

**Town of Milford
Zoning Board of Adjustment
May 21, 2020**

Case 2020-09
Controlled Forestry Investments LLC
Variance

Present: Jason Plourde, Chairman

Rob Costantino, Vice Chair

Wade Campbell

Michael Thornton

Karin Lagro (Alternate)

Joan Dargie (Alternate)

Paul Dargie, BOS Representative

Lincoln Daley, Director of Community Development

Darlene Bouffard, Recording Secretary

Absent: Tracy Steel

Chairman Plourde welcomed everyone and declared a State of Emergency as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, the Board of Adjustment is authorized to meet electronically. This meeting is held in accordance with the applicable New Hampshire State statutes, Town of Milford ordinances, and the Zoning Board of Adjustment Rules of Procedure. He stated that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, he confirmed that the Board is:

- a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means;
- b) Providing public notice of the necessary information for accessing the meeting;
- c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access.
- d) Adjourning the meeting if the public is unable to access the meeting.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law. Jason Plourde at Town Hall alone in the room; Rob Costantino at home alone; Wade Campbell at home alone, Karin Lagro at home alone, Mike Thornton at home alone, Joan Dargie at Town Hall in her office alone.

Let us begin by seating our alternates who will hear tonight's cases. Jason Plourde asked that Karin Lagro-Alternate, be seated on the ZBA in the absence of Tracy Steel.

Case 2020-09

Controlled Forestry Investments LLC, 61 North River Road, Milford Tax Map 8, Lot 50 is seeking a VARIANCE from the Milford Zoning Ordinances per Article V, Section 5.04 to allow an Auto Repair Facility use totaling approximately 2,500 square feet in an existing building in the Residential "R" Zoning District.

Attorney Paul English, representing the applicant indicated that the applicant is present with him, as is Dave Parker, who currently owns the property and can answer questions that he cannot answer. This property had an auto shop which was discontinued and now the applicant would like to open that auto repair shop again. The building was built in 1910, one residential abutter also runs a business out of their home, this is in the Residential Zone and there are other commercial businesses operating in this residential area. The proposed use is a small car repair business and will not create high volumes of traffic, it is anticipated to have 5-10 vehicles per day. The applicant is hoping to open in the fall, the current taxes are in arrears. If this sale goes through and the ZBA approves the Variance, those

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back taxes would be paid. This use will not affect the surrounding properties or the tax base. Mr. English said the property was used as an auto repair garage until about five years ago. The current owner has been using the property for cutting and splitting wood. He does want to continue to sell firewood at this site. There are pallets there for sale and that is part of this Variance. The requested Variance is for: 1) allow the property to go back to the previous use; 2) continue allowing the sale of firewood; 3) expand the use (page 13 of the plan for a proposed addition to the building for a waiting room for customers. The building is currently a 3-bay garage but it will not cause significant traffic. The applicant would like to keep the same structure, and have an addition off the right side which is currently paved, he is not requesting to put another bay, it is just a waiting room for customers. This building is constructed as a commercial use with a slab floor with no basement and has commercial wiring, it is not building for residential use.

Paul English continued that this building is not built as a residence. The grading and slope is also an issue on this property. There is an extreme slope and the grading in the rear would probably prevent use as residential. There are also wetland issues in the rear. Right now the wetlands are not a problem. The structure is in the only location on the parcel where a building could be placed. Mr. English reviewed the criteria. The abutters are all commercial except one residence. This property pre-exists the zoning ordinance. There is no gain to the public if this were denied. This use has already been there for years. This will not have substantial impact to the neighbors. There will not be a decline in the value based on this use. All of the surrounding properties are commercial; to make this property into residential would not fit. This lot is triangular and has wetlands in the rear, so any redevelopment of the site would be pretty substantial and would be in front of the ZBA for relief. This land has a hardship with it because you cannot do much on the site. The property use was established and the applicant is looking to have it used for that prior use as an auto repair shop.

Jason Plourde said that five years ago, this building was used as an auto repair business, if that business was still there and was looking to expand, it would be expanding a non-conforming use, but since the building was not in use as an auto repair business for five years, the applicant has to start over. Mike Thornton agreed saying in order to pick up the grandfathered rule, it has to be done within one year. Mr. English said currently there is some equipment stored in the garage for Controlled Forestry. J. Plourde said within the ordinance, Forestry is an acceptable use. J. Plourde asked what the hours are and how many employees will be at the repair shop. Mr. English responded the hours will be M-F 8:00 am – 5:00 p.m. There will be no weekend hours and there will be two employees, eventually there will be a third. It is anticipated there will be 4-5 vehicles per day but it depends on the scope of work. This is not a walk-in type business, the customers will be scheduled. J. Plourde said no weekend hours is good since this is next to the Transfer Station. J. Plourde asked if a retaining wall will be needed? Mr. English responded that is not anticipated, but that will be discussed with the Planning Board and also the Building Inspector. J. Plourde asked where the firewood pallets will be located? Mr. English said they will be out front, with bundled firewood, much like a farm stand. The applicant wants to make this property more appealing to its customers. J. Plourde asked about the large piles of wood that are there now, will those be moved because that area will be for parking. The lower level will have parking, will there be enough room to have parking on the upper portion? J. Plourde asked if this will go to Planning Board? Lincoln Daley responded that it will.

M. Thornton said the ZBA is allowed to consider the financial aspects that were presented. Because the grandfathered period for this property has expired, J. Plourde said this applicant is before the ZBA for that same use. W. Campbell and K. Lagro, had no comments. R. Costantino said there are commercial properties abutting this one, there is a residential lot right next door, the lots further down from this one are nice residential lots that you are able to see from North River Road. His major concern is to have this property not look “dumpy”. There are auto repair shops that store junk cars and that would not look good in this area. It has been presented that this commercial use will not be storing cars, they will just service cars for customers and not store cars. P. English said that is correct, it is not desired, the applicant wants the property to be more appealing. M. Thornton said we do not want to give the Transfer Station a bad name, but that is an abutter. P. English said this applicant wants to fix it up and make it nice. R. Costantino does not want to gamble on this, he wants to have something that says there will be no storage of cars for parts so that it can be enforced and point out what was approved. This is for car repairs but not storage of cars that do not work. J. Plourde agreed when they are done working on the car, will they not be allowed to park it outside? R. Costantino said it would need to be picked up and the point is there should not be cars there that do not run and just sit out there and rust. It is tolerable if once it is fixed it gets picked up, but the intent is not to store non-working cars there, which becomes a junkyard and does not look good in a residential area.

M. Thornton said we need to put in a qualifier that no car will be stored in excess of a number of days. There are times that the car may need to be kept there to be fixed, what would be an acceptable number of days? L. Daley said

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Rob is trying to create parameters for the site: 1) no long term storage; 2) determine if additional parameters should be put in place; 3) no sales of cars at this site. L. Daley said some repairs end up becoming a sales opportunity if the repair bill is not paid. M. Thornton said part of having an auto repair shop is they can have a mechanic lien and then the mechanic owns the vehicle if the repair bills are not paid, would they not have a legal ability to sell such a car? L. Daley said the use impacting the general use of the property for one sale is one thing, but to become a car dealership is not allowed in a residential zone. M. Thornton believes that limit would be three cars in one year. P. English said the mechanic lien is the only reason there might be a car stored, but often that car would be stored inside so that the owner cannot take it back. That has happened to the applicant once in ten years.

P. English understands the concept of what Rob is asking for. The applicant does not rebuild cars, the business is to fix cars. The applicant does not want long term storage of cars. If the Board wants to have a condition on the applicant, he is not opposed to that, he agrees with it. J. Plourde asked if the cars would be brought to the lower lot once the repair is complete? P. English responded that is correct, because there will not be much parking on the top lot. This is not a high volume business. J. Plourde said it makes sense to bring the cars to the lower lot once repair is complete. W. Campbell, K. Lagro, J. Dargie had no further comments. M. Thornton would expect to see many different cars there. L. Daley asked about any discussions with abutters and what about a visual buffer between this lot and the residential lot? P. English responded the current owner said the neighbors told him they are putting up a fence, they have talked to the current owner, Dave Parker, who has not talked to any other abutters. There are surveyor markings out there for the fence. L. Daley said the applicant is trying to keep the repair business close to the road and the wood cutting is on the back half of the lot, will the wood business continue? P. English said that part of the lot is in the flood zone so things will not be put back there, there might be some pallets of wood for sale, but that is not a part of the property that the applicant will be using. M. Thornton asked if the logging operation will vacate this lot and the only thing that will remain is the firewood for sale? P. English said that is correct, the logging equipment will be removed, there will not be anything permanently out back there. L. Daley asked if the applicant and current owner have a defined area where the wood storage will be? P. English asked Dave Parker where the extra wood will be stored. Dave Parker responded the pallet of bundled firewood will be out front and there will be a paved area out on the back of the lot where the extra wood will be stored to dry. The farther out back on the lot you go, the wetter it gets.

R. Costantino asked how much wood will be stored out back? P. English said there will be about ten cords that will be rotated up front as it is dry. L. Daley asked if there is any intent to do any vehicle painting? P. English responded there will be no painting or body work, this is just a mechanical repair business, the applicant just wants to expand his business. This is not a walk-in type business, it is by appointment only. W. Campbell, K. Lagro, J. Dargie and R. Costantino had no other comments, but Rob would like to have conditions on this case. J. Plourde said the applicant agrees to have conditions. L. Daley indicated the conditions should be tight so they are enforceable, we could use a 30 day window for car storage, if it is a long term repair, like engine rebuild, the car is stored in the garage. L. Daley hopes this business is successful, asking if 4-5 customers per day is the max? P. English said 4-5 customers per day is the average. During the day, there might be employee cars parked and customer cars coming and going. Over time, L. Daley commented that existing auto repair shops seem to have an increase of cars parked on site. P. English said the parking spaces will be worked out at Site Plan review with the Planning Board and the maximum number of cars would be the maximum parking spaces. There will be one handicapped parking space in the top lot and 1-2 other parking spaces, and the lower lot number of spaces has yet to be determined, but around 6-7.

J. Dargie suggested that considering the hour, everyone should consider either ending this discussion now and tabling it for the vote, or have the vote and continue the next application to the next ZBA meeting. M. Thornton said the difficult questions have been addressed for this case and the conditions have been identified, he thinks it should be fairly quick to vote. J. Plourde said there is one case after this, can we dismiss that next applicant and continue them to the next ZBA meeting now? J. Dargie said that is a good idea.

There was a brief pause on the discussion to dismiss the next applicant to the June 4 ZBA meeting. J. Plourde asked ZBA members if they want to continue with this case through the vote or continue it? R. Costantino moved to keep going, M. Thornton thinks the hard questions are done and we should keep going; K. Lagro agreed to keep going to wrap it up tonight; W. Campbell wants to keep going. L. Daley indicated there were no e-mails received for this application. J. Plourde opened the meeting to the public for abutters first, and then general public. L. Daley said there were no people in the waiting room. There were no further questions for the applicant

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J. Plourde invited abutters and members of the public to ask questions by calling in and pressing *9 if you wish to speak. There were no people waiting to speak. L. Daley confirmed there were no people waiting to speak. J. Plourde asked if there were any further questions from the Board then took a poll of members. W. Campbell no; R. Costantino no, M. Thornton no, K. Lagro no, J. Dargie no. J. Plourde asked for a motion. K. Lagro moved to close the public meeting. M. Thornton seconded. R. Costantino yes; M. Thornton yes; K. Lagro yes; J. Dargie yes; W. Campbell yes, J. Plourde yes.

The ZBA deliberated the application.

- 1) Would granting the variance not be contrary to the public interest? R. Costantino yes; K. Lagro yes; W. Campbell yes; M. Thornton yes; J. Plourde yes
- 2) Could the variance be granted without violating the spirit of the ordinance? M. Thornton yes, this is consistent with the town's ordinance; K. Lagro yes, this is within the spirit of the ordinance; R. Costantino yes; W. Campbell yes; J. Plourde said yes he agrees this proposal satisfies the criteria of the spirit of the ordinance.
- 3) Would granting the variance do substantial justice? K. Lagro yes substantial justice will be done and there is no gain to the public by a denial; W. Campbell yes, M. Thornton with the conditions to be put on yes, R. Costantino, yes, J. Plourde said this was the use on this property five years ago, the applicant is bringing the use back and improving it.
- 4) Could the variance be granted without diminishing the value of abutting property? W. Campbell yes; M. Thornton yes; R. Costantino yes, K. Lagro yes the intent will not diminish the value of surrounding properties; J. Plourde the residential neighbor putting up a fence will satisfy his concern for the neighboring lot.

J. Dargie asked if the ZBA has proof that the abutting residential neighbor will put up a fence? J. Plourde said the ZBA has not been provided with that information; J. Dargie said if the abutter does not put up that fence as discussed, the ZBA has no leverage – we might want to have that as a condition; W. Campbell yes, M. Thornton yes, noting that the fence is between the two owners, R. Costantino yes, K. Lagro yes. L. Daley indicated that he talked with the abutter, the two parties are working out what to put up between the two properties. J. Plourde said if the abutting land owner does not put up a fence, we should have the applicant put up a fence as a condition. L. Daley said the type of barrier should be defined between the two parties that own the properties. R. Costantino asked if the ZBA should have a condition for the fence? L. Daley said it should be part of the decision and will be part of the Planning Board discussion and decision. This is a commercial use in a residential zone. M. Thornton would like the negotiations between the two property owners to continue and the intent is to have a visual mitigation between the two properties. The two parties are working on that together. J. Plourde said there is some type of vegetation that separate the two properties. M. Thornton said the two properties should be divided to mark the property line.

- 5) Would denial of the variance result in unnecessary hardship? R. Costantino noted that Joan was right, this took longer than anticipated. This application will not cause unnecessary hardship, there are different elevations and the applicant is using the existing building. K. Lagro said the structure is being used, the only place where anything can be built is where the structure is; M. Thornton; the usable land is where the existing structure is, it would be impractical to make it into a residential structure; W. Campbell agreed; J. Dargie believe there are other residential things that could be there, it is the land that has the hardship, she can see other things located on the property; R. Costantino said the elevation difference make is not practical, the existing building would need to be taken down and re-built. M. Thornton said if the lot were desirable, it might be practical, but he believes it is a hardship to change it from what it is now. M. Thornton sees that this repair facility would be a good fit. He sees a hardship with it going back to residential. J. Plourde said the grade difference from the front and the rear is a hardship, the rear lot is very wet. The lot is very limited, this use was already there but not in use for five years. They want to do a minor expansion. J. Plourde feels the intent of the ordinance is to provide for low density land use that is sensitive to what is existing in the district. This use fits in with the rural character, there is not a lot of high turnover with lots of traffic being added and with the environmental constraints that will be followed for operations being conducted in the facility. This type of use takes care of the hardship.

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J. Dargie said the nonconforming use grace period is to limit the non-conforming uses, that is the reason why it is there. J. Plourde thanked Joan for bringing that up, these nonconforming uses stop and that is the opportunity to change the use. But is a single family home going to be built across the street from the Transfer Station? It would not be desirable. R. Costantino said Joan is right, seeing the scale of this business has changed his thinking, the lot could be a residence if it were flat, but it is not, it is a hardship and he is glad we can revisit this in this location, R. Costantino feels it is fine. He asked which criteria the conditions will go with? J. Plourde answered we will review the criteria and vote and after that we can talk about the conditions. Joan said in the past the ZBA has said the conditions should be talked about first because that could sway the decision. J. Plourde reviewed the conditions: 1) no more than 10 vehicles stored overnight 2) no long term storage; 3) no sales other than a mechanics lien; 4) buffer between this lot and the residential lot. M. Thornton thinks the Board should have the conditions identified before any vote. J. Plourde asked for the abutting property to be identified in the motion as 51 North River Road. R. Costantino moved to accept the following conditions: 1) no more than ten vehicles stored on the property; 2) no long term storage or parts storage outside of the facility for more than 3 days; 3) no vehicle sales other than for a mechanic's lien; 4) an uninterrupted visual buffer be put between this property and the 51 North River Road residential property. K. Lagro seconded. R. Costantino yes; W. Campbell yes; M. Thornton yes; K. Lagro yes and J. Plourde yes.

Voting on application:

- 1) K. Lagro yes; M. Thornton yes, W. Campbell yes, R. Costantino yes, J. Plourde yes.
- 2) R. Costantino yes; W. Campbell yes; K. Lagro yes; M. Thornton yes; J. Plourde yes.
- 3) W. Campbell yes; K. Lagro yes; R. Costantino yes, M. Thornton yes; J. Plourde yes.
- 4) M. Thornton yes; W. Campbell yes; R. Costantino yes; K. Lagro yes; J. Plourde yes.
- 5) R. Costantino yes; K. Lagro yes; R. Costantino yes; M. Thornton yes; J. Plourde yes.

M. Thornton moved to approve with the conditions as follows: 1) no more than 10 vehicles stored overnight 2) no long term storage; 3) no sales other than a mechanics lien; 4) buffer between this lot and the residential lot. R. Costantino seconded. M. Thornton yes; R. Costantino yes; W. Campbell yes; K. Lagro yes; J. Plourde yes. The Zoning application has been approved, there is a 30 day appeal period to appeal the ZBA decision.

M. Thornton moved to adjourn at 10:40 p.m. R. Costantino seconded. All were in favor. R. Costantino yes; M. Thornton yes; K. Lagro yes; W. Campbell yes, J. Plourde yes.

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

THE MINUTES OF 5/21/2020 WERE APPROVED 7/2/2020