

ZONING BOARD OF ADJUSTMENT

MINUTES

OCTOBER 16, 2013

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 16, 2013 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Dana Hylan; Luigi Bartolomeo; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. David Pandora, Building Inspector, was in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **JANET MCMAHON** in regards to §147.13.4.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 368 Kearsarge Road, North Conway (PID 214-23.1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2013.

Janet and Jack McMahon appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearing until a five member Board is present. Mr. McMahon agreed to proceed with four members. Mr. Irving explained that only having four members is not a reason to request a rehearing. Mr. and Ms. Mahon understood.

Mr. McMahon stated they would like to use the existing unit as an accessory apartment and construct a new building to be the main house. Mr. McMahon stated that the accessory apartment has been there for more than 50 years. Mr. Bartolomeo stated the existing building is the accessory apartment and the new building would be the owner-occupied house. Mr. McMahon agreed. Mr. Bartolomeo asked the size of the existing building. Mr. McMahon answered 22' x 25' and is one-story. Ms. Sherman asked about parking. Mr. McMahon stated there are four spaces available.

Mr. McMahon stated that the existing building is within the setback, however, they would like to put a foundation under the existing building and move it further out of the setback. Mr. McMahon stated that the existing building would still have some non-conformity even if it is moved as it would not be completely moved out of the setback. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylan, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the apartment is no less than 300 square feet and no greater than 800 square feet.** 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 apartment is architecturally compatible with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that based on the forgoing findings of fact, the Special Exception pursuant to §147.13.4.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

A public hearing was opened at 7:37 pm to consider a **VARIANCE** requested by **MELVIN BATCHELDER** in regards to §147.14.2.2.4 of the Conway Zoning **Ordinance to allow a three-dimensional expansion by adding a second story to the existing two-dimensional footprint within the Floodplain Conservation Overlay District** at 27 C Road, Conway (PID 251-115). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2013.

Melvin Batchelder and Wes Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearing until a five member Board is present. Mr. Smith stated they would like to wait until there are five members available.

Mr. Bartolomeo made a motion, seconded by Mr. Colbath, to continue the hearing for Melvin Batchelder until November 20, 2013 at 7:30 pm. Motion unanimously carried.

A public hearing was opened at 7:40 pm to consider a **VARIANCE** requested by **LAWRENCE SULLIVAN** in regards to §147.13.16.3.1 of the Conway Zoning Ordinance **to install a pergola over an existing deck within the 75-foot wetland setback** at 538 Old Bartlett Road, North Conway (PID 203-92). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2013.

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Lawrence Sullivan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearing until a five member Board is present. Mr. Sullivan agreed to proceed with four members. Mr. Irving explained that only having four members is not a reason to request a rehearing. Mr. Sullivan understood.

Mr. Sullivan stated he wanted to cover part of a porch which he already did and they wanted to put a pergola over a portion of the porch. Mr. Sullivan stated that a pergola is an open air trellis. Mr. Sullivan stated that we submitted the plans to the building inspector, which were approved, but then realized that a variance issued in 2009 prevented anything above the railings.

Mr. Bartolomeo stated that Mr. Sullivan is a former client of his and just putting it out there in case anyone has a problem. Mr. Bartolomeo and Mr. Sullivan agreed that it would not be a conflict. Mr. Bartolomeo stated that pergolas were used for grape vines which then provided shade to keep it cool below; they are roofless structures, light and airy and minimally invasive.

Ms. Sherman asked public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the variance will not be contrary to the public interest.** 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 the spirit of the ordinance is observed.** 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 substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Mr. Colbath stated there was no testimony to that and there were no abutters in attendance. **Motion unanimously carried.**

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

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

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

Ms. Sherman read item 5.b. Ms. Sherman read item 5.b. Mr. Colbath made a motion, seconded by Mr. Hylen, that item 5.b is not necessary. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Bartolomeo that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to install a pergola over an existing deck within the 75-foot wetland setback be granted. Motion unanimously carried.

