



Town of Moultonborough

PO Box 139 – 6 Holland Street
Moultonborough, NH 03254
(603) 476-2347

Zoning Board of Adjustment Notice of Decision

**Appeal from Administrative Decision of the Interim Town Planner's decision of August 6, 2020
"administrative decision concerning outside boat and trailer storage and retail boat dealership".**

October 8, 2020

**Applicant: 130 Whittier Property LLC & NNC Properties LLC
91 Long Bay Drive
Laconia, NH 03246**

Location: 130 Whittier Highway, Moultonborough, NH (Tax Map 141 Lot 003)

On October 7, 2020, the Zoning Board of Adjustment of the Town of Moultonborough held a public hearing on the application of 130 Whittier Property LLC & NNC Properties LLC (hereinafter referred to as the "Applicant" and/or "Owner") for an appeal of the Interim Town Planner's decision of August 6, 2020 "administrative decision concerning outside boat and trailer storage and retail boat dealership".

Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 130 Whittier Highway, Moultonborough, NH (Tax Map 141, Lot 003)
- 2) 130 Whittier Property LLC is the owner of record for the lot.
- 3) Nick Castel for NNC Properties LLD and Atty. Corey Giroux of Strang, Scott, Giroux & Young, LLP presented the Appeal.
- 4) The lot is in the Commercial Zone A and the West Village Overlay Zoning Districts.
- 5) The regulations in the West Village Overlay District supersede those in the underlying Commercial A District.
- 6) The Applicant and his attorney presented their case, stating that the Planner erred in his decision that the Table of Permitted Uses in the Zoning Ordinance does not allow outside storage because that particular use is not in the table. He posited that the civil covenants allowed outside storage and that the covenants took precedence over the Town's Zoning Ordinance.

- 7) The Interim Town Planner explained that the Town's Zoning Ordinance was an exclusionary one, meaning that if a use was not in the table, then that use was not permitted in a zoning district. The Planner also stated that civil covenants on properties do not take precedence over the Town land use law. They are a civil matter to be upheld or challenged in a civil court and are not a municipal matter. Zoning cannot be superseded by civil covenants; from a municipal standpoint it is just the opposite. Even though the Planning Board may have requested a review of the civil covenants back in 1991, it had no authority to approve them or sign on to them.
- 8) The Planner stated six bullet points that summed up his rationale for the decision. They are:
 - a. At no time did I consider anything that was civil in nature such as covenants or codicils in the consideration of my administrative decisions, so they should bear no relevancy in your adjudication of this case.
 - b. That said, my decision to not allow outside storage on this property was solely predicated on my review and understanding of the existing valid site plan and the zoning ordinance.
 - c. The site plan does not allow outside storage and it is still in effect unless the applicant wishes to submit an amended site plan review application (after requesting a variance from this Board).
 - d. The property is located wholly in the West Village Overlay District (WVOD). The regulations for the WVOD preempt the regulations in the underlying zoning district. See MZO, Section 9.3.3. The district has a table of permitted uses that does not have outside storage listed as a use. The WVOD is very clear that uses that are not in that table are not permitted unless a variance is granted by the ZBA to do so. See MZO, Section 9.3.4-Note.
 - e. Simply put, my decision to not allow outside storage is based on exactly what the ordinance says is or is not permitted in the overlay district.
 - f. The appellant continues to have the right to request a variance from the ZBA in this matter.
- 9) The applicant's attorney had no rebuttal but stated he did not have an issue with the Board tabling the case to get a legal opinion on the question of covenants. The Board, by consensus, did not see a need to table and seek legal counsel.
- 10) One abutter testified that the noise from the noise and activity of a boat storage area and dealership would reduce their property value.
- 11) The Board deliberated on the case and agreed with the Planner on the use table and what it meant and agreed with the Planner that zoning law cannot be trumped by civil covenants.

Based on the evidence presented, the Board of Adjustment voted five (5) in favor (Stephens, Bickford, St. Peter, DeMeo, Jenny) and none (0) opposed, to deny the Applicant's appeal and uphold the Interim Town Planner's decision of August 6, 2020 "administrative decision concerning outside boat and trailer storage and retail boat dealership". The reason for this decision was that the ZBA concluded that the Declarations of Harbor Pines Covenants and restrictions to not supersede local ordinances and regulations.



Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date: November 4, 2020