

ZONING BOARD OF ADJUSTMENT

MINUTES

APRIL 16, 2014

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 16, 2014 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Luigi Bartolomeo; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Peter Malia, Town Attorney, was in attendance.

PUBLIC MEETING

A public meeting was opened at 7:00 pm for clarification in accordance with the Court Order dated February 3, 2014 by Justice Stephen M. Houran and issued by Notice of Decision dated March 11, 2014 of the ZBA's interpretation on what constitutes qualified frontage relative to §147.13.7.6.14.2 regarding Hancock White Mountain LLC Case #13-11 for an Appeal from Administrative Decision at 2451 White Mountain Highway, North Conway (PID 219-228).

Chris Meier of Cooper Cargill Chant was in attendance. Mr. Malia stated on January 20, 2013 a sign application was filed; they had a 30-square foot sign and wanted a 70-square foot sign. Mr. Malia stated that the application was denied as James Yeager determined that the qualified frontage was on White Mountain Highway and did not meet the requirement to use the incentive.

Mr. Malia stated that the applicant appealed Mr. Yeager's decision and the Board held a public hearing in March 2013 where the Board upheld Mr. Yeager's decision. Mr. Malia stated that the applicant then filed a Motion for Rehearing which the Board denied in May 2013. Mr. Malia stated that the applicant filed with the Court in June 2013. Mr. Malia stated that the Court issued a decision in February 2014 and remanded it back to this Board. Mr. Malia asked if the Board had read the decision. All Board members acknowledged that they read the decision.

Mr. Malia stated the issue is what constitutes frontage. Mr. Malia stated that the Court remanded this case back to the Board to clarify the Board's decision on why the Board accepted White Mountain Highway and not Depot Road. Mr. Malia stated that they did discover that there was a math error made by Shawn Bergeron; he represented that this lot had 180-feet of frontage on White Mountain Highway, 233-feet on Depot Road and 218-feet on the North-South Road.

Mr. Malia stated that this lot does not have frontage on the North-South Road and it actually has 340-feet of frontage on Depot Road. Mr. Malia stated if the Board considers both roads, White Mountain Highway and Depot Road, as qualifying frontage then the applicant would meet the incentive requirement and the Board could overturn Mr. Yeager's decision, but if the Board still disallows Depot Road then the Board needs to clarify for the judge why it does not consider Depot Road to qualify as frontage.

Adopted: June 18, 2014 – As Written
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Chris Meier stated in regard to the initial application two abutters did show up and both were in favor of the application. Mr. Colbath stated so there is no frontage on the North-South Road; it is owned by someone else. Mr. Malia stated it is owned by the State of New Hampshire. Mr. Meier stated that his client does not need the North-South Road frontage to meet the requirement of the incentive. Mr. Colbath asked what signs are allowed on that site. Mr. Irving stated they have a 30 square foot freestanding sign without the incentive. Mr. Colbath asked what about the sign on the building facing the North-South Road. Mr. Irving stated that they are entitled to a wall sign.

Ms. Tobin stated that her reasoning was that they had an entrance on Route 16 and there is no access onto Depot Road or the North-South Road; her decision was based on the fact that there was no access. Mr. Bartolomeo stated that his reasoning for discounting Depot Road was the language in §147.13.7.3 “All lots must front on a street...” and “To qualify as frontage the lot must have access rights to the subject highway or road”. Mr. Meier stated there is no definition of frontage; you have to look at how it is defined in each section. Mr. Meier stated when the ordinance was drafted the writers decided to not include access in the sign section.

Mr. Bartolomeo stated it has been our procedure that if it is not clear then the stricter restriction applies and that stricter restriction is under lots. Mr. Colbath stated he thinks this was all in the minutes; he saw it as a unique lot that had frontage on three sides, but now does not have frontage on the North-South Road.

Mr. Meier stated there is no documentation that states that they don't have access rights; he would agree that they don't currently have access. Mr. Meier stated that Hancock does have access rights on Depot Road, but they have to come back to the Town to furnish it. Mr. Bartolomeo stated the ordinance indicates only “a” road and only one is your frontage; don't think we can claim every single road that the lot abuts as frontage.

Mr. Chalmers stated that we have a front yard, two side yards and a backyard. Mr. Irving stated that the setback is set back from road right of ways; frontage and front setbacks are not necessarily defined the same way. Mr. Irving stated typically, in most districts, the front setback is greater than what is known as the side and rear setbacks, but in the village districts it is only 5-feet.

Mr. Malia stated although frontage is addressed under §147.13.7.3, it is not defined in the definitions section of the ordinance. Mr. Malia stated that Mr. Meier pointed this out in oral argument and Mr. Meier argued that §147.13.7.3 is a qualifier to lot size not to the sign incentive and if it was for the sign incentive it would have been put in that section of the ordinance. Mr. Malia stated that the sign incentive requirement does say frontage on a qualified road, and “a” seems to indicate a single road.

Mr. Bartolomeo stated nowhere in the ordinance does it say you can string together or use accumulative roads to meet the road frontage requirement. Mr. Meier stated that he would disagree; if it qualifies as frontage then it qualifies. Mr. Meier stated that the ordinance doesn't say that it has to be on a single road. Mr. Hylen stated he does not know why the Board is

hearing more testimony when we are just supposed to tell the judge why we disqualified Depot Road. Mr. Hylen stated that he would agree with Mr. Bartolomeo.

Ms. Sherman asked who was in attendance at the first meeting. Mr. Irving stated that Ms. Sherman, Mr. Colbath, Mr. Chalmers and Mr. Bartolomeo attended the March 20, 2013 meeting. Ms. Sherman stated that she agrees with Mr. Bartolomeo, primarily with “a” and using the definition from the lot frontage section.

Mr. Bartolomeo made a motion, seconded by Mr. Bartolomeo, that the Board finds by way of clarification for the Court the reason for upholding Yeager’s decision was language found in §147.13.7.3 and §147.13.7.6.14.2 which uses the singular “a” when talking about frontage road. Motion carried with Mr. Chalmers, Mr. Bartolomeo and Ms. Sherman voting in the affirmative, Mr. Colbath voting in the negative and Mr. Hylen abstaining from voting.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of March 19, 2014 as written. Motion unanimously carried.

ELECTION OF OFFICERS

Mr. Colbath nominated, seconded by Mr. Chalmers, Ms. Sherman as Chair. Motion unanimously carried.

Mr. Hylen nominated, seconded by Mr. Chalmers, to nominate Mr. Colbath as Vice Chair. Motion unanimously carried.

Meeting adjourned at 7:43 pm.

Respectfully Submitted,



**Holly L. Meserve
Recording Secretary**