A public hearing was opened at 7:53 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **GIBSON CENTER FOR SENIOR SERVICES INC** in regards to §147.13.7.4 of the Conway Zoning Ordinance **to allow an HVAC condenser to remain within the side setback** at 14 Grove Street, North Conway (PID 218-137). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2013.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearing until a five member Board is present. Mr. Bergeron agreed to proceed with four members. Mr. Irving explained that only having four members is not a reason to request a rehearing. Mr. Bergeron understood.

Mr. Bergeron stated as we were developing the site we had a bit of an issue with another item on the site that was not on the site plan; there was an electrical panel which was added to the site plan, but when submitting a revised plan it was discovered that the air conditioning unit was in the setback. Mr. Bergeron stated that they moved it as much towards the building as they could to reduce the amount in the setback. Mr. Bartolomeo stated there are not a lot of options to where it could have gone. Mr. Bergeron agreed.

Mr. Colbath asked if the plantings were already there. Mr. Bergeron stated some were there and some were planted. Mr. Irving read a letter from abutters, Judy and Fred Fallen, who were in favor of the 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 the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** Ms. Sherman asked for Board

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comment; Mr. Bartolomeo asked if this showed up on the building permit application. Mr. Bergeron stated it was on the building plans, but in fairness to Town Hall it was not the same as the site plan. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** 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 physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the equitable waiver of dimensional requirement from §147.13.7.4 of the Town of Conway Zoning Ordinance to allow an HVAC condenser to remain within the side setback be granted. Motion unanimously carried.

A public hearing was opened at 8:01 pm to consider a **VARIANCE** requested by **BRIAN AND GOLDIE BACHELDER** in regards to §147.13.1.4 of the Conway Zoning Ordinance **to allow the existing structure to remain in the front setback** at 19 B Road, Conway (PID 251-32). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2013.

Paul Tripp and Brian and Goldie Bachelder appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearing until a five member Board is present. Mr. Tripp agreed to proceed with four members. Mr. Irving explained that only having four members is not a reason to request a rehearing. Mr. and Mrs. Bachelder understood.

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Mr. Tripp stated that a corner of the trailer is within the 25-foot front setback. Mr. Tripp stated they would like the trailer to remain where it is situated as it is attached to a deck and a porch. Mr. Tripp stated to move it out of the setback would put the heating unit into the porch area, and would likely then encroach into the side setback. Mr. Tripp stated that it is a very small lot.

Mr. Tripp stated that the hardship with moving the trailer forward would put a vent into the approved porch creating an unsafe situation; it also might move the trailer into the side setback. Mr. Tripp stated that they believe substantial justice would be done as their uncle was just granted a variance on the lot next door for the very same thing. Mr. Tripp stated that this lot is out of the flood zone. Mr. Tripp stated that it would be in the public's best interest and it would not diminish surrounding property values. Mr. Tripp stated that they believe the spirit of the ordinance is met.

Mr. Colbath asked how long has it been there. Ms. Bachelder answered eight years. Mr. Colbath asked if this trailer replaced something else. Ms. Bachelder answered in the affirmative. Mr. Colbath asked if this is a seasonal or yearly site. Mr. Bachelder answered seasonal. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the variance will not be contrary to the public interest.** 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 the spirit of the ordinance is observed.** 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 substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

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

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

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

Ms. Sherman read item 5.b. Mr. Colbath made a motion, seconded by Mr. Hylen, that item 5.b is not necessary. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the existing structure to remain in the front setback be granted. Motion unanimously carried.

A public hearing was opened at 8:15 pm to consider a **SPECIAL EXCEPTION** requested by **ML HOLDINGS/CMF TRANSPORTATION** in regards to §147.14.1.2 of the Conway Zoning Ordinance **to change the use from a Fair Point Communications garage and storage to a transportation trucking company garage and storage** at 38 Melody Lane, Center Conway (PID 258-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2013.

James Mulkin, owner of the property, and Al Landano of CMF Transportation appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearing until a five member Board is present. Mr. Landano agreed to proceed with four members. Mr. Irving explained that only having four members is not a reason to request a rehearing. Mr. Mulkin and Mr. Landano understood.

Mr. Landano stated the building was previously occupied by Fair Point Communications and they had 25-30 employees and service trucks. Mr. Landano stated that CMF has approximately between 6-10 trucks and about 10 employees. Mr. Landano stated when speaking with Mr. Irving he thought some of the issues might be traffic and noise. Mr. Landano stated that Fair Point operated seven days a week; five full days and part time on the weekend. Mr. Landano stated that they made a minimum of 100 trips per day; based on 5 days that would be 500 trips plus weekends would put it about 600 trips per week. Mr. Landano stated that his company would do 60 -100 trips per week.

Mr. Landano stated most of his traffic would be Mondays and Fridays. Mr. Landano stated they leave on Monday, go to New York or New Jersey, and return with loads for local businesses. Mr. Landano stated they drop off their loads and then return to the site to drop their trucks off on Fridays. Mr. Bartolomeo stated from a numerical point of view, it seems to be a lesser impact than the previous use. Ms. Sherman asked how many tractor trailers Fair Point had. Mr. Mulkin stated they didn't have tractor trailer vehicles, but they repaired their vehicles on site and they did have big trucks. Mr. Landano stated that the overall impact would be less as they were on the road.

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Mr. Colbath asked if Fair Point serviced or maintained their vehicles at the garage on site. Mr. Landano answered in the affirmative. Mr. Landano stated maybe on Saturdays and a couple of hours on Sunday. Mr. Landano stated that maintenance would be on their vehicles only and inside only. Mr. Irving submitted a letter to the Board from James and Claudette Brown. Mr. Bartolomeo asked if they have to pass the Melody Lane Condominiums. Mr. Landano answered in the negative and stated they are located in the back. Mr. Landano stated that they would not be traveling the private way of Melody Lane.

Ms. Sherman asked for public comment; Tony Teolis stated that he was on the Board of the Melody Pines Association; he submitted aerial photos and 31 letters from Condominium owners expressing their feelings toward the project. Mr. Teolis stated there are conditions that have to be met in order for a Special Exception to be granted; in regard to safety and traffic, summers and weekends are very busy and this is a newly paved semi-private road and since we cannot restrict access Fair Point constantly used their entrance. Mr. Teolis stated that they cannot be assured that they will not use their road and it only takes one truck and one child to be at the same place at the same time for an accident to happen. Mr. Teolis stated that they used their entrance to avoid the sharp right hand turn on the Town portion of Melody Lane.

Mr. Teolis stated this use would have a negative impact on their property values and Karl Siebold, a realtor who is in attendance, will give his take on the property value issue. Mr. Teolis stated in regard to noise pollution, Fair Point was a Monday thru Friday operation. Mr. Teolis stated Fair Point had 10 small vehicles and there will be more numerous and larger vehicles from CMF. Mr. Teolis stated that we do not feel this special exception should be granted. Mr. Bartolomeo asked if Fair Point would use their road for their larger trucks. Mr. Teolis stated with their bucket trucks, not tractor trailers.

Mr. Mulkin stated that we cannot control what Fair Point did in the past and would be willing to agree to not use their portion of Melody Lane. Mr. Bartolomeo asked if a tractor trailer could use the Town owned entrance. Mr. Landano answered in the affirmative and stated there is absolutely no reason to use their entrance. Mr. Bartolomeo asked the zoning in this area. Mr. Irving stated that this is in the residential agricultural district and is a nonconforming use. Mr. Landano stated that the impact is going to be so much less; trucks will be worked on inside and he really believes you will see less of an impact. Mr. Landano stated there will be no late nights as he goes home at 6 and his drivers are somewhere in the northeast.

Mr. Teolis stated the proximity to their buildings is very close. Mr. Bartolomeo asked what would go on at the back corner of the property. Mr. Landano stated there will be four or five trailers parked in that area. Mr. Bartolomeo asked if there would be any additional site lighting. Mr. Landano answered in the negative. Mr. Teolis stated they approached Fair Point about their road and they would still drive through. Ms. Sherman stated it could be a condition of approval. Mr. Irving stated the town could not enforce that condition.

Mr. Colbath asked what the existing covered pad at the back of the property was used for. Mr. Landano stated it was used to store cable and he is not sure what they would use it for as it is too low for a truck.

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Scott Sullivan, unit 7A, stated that he is the closest to the proposed site and he is opposed to the application. Mr. Sullivan stated that his window is less than several feet from the lot line and he cannot see why this would be a benefit to the surrounding properties or to the Town. Mr. Sullivan asked if there would be enforceable hours; will the noise be contained onto their lot, and is there a base line for noise in a residential neighborhood.

Mr. Sullivan asked if truck fumes would go onto their lots; would the vibration from their lot be felt on his property, how much and is it enforceable. Mr. Sullivan stated the Fair Point property operated unnoticed, used the lot area as an accessory use and the truck traffic was minimal. Mr. Sullivan stated that the applicant is promoted to be a heavy hauler and offers a range of services.

Mr. Mulkin stated that the use is going to be less than what was there before. Mr. Landano stated that they do not haul liquids; they do heavy hauling, but they go to a place, load our places heavy and they leave. Mr. Landano stated when we come back were empty and when we leave we are empty. Mr. Landano stated that they believe they will be a good neighbor and there will be more noise on Route 302 then from their operation. Mr. Landano stated that their trucks will start, leave and be gone for the week. Mr. Landano stated that he does not want to disturb anyone; he wants to run his business. Mr. Landano stated there is no reason why we would want to go into their area; safety is a priority to them too.

Mr. Sullivan stated they are promoting liquids. Mr. Landano stated liquids are bottled water from Poland Spring. Karl Siebel, unit 36, stated this is a residential area and this Board cannot guarantee this is going to have the same type of existence here. Mr. Siebel stated we are asking that you deny the change of use for CMF. Mr. Mulkin asked how you can deny an application based on that they might do something else other than what is on the application.

Glen Krumholz, Unit 41, stated that they are concerned with their property values. Mr. Krumholz stated that Fair Point usually did not work on Saturdays and he doesn't think there were ever 25 trucks or employees. Mr. Colbath stated when you purchased your unit it was a commercial property and asked if the Condominium Association considered purchasing the property. Mr. Teolis stated that it has not come up.

Jim Zepp, Unit 21, stated the cut through was mostly deliveries; and he never saw 25 trucks there, that is not true on the amount of traffic they were generating on that road. Mr. Zepp stated that we are seeing big rigs here which generate up to 95 decibels which is a lot more than the small rigs of Fair Point. Mr. Zepp asked the lighting plan for the facility; what the noise would be and would the vehicles be idling at night; what are the braking systems and stated that the impact on the noise is going to be greater than what was there before.

Mr. Krumholz stated the difference between the two specifically is that Fair Point you saw as a friend, as you would invite them into your home to install your TV and internet; this will certainly not increase our property values and there is a strong possibility that it will decrease the property values.

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Mr. Mulkin stated that you wouldn't see a lot of the Fair Point trucks as a lot of them would take them home at night, but would have to come in to get their assignments every morning. Mr. Mulkin stated there were a lot of trips. Mr. Krumholz stated they did not take them home they brought their own cars and the trucks came back every evening. Mr. Landano stated that he spoke with employees of Fair Point and they are the ones who told him the number of employees. Mr. Landano stated that the garage can hold a lot of trucks, too.

Susan Sullivan, Unit 7A, stated that she has never seen four Fair Point trucks in the yard and in the evening it was lights out and business is done. Ms. Sullivan stated that they will hear those trucks coming in. Ms. Sullivan stated that she does not see how a large truck will be able to negotiate that turn. Ms. Sullivan stated that this use would impact this area by noise and pollution on their property.

There was a brief discussion regarding decibels. Mr. Sullivan stated that it is not just decibels it is the low frequency that will be felt as well. Mr. Sullivan stated that this is a different use. Mr. Mulkin stated there will not be a change of use. Mr. Landano stated that they are not changing the lighting and he would be willing to decrease the amount of time the lights are on. Mr. Bartolomeo asked what the hours of operation are. Mr. Landano answered 8 am to 6 pm Monday through Friday and the usage is very minimal, but you have these trucks that you need to park somewhere at some point.

Ed O'Halloran of Badger Realty stated that he is involved in the transaction and this has been a commercial property for 30 years on a continuous basis. Mr. O'Halloran stated that it is going to be a lesser impact. Mr. O'Halloran stated who they spoke with stated there were 25 trucks and this has been a commercial property in front of the Condominiums since day one of the Condominiums. Mr. O'Halloran stated that this is the same work, but different vehicles.

Donna Cormier, Unit 49, stated that she has never seen 25 trucks; she saw 10 or 12 personal vehicles. Joan Krumholz, Unit 41, asked what if that all changes and they don't use it the way they say they are going to use it. Mr. Krumholz stated that there are not differencing types of commercials. Ms. Sherman closed the public hearing at 9:22 pm

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** 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 the proposed use has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** Ms. Sherman asked for Board comment; Mr. Hylen stated that he used to live in Melody Pines and he is in complete agreement with the abutters that this would be a much greater impact to the neighborhood. Mr. Bartolomeo asked even with restricted access. Ms. Sherman stated that the Town cannot enforce that. Mr. Hylen stated that the whole area is a neighborhood, which is an area where people walk and run; the tennis courts and recreation are down the street. Mr. Hylen stated that he finds it hard to say that it would be the same or lesser,

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but this would be a greater impact. **Motion defeated with Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hylen and Ms. Sherman voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** Ms. Sherman asked for Board comment; Mr. Hylen stated from his personal experience, he never really paid any attention to Fair Point, but had there been a trucking business there he would not have moved there. **Motion defeated with Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hylen and Ms. Sherman voting in the negative.**

Ms. Sherman reads item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Ms. Sherman asked for Board comment; Mr. Hylen stated there is a difference between big trucks and little trucks, they are not the same and they would have a different impact, not the same impact. Mr. Hylen stated he is familiar with the trucks Fair Point worked on and he knows someone when he worked there and only took his truck home when he was on-call. Mr. Hylen stated that this would be a greater impact. **Motion defeated with Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hylen and Ms. Sherman voting in the negative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; Mr. Hylen stated this use will cause more of an impact on neighbors in regard to nuisance. Mr. Colbath stated that he does not live in this neighborhood and it seems to be the same type of business, but he is very bias as the abutters made an effort show there is a nuisance and he believes if they feel that strongly that there is a nuisance then he should agree with them. **Motion defeated with Mr. Bartolomeo voting in the affirmative and Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the negative.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use has the same or lesser impact on the neighborhood relative to noise.** Ms. Sherman asked for Board comment; Mr. Hylen stated that the noise from a bigger truck is going to create a bigger noise. **Motion defeated with Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hylen and Ms. Sherman voting in the negative.**

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

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.14.1.2 of the Town of Conway Zoning Ordinance to change the use from a Fair Point Communications garage and storage to a transportation trucking company garage and storage be granted. Motion defeated with

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Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hylan and Ms. Sherman voting in the negative.

Ms. Sherman explained the rehearing process.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Colbath, to approve the Minutes of August 21, 2013 as written. Motion carried with Ms. Sherman abstaining from voting.

Meeting adjourned at 9:40 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Recording Secretary