

Town of Cornish, New Hampshire
Zoning Board of Adjustment
PUBLIC HEARING MINUTES UNAPPROVED
December 4, 2023

The Zoning Board of Adjustment met on Monday, December 4, 2023 at 6:30pm at the Cornish Town Hall to hear Case 23-02, James & Diane Liggett for a Special Exception.

Present for the ZBA: Kate Freeland, Merilynn Bourne, Kerry Osgood, Troy Simino and Alternate David Haseman sitting in for Michael Fuerst. Mr. Fuerst recused himself due to his attorney/client relationship with the Liggetts. Karim Chichakly and Lyle Parry were absent

Applicants Present: James Liggett and Jamie Miller

Present for the Public:

Michael Belanger was omitted from the list of abutters but was contacted directly by James Liggett and told of the hearing. Mr. Belanger was present and stated he has waived his right to receive certified mail notification. Sharona Sylvester, abutter, and Garrett Glasscock were also present.

The meeting was called to order at 6:30 pm

Merilynn Bourne, Clerk, called the roll. The Clerk, provided the Board with the Hearing Invoice to present to the Liggetts. The fees being paid, the Clerk read the Notice of Hearing and announced the date of publishing in the Valley News as well as the dates of public posting. The Clerk then reported on Certified Notices sent to all abutters as well as receipts returned.

James and Diane Liggett filed an Application for a Special Exception, under Article IV Section C (19)a Expanded Cottage Industry, of the Cornish Zoning Ordinance.

Kate Freeland, acting Chair, explained the hearing process and then invited the applicant to speak.

James Liggett explained that the Selectmen sent him to the ZBA because his use of Expanded Cottage Industry has never gone through the Zoning Board. Mr. Liggett explained that his daughter Jamie will be taking over the business which has been in operation since 1982. The property is a 65-acre farm with road frontage (Rt.12-a) on the east side of the property. His business is licensed by the state of New Hampshire and has operated for over 41 years. His home was built in 1769 and is the oldest house in Cornish. Mr. Liggett has tried to uphold the historic nature of the home.

Mr. Liggett then reviewed the criteria for Special Exception for Expanded Cottage Industry. Ms. Freeland read the criteria for approval with Mr. Liggett responding.

In order for a Special Exception for Expanded Cottage Industry to be granted, the proposed use shall comply with the following:

a) The Business shall be conducted principally on the residential premises.

J.R. Liggett LTD. Conducts its business principally on our residential premises.

b) The business shall be carried on by a person only within the building used by him or her as [his or her private residence or within accessory structure(s).

J.R.Liggett LTD. business is carried on by the owners within the accessory structures.

c) The business shall not occupy :

i) Accessory building(s) built after March 1996 within a total footprint greater than 10,000 square feet

1. No accessory building has a total foot print greater than 10,000 sq. ft.

ii) An area within the private residence and the accessory building(s) in excess of a total of 15,000 square feet.

2. The total square footage of accessory buildings with "proposed" building will be 9,291 sq. ft.; total allowable under current zoning ordinance is 15,000 sq.ft.

iii) An area greater than 25% of the finished floor area of the residence except for structures in existence on March 1996.

3. No business is conducted within the residence.

d) The business shall employ no more than 20 (20) full-time employees or their equivalent working on the premises other than family members living in the dwelling, and shall have no more than a total of fourteen (14) employees, excluding family members, working on the premises at any one time.

J.R. Liggett LTD. currently employs (with the exception of family members living inside the residence) six (6) full-time persons and two (2) part time persons, the majority of employees live in Cornish.

e) The business shall not have window displays, window advertising or any other advertising except a sign which shall not exceed twelve (12) sq. ft. in size.

J.R. Liggett LTD. has not window displays and one sign on the front of the building less than 12 sq. ft.

f) The business shall not:

i) Generate non-residential level of vibration, glare, smoke, dust, fumes, odors or heat.

J.R. Liggett LTD. generates no vibration, glare, smoke, dust, fumes, odors or heat.

ii) Produce noise of such volume or frequency as to be unreasonably offensive at or beyond the property line. Unreasonable offensive noises, due to intermittence, beat frequency or shrillness shall be muffled so as not to become a nuisance to adjacent use.

J.R. Liggett LTD. produces no noise of any volume or frequency

iii) Generate more than an average of one (1) vehicle trip per hour to the premises for each hour the business is open or peak of three (3) vehicles per hour excluding employee commuters.

J.R. Liggett LTD. generates less than 1 vehicle trip per hour.

iv) Require the use of on-street parking.

J.R. Liggett LTD requires no on-street parking.

v) Require more than fourteen (14) off-street parking spaces beyond those required by the dwelling.

J.R. Liggett LTD. requires less than 14 off-street parking spaces.

vi) Utilize exterior spaces of residential structure or yard for storage, display or occupational activities.

J.R. Liggett LTD. utilizes no exterior space of residential structure or yard for

storage, display or occupational activities (with the exception of one dumpster for trash).

- vii) Involve the overnight parking of more than three (3) business cars or other business vehicles on the premises.

J.R. Liggett LTD. conducts normal working hours with no business-related overnight parking.

- g) Except for structures in existence on the date of the adoption of these amendments, no portion of the building (s) used for Expanded Cottage Industry shall be closer than 75 feet from the edge of a traveled way.

J.R. Liggett LTD. operations occupy no buildings less than 75 feet of a traveled way.

- h) The lot shall have frontage and access on a state-maintained road.

J.R. Liggett LTD. has frontage and access to a state-maintained road.

- i) Retail sales of products generated by the Expanded Cottage Industry may be sold within an area not to exceed 500 square feet or the residence or accessory structure.

J.R. Liggett LTD. currently does not conduct retail sales in an area exceeding 500 sq. ft.

- j) Restaurants, sandwich shops and on-site commercial recreation are not allowed as Expanded Cottage Industry.

J.R. Liggett LTD. is not a restaurant, sandwich shop or offer commercial recreation.

Kate asked the board if there were any questions.

In response to a question from the board regarding seasonal water, Mr. Liggett reported that the seasonal waterway that might be of a question is non-existent due to a holding pond on the Sprague property north of his that now prevents water from running. Even during this past rainy summer there was no water in the waterway. He added that Dig Safe had been contacted.

Mr. Liggett submitted a plan showing the location of the structures on the premises.

Mr. Haseman asked about a bathroom in the proposed building. Mr. Liggett stated there would be no bathroom. Only a sink for washing hands. He provided a description of the proposed building. Mr. Haseman asked about inspection by the fire department. Mr. Liggett stated that might happen when a new building was completed. Troy Simino asked about Site Plan Review before the Planning Board. The board replied that would be up to the Selectmen when Mr. Liggett applies for a building permit. Kate asked about the building on the north side of McSwain Drive. Mr. Liggett explained that those buildings are not related to the business. Kate asked for assurance that the total of the square footage was 9,291 sq. ft. A calculation was completed and the 9,291 sq. ft. is correct. Mr. Simino asked to define "traveled way". There is no definition in our ordinance. Mr. Simino voiced concern that if McSwain Drive is considered a "traveled way", the 30-foot set-back shown on the plot drawing was not sufficient relative to a 75-foot set-back requirement from a "traveled way". Mr. Liggett explained that McSwain Drive is a private road serving 3 residences. He indicated that access is by easement over his property. Merilynn Bourne stated she felt McSwain Drive was a private road, not maintained

by the town, so did not fit the concept of a “traveled way”. She stated 12-a is clearly a traveled way. Mr. Simino asked for the board to pause while he went to the town office to see if he could find a definition of a “traveled way”.

The board took a 10-minute break while Mr. Simino took time to gather what information he could find regarding the definition of a “traveled way”. RSA 259:124 defines “way”.

The meeting resumed and Ms. Freeland asked for public input regarding the special exception. Abutters Sylvester and Belanger stated they supported the Expanded Cottage Industry and had no problem with the Special Exception.

The conversation of the board returned to the definition of a “traveled way” as well as the meaning of the phrase “...under authority of statute...”. Mr. Haseman and Mr. Simino do not want to move forward without more information. Michael Fuerst added that there may be a site plan submitted to the Planning Board which could shed light on how the issue was handled previously. Ms. Freeland paused the meeting to look for a possible site plan. No plan was found. The board decided it would be best to do more research before issuing a decision. Ms. Freeland offered that we could continue the meeting until next Monday evening, December 11th at 6:30pm. Troy Simino made the motion to continue case 23-02 to Monday, December 11th, seconded by David Haseman. The vote was in the affirmative without exception.

The Board moved to ZBA Business:

Ms. Freeland stated she would speak to Heidi Jaarsma about Planning Board minutes related to the current building set back 15 feet from McSwain Drive. How did the Planning Board treat that building and that set back? Was there a site plan review? We need to find out what is meant by “under authority of statute”. Ms. Freeland will undertake those tasks. Merilynn Bourne will look into the Liggett property tax file and research the deed.

Michael Fuerst asked for a vote to approve June 5th minutes with one correction, Kate Freeland seconded. The vote was in the affirmative. Ms. Bourne reported that she had updated all the ZBA application forms to include the hearing fee of \$75.00 as well as adding lines for phone number and email. She also put the state’s definition of an abutter into each form. Mr. Fuerst remarked that we would need to hold a public hearing prior to inserting the state’s definition of an abutter in the ZBA’s Procedures book.

Mr. Fuerst mentioned that we no longer have a minute taker and that we may need to advertise for one in Connect Cornish.

David Haseman moved to adjourn at 8:45pm, seconded by Merilynn Bourne.

December 11, 2023

The Zoning Board of Adjustment met on Monday, December 11, 2023 at 6:30pm at the Cornish Town Hall to hear Continued Case 23-02. James & Diane Liggett for a Special Exception.

Present for the ZBA: Kate Freeland, Merilynn Bourne, Kerry Osgood, Troy Simino and Alternate David Haseman. Michael Fuerst recused himself due to his attorney/client relationship with the Liggetts. Karim Chichakly and Lyle Parry were absent

Applicant Present: James Liggett

Present for the Public: none

Kate Freeland, Acting Chair, called the meeting to order at 6:30pm

Merilynn Bourne, Clerk, called the roll.

James Liggett was present for the continuation. Mr. Liggett remarked that we had gone through the entire case last Monday but without a decision. Kate Freeland explained that we would be deciding the case tonight. Ms. Freeland stated we would be going into deliberations and that during that process the board might have questions for Mr. Liggett.

Ms. Freeland asked if the Board had a chance to read the Planning Board Minutes from the 2014 Site Plan Review for Mr. Liggett. The Board had. Ms. Freeland asked if the Board had read the Municipal Association's response to her question regarding "travelled way". The Board had. Merilynn Bourne stated she had emailed the site plan and Planning Board decision to members hearing the case. There followed a discussion regarding the purpose of our hearing. The ZBA is to rule on the request for a Special Exception, Expanded Cottage Industry and nothing more. The Planning Board had, in the past, referred to the Liggett operation as "grandfathered" but that designation was incorrect as the operation came into existence after the adoption of the Zoning Ordinance and had never applied for a Special Exception. That is the purpose of this hearing; to cure that defect. In order to do that, Mr. Liggett's operation must meet all the criteria under Expanded Cottage Industry.

There followed a lengthy Board discussion regarding "traveled way" and the 75-foot setback issue. Kerry Osgood remarked that the official town map shows the roadway as a private, non-town maintained road. The board took a vote regarding the issue of the intent of the ordinance relative to road right of way vs traveled way. Ms. Freeland directed, if you are in favor of the interpretation that a private drive is not subject to the 75-foot setback under Expanded Cottage Industry, please respond with "Aye":

Kerry Osgood voted "Aye"

David Haseman voted "Aye"

Kate Freeland voted "No"

Merilynn Bourne voted "Aye"

Troy Simino voted "No"

Merilynn Bourne then made a motion to approve the applicant's request for Special Exception under Article IV, Section C, 19a for Expanded Cottage Industry, Map 03, Lot 16 and Lot 38; the motion was seconded by David Haseman.

Kate went through the criteria for Special Exception under Article 10, d) of the Zoning Ordinance. The Board voted unanimously and without exception that the proposed use would not adversely affect:

1. The capacity of existing or planned community facilities
2. The character of the area affected
3. Traffic on roads and highways in the immediate vicinity
4. Town Services and facilities
5. Neighboring land use present and prospective
6. Significant wildlife habitat, trails, natural scenic or historic features.

Relative to Article IV, Section C, 19a, g), this Board's interpretation of the ordinance excludes "McSwain Drive, Private" from the 75-foot setback. A Unique Condition is that the official town road map shows McSwain Drive as a privately maintained drive and shown as a private right of way over the Liggett property.

Ms. Bourne's motion was re-read followed by a vote to approve the Liggett application for Special Exception for Expanded Cottage Industry:

Kerry Osgood voted "Aye"

David Haseman voted "Aye"

Kate Freeland voted "No"

Merilynn Bourne voted "Aye"

Troy Simino voted "No"

The motion passed.

Kate filled out the decision and finding of facts.

Troy Simino remarked that we should make it clear that our decision was simply to determine if the applicant met the criteria for Expanded Cottage Industry. That is what we voted on.

Kate Freeland explained to Mr. Liggett that he is now approved for the use. His next step is to see the selectmen for any permit he may need and they may or may not require site plan review.

Kerry Osgood moved to adjourn, seconded by Merilynn Bourne

Adjourned 7:45pm

Respectfully submitted,
Merilynn Bourne, Clerk