

**Town of Bartlett
Zoning Board of Adjustment
Public Hearing
April 23, 2018**

Members present: Chairman Richard Plusch; Julia King; Norman Head; Anita Burroughs.

Members absent: Peter Gagne (with notice).

Also present were Peter Pelletier; Eric Dziedzic and Chris Marchione of Story Land; Atty. Randy Cooper; John Magazzu; John Smallcomb; James Grooms; Bob Ference; Darlene Ference; Brian Otis; David Shedd.

Chairman Plusch called the meeting to order at 7:00 pm by announcing the case number, name of applicant, and purpose of the applications. He advised the meeting notice for these applications was published in the Conway Daily Sun on April 13th and 21st, 2018 and publicly noticed at the Bartlett, Glen, and Intervale post offices, as well as the Bartlett town hall.

Before continuing with the hearing, the Chairman called for a motion to appoint Peter Pelletier to the board as an alternate member. Motion made by Norman Head; seconded by Julia King. Vote: All in favor. Due to the absence of ZBA member Peter Gagne, the Chairman asked Mr. Pelletier to take a seat at the table to fill Mr. Gagne's position. He next announced that the board needed to elect a chairman and a vice-chairman for the upcoming year. A motion to nominate Richard Plusch as chairman was made by Norman Head; seconded by Julia King. Vote: All in favor. A motion was then made by Julia King; seconded by Peter Pelletier to nominate Norman Head as vice-chairman. Vote: All in favor.

Public Hearing - File 2018-01:

Applicant:	Festival Fun Parks, dba Story Land for Living Shores Aquarium.
Location:	850 NH Route 16, Glen, NH
Bartlett Tax Map:	Tax Map 2RT016, Lot 92R00
Purpose:	A variance to allow new and/or replacement signage, or to negotiate the removal of some of the existing signage in order to allow new signs on the aquarium building. All present signage is grandfathered and exceeds what is currently allowed under the zoning ordinance.

Zoning Ordinance Section: Article XVI, Section B.

Eric Dziedzic and Chris Marchioni presented and provided literature which showed colored photographs of the existing signs, as well as a colored rendering of the proposed signage on the side of the aquarium. The existing signs were allocated an alphabetical number which corresponded with an arrow pointing to a map of the Story Land complex which identified where each sign was located. The photos also showed the size of the signs in square feet.

Mr. Dziedzic said they were currently allowed to have a 60 square foot sign and were seeking a variance to be able to have a larger sign to replace one which had just been removed. This sign was identified as sign M on the map. Julia King asked whether they wanted to change the dimensions of that sign. Mr. Dziedzic said they would like a larger sign or multiple signs and were here tonight to find out what they can or can't do. He said Living Shores is an aquarium currently under construction which will also have a restaurant (and, no, it won't be a seafood restaurant) and Mr. Dziedzic said they would like people driving down the road to know what was being offered inside the building. Norman Head asked if the reason the sign had been removed was because of the septic system. Mr. Dziedzic said that was correct. Mr. Head asked whether this was the Heritage sign which had been out front of the building, and was Mr. Dziedzic intending to eliminate it and replace it with something else. Mr. Dziedzic confirmed that was correct and said they would like to replace it with signage on the side of the building. The Chairman noted there were two signs, A and B, shown on the side of the building and asked which one was going to be the replacement. Mr. Dziedzic said either one. Julia King noted that sign A (99 sf) was much larger than sign B (55 sf) and asked what the dimensions of the old Heritage sign were. Chris Marchioni said it was 66 sf. Julia King asked if what the applicant wanted to do was

to swap some footage on the main sign. Mr. Dziedzic said they wanted to take down that sign and put a sign on the building, and that was what they were here to talk about to see what they could actually get. He said there were a number of smaller signs on the property along the roadway which they were willing to get rid of in order to facilitate a larger building sign. Mr. Dziedzic said depending on the size allowed by the ZBA, they would then come back with a permit application showing exactly what the sign would look like and where it was going to go, since its location would depend on how large or small it was going to be. Julia King asked how much area of grandfathered signage the applicants currently had. Chris Marchioni said it was 221 sf, which included signs J, K, L, M and the Linderhof motel sign. Ms. King asked whether the Linderhof sign was on a separate parcel. Chris Marchioni said it was not, that all the lots had been merged a long time ago and it was all one lot. Ms. King asked whether the applicant was asking for additional square footage or were just wanting to swap some. Mr. Marchioni said if they could negotiate, they would be willing to get rid of 221 sf in order to get about 150-160 sf on the building. When Ms. King noted they were looking to downsize and Mr. Marchioni responded, "yes," Ms. King asked what the selectmen were objecting to, then? Eric Dziedzic said the selectmen had indicated they could not allow any type of swapping without first coming to the ZBA.

The original Story Land sign N was discussed, which the applicants said was to remain. Norman Head asked how large the sign was and why it wasn't included in the total square footage. Mr. Marchioni said it was 120 sf. When Julia King said that had to be included in the total of grandfathered signage, Mr. Marchioni agreed which now brought the total of grandfathered signage to 341 sf. Julia King asked whether any of the signs along the road were intended to be directional signs which directed people to the three activities on the lot: the aquarium, restaurant, and amusement park. Eric Dziedzic said no, that they would like signs on the building saying "Restaurant" and "Living Shores Aquarium." He noted that there was only one entrance into the building so they didn't need additional signs pointing to the restaurant or aquarium since people would be directed to those once they were inside. If a compromise could be reached, Mr. Marchioni said signs J, K, and L would be eliminated completely, and M would be eliminated from that location. Therefore, there would only be one roadside sign which would be the existing Story Land sign, N. The rest would be on the building. Julia King said she recalled from her days as the sign compliance officer that lettering wasn't permitted on awnings, however she admitted she couldn't find where it said that in the zoning ordinance. Eric Dziedzic said the material presented tonight showed a "worse case scenario" of what they wanted, and once it was determined through the ZBA what they can do, new plans would be drawn up and submitted to the selectmen. Julia King asked whether the marine life silhouettes shown on the building should be considered signs. Mr. Dziedzic said they were no longer going to be there and directed her to the material he had provided which showed the new different-colored building exterior. The Chairman asked about the "bubbles" shown on the illustration of the new exterior. Mr. Marchioni said they were windows which were made to look like bubbles.

Julia King said she had a question for the board and said the idea of swapping was something new. She said she always thought that if a sign was taken down that it lost its grandfathered status. The Chairman said he thought it could be taken down and replaced, which prompted Ms. King to state that if it was taken down that some part of it had to be left up. She cited the May Kelly sign in Conway as an example. When Chris Marchioni asked which sign Ms. King was speaking about and she said the May Kelly sign, he rephrased his question by asking which Story Land sign she was talking. Ms. King said a willingness had been expressed to take down some signs and asked didn't that mean they would lose their grandfathered status. Mr. Dziedzic said in that case they wouldn't take anything down until an agreement had been reached about the request to swap the signs for some on the building. Mr. Dziedzic summarized this as being their willingness to give-up 221 sf of ground signage, being the existing J, K, L and M signs, for signs A, B, D, and E, totaling 205.895 sf, on the building. This was an overall reduction of approximately 15 sf. Julia King asked whether the selectmen were apprehensive because of the idea of negotiating. Mr. Marchioni said he didn't think so; they just looked at the square footage and said no. The Chairman noted we had a copy of their denial letter and he read it aloud. The letter seemed to indicate the selectmen's main concern appeared to be a small appendage sign attached to sign M saying "Story Land," which they did not have as a permitted sign. They also expressed concern regarding the ground lighting indicated on the proposed building signs. Eric Dziedzic said that lighting had been

changed. Anita Burroughs said she was a little confused about one thing, saying the selectmen's letter stated that the square footage of the signs had not been provided, yet it exceeded what was grandfathered and was not permitted. The Chairman asked whether the selectmen had been provided with the same information which had been given to the ZBA tonight. Mr. Dziedzic said they had received the information, but it did not show the square footage, only the measurements of the signs expressed in inches. The Chairman suggested they go back to the selectmen with the square footage in-hand, which Mr. Dziedzic felt would not be productive being that they could not give consideration to any swapping of signage until it had been to the ZBA. Norman Head explained the selectmen did not have the power to make decisions against the requirements of the zoning ordinance, only the ZBA could do that.

Peter Pelletier referenced the applicant's response to Section 3, Item 3 of the application form which said an unnecessary hardship could result and the project could be jeopardized if the public was unaware of the building's use. Mr. Pelletier said this was 2018 and he did not read signs; instead he went on the Internet or used social media to get information. He felt any marketing which involved a 99 sf sign intended to attract the attention of people coming from the north along Route 16, was not justified. Eric Dziedzic said he somewhat agreed with Mr. Pelletier but said the number of people coming down from Canada who stopped at Story Land to ask what it was because they saw the sign, was significant. This even when Story Land had been around since 1963, but the aquarium had never been there before and they wanted people to know about it. He said we were talking about a 32,000 sf building and he did not feel a 99 sf sign would be unreasonable. Chris Marchioni said another point to that was that the aquarium and restaurant were going to be full-time, year-round operations, compared to Story Land which was a 101-day operation. He said they were hopeful good signage would attract people's attention driving by in the winter, who knew Story Land was closed and would otherwise drive right by. The Chairman said he was just throwing this idea out as a suggestion and asked whether the message on the Story Land sign could be changed in the winter to advertise the aquarium. Mr. Marchioni said he supposed it could. The Chairman explained part of the whole sign ordinance was to be fair to everyone in business, noting everybody would love to have a larger sign. He felt swapping the signage for Story Land out in the winter would be a good compromise, seeing as the sign was already there. Norman Head suggested leaving the Heritage sign in place. Chris Marchioni said they could do that, but it is not easily visible in the summer due to the foliage, especially when going south.

The Chairman attempted to bring the discussion to a head by asking whether the board felt a swappage was a reasonable approach. Julia King said no. She said it was great they were grandfathered for all of this, but originally it was two different business entities. She said that doesn't change anything for 2018, but in thinking of the spirit of the law, even though people are non-conforming we don't want them to be more non-conforming, which she felt this was. Eric Dziedzic pointed-out that they were reducing the total amount of signage they had. Ms. King said she understood that, but still felt they were taking advantage of their grandfathered status. She said the spirit of the law indicates what size a sign should be and the applicant didn't have a 99 sf sign before, but wants one now. Peter Pelletier read the sign ordinance which said no lot shall contain a total of more than four signs having a total combined message area not to exceed a total of sixty square feet. No one sign shall contain more than forty-eight square feet of message area. Mr. Pelletier felt a 99 sf sign was so beyond the realm of the ordinance to be considered.

The discussion continued along these lines for another hour, with items discussed including which signs could be reduced in size, which ones could be eliminated and which ones needed to remain, which ones offered the best visibility and which side was more visible in each direction, how much square footage the applicant would need to give-up to have building signs and how large those signs could be since the board was unwilling to allow a 99 sf wall sign, or if a compromise was to be considered how to come to an agreement to do that, etc. etc. Anita Burroughs wondered why a wall sign was considered more-attractive than changing some of the existing structures and making them more contemporary. Eric Dziedzic said it wasn't a matter of being more attractive, it was a matter of being more visible. The board indicated they would like to see scaled drawings which accurately depicted how the signs would look on the building. Eric Dziedzic explained that once he

knew what size signs the board was willing to allow then the drawings would be revised accordingly, but they could not be drawn to scale without that information. This seemed to present an impasse as the conversation went back and forth with the applicant explaining the difficulty of giving the board what they wanted to see without first getting a determination of the sign size from them, and the board explaining they could not make that determination without first seeing what the end result would look like. Eric Dziedzic indicated if the board was just going to say no, they would simply keep all their grandfathered signs and work on getting permits for all the signs along the road to add aquarium language, and work with what they had. Mr. Marchioni said that was not really what they wanted to do, but it would be foolish for them to give up that amount of grandfathered square footage for nothing in return. He said another thought process of putting them on the building and not having any monument signs was that although the building signs would be larger, all the monument signs are double-sided and viewed from both directions, whereas the building signs are only viewable as a drive-by.

Peter Pelletier noted that the letter from the selectmen indicated that any compromise which would bring the total square footage down a little bit would be welcome. He said if there was a message anywhere, it was that. Mr. Pelletier said while he wasn't speaking for the selectmen, he felt they would be amenable to swapping some signage out, and if the applicant came back showing some lesser-size signage on the building we might have something. The Chairman added, "the lesser the better" and said he would like to see the A sign disappear. Peter Pelletier said, in fairness, if he was going to put a sign on the building it would be there where it was more visible. The Chairman asked the board what they would like to do. He noted the number of businesses located on the Story Land property and felt they all deserved their own advertising and signs.

Mr. Dziedzic said, without holding the board to their decision, asked what the largest-sized sign was they would be comfortable discussing if they wanted one large Living Shores sign on the building and were willing to give up other signs to get it. He agreed a 99 sf sign was huge. There was a long discussion and many opinions expressed and changed in answer to Mr. Dziedzic's question, including a suggestion to allow sign A to be 99 sf if it included the Restaurant D sign, and that sign was eliminated. Peter Pelletier said he thought four signs with each being no larger than 50-52 sf would be acceptable since that would be under the 221 sf being given-up by the four monument signs. It was asked whether four signs on the building would be too many? Chris Marchioni said if that was the case, they could have three and retain one of the monument signs. Peter Pelletier also said he was willing to consider a smaller wall sign than sign A was at 99 sf such as something closer to the 55 sf size of sign B. Julia King said that still exceeded the 48 sf allowed under the ordinance. Mr. Pelletier said it was only a matter of several inches larger, and he was willing to concede that amount to make this work.

The applicants indicated they were willing to give consideration to those compromises and agreed to re-work their drawings to show a scaled depiction of what they would like to have on the building and would return to see if their concept was acceptable to the board. The board agreed to this and a motion was made by Norman Head; seconded by Peter Pelletier to continue the hearing to Thursday, May 10 as that appeared to be a date when everyone would be available and which did not conflict with planning board meetings. Vote: All in favor.

Public Hearing - File 2018-02:

Applicant:	John and Monika Magazzu (Christmas Mountain Amenities building)
Location:	100 Christmas Mountain Road, Glen, NH
Bartlett Tax Map:	Tax Map 2RT016, Lot 182-REC.
Purpose:	A Special Exception to allow a sports/health club in the Town Residential District A. The club will be open to members and their guests only and will not include a restaurant or lounge.

Zoning Ordinance Section: Article XVII, Section D(1)(y).

Atty. Randall Cooper of Cooper Cargill Chant, PA and applicant John Magazzu presented. Atty. Cooper described how this special exception had been approved by voters at this year's town meeting. He said it allowed a sports/health club to be located in the Town Residential District A on parcels of land of four acres or more and was open to members and their guests who held monthly or more memberships. The club was not permitted to have a restaurant or lounge.

Atty. Cooper said the application before the board was a recitation of the facts that supported the application. He said the reality is that almost all the questions are answered by the fact that this particular use has been occurring on this site since 1985. The building was originally intended as a recreational building and health club for the Christmas Mountain Condominiums and the only thing changing is that it is now a more-open membership to allow other people within the town to use the amenities. Atty. Cooper proceeded to read the criteria necessary for a special exception to be granted and facts supporting the request as follows: (The italicized text represents the actual wording of the special exception criteria).

- 1) *The specific site is an appropriate location for such a use* because the parcel upon which the existing health club sits was designated as a recreational building lot since 1985, when the subdivision plan was approved. A building permit was issued for the club in 1986. Atty. Cooper said the continued use of this facility over the years without causing any negative impact on anyone shows that this is an appropriate location for such a use.
- 2) *A preponderance of evidence is found that property values will not be reduced due to incompatible land use of such a use* because it's an already-existing use. Additionally, it will provide a valuable asset to the surrounding properties because it will provide residents a place to recreate and congregate which is not otherwise available to them.
- 3) *No traffic hazard will be created* because the roadway is sufficient to handle the traffic as evidenced by the fact that the pickleball use of the facility was occurring previously without creating any traffic hazard.
- 4) Atty. Cooper referred to his previous answers and said they also apply to the requirement that *no nuisance or other hazard is involved*.
- 5) Atty. Cooper said the previous pickleball use also applies to show *adequate and appropriate facilities are provided for the proper operation of the proposed use*. A planned indoor pickleball court will require a building permit from the selectmen and will be vetted by them.
- 6) Atty. Cooper said *there is adequate area for safe and sanitary sewage disposal according to state regulations* as addressed in a letter from HEB Engineers, a copy of which was provided for the board's information. The letter said based upon an assumption of 40 daily users and a function room of 50 seats, only 1,400 gpd is being used for a system designed for 2,000 gpd. The remaining 600 gpd will support an additional 30 daily users if the function room is being used, and up to 100 additional users having showers every day if the function room is not being used. Atty. Cooper said these figures were conservative since not all users took showers at the facility, preferring to do so at home.
- 7) *Operations in connection with such a use shall not violate the provisions of Article IV of this ordinance*. Atty. Cooper said Article IV of the zoning ordinance contains certain substantive general provisions regulating excavation, