what about the taxi business that was there. Ms. Lynch stated the owners of the taxi business were putting a new foundation under their home and needed a space for their vehicles, so she is renting them the padded space. Mr. Shaw stated if there was an interruption in the landscaping business could it start again. Mr. Irving stated that the property owner would have to willingly and knowingly and take an overt action to abandon the use. Mr. Irving stated simply ceasing the operation doesn't necessarily abandon the use.

Mr. Irving asked if the taxi business is renting space on this property. Ms. Lynch answered in the affirmative. Mr. Irving stated that it is not a permitted use and would have to stop. Ms. Lynch stated that she would have it stopped.

Mr. Shaw asked if the dump trucks and the tractor-trailer were a part of the landscaping business. Mr. Lynch answered in the affirmative. Mr. Shaw asked why is the loader always running. Mr. Lynch stated that it is a part of the landscaping business. Mr. Chalmers stated that you get delivery of materials and then reload it for your use. Mr. Lynch agreed. Ms. Duane asked if it is being sold to the public. Mr. Lynch answered in the negative.

Mr. Irving asked if a permit from the State has been received for the wetlands. Ms. Gannon stated Wes Smith of Thaddeus Thorne Surveys was dealing with this application so she did not know if a Wetlands Permit has been issued. Mr. Irving stated he does not know if one is necessary as this is crossing the wetland buffer. Mr. Shaw asked if the Kearsarge Lighting Precinct would see this application. Mr. Irving stated that they would have to address this application under the subdivision review process.

**ADOPTED: September 26, 2007 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 22, 2007**

Ms. Sherman asked if this would change anything on the driveway. Mr. Lynch answered in the negative. Mr. Chalmers asked if this use was to continue and the land was not subdivided would they be required to apply for any permits. Mr. Irving answered in the negative and stated the subdivision triggered the wetland issue. Mr. Chalmers stated the only additional impact is the cars to the proposed house as the existing use can continue. Mr. Colbath stated since it exists there really is not an impact. Mr. Colbath stated that he agrees with Mr. Chalmers.

Mr. Shaw asked when was the existing house constructed. Ms. Lynch stated that they started constructing the house in 1959 and moved in 1960. Mr. Lynch stated that he stopped the snow plowing for a few years. Mr. Irving stated just because we are treating this an existing non-conforming use does not mean the Kearsarge Lighting Precinct will agree.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** 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. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** 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 §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the existing driveway to remain in the wetland to service three-lots and an existing commercial use to be granted. Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of July 25, 2007 as written. Motion unanimously carried.**

Meeting adjourned at 8:10 pm.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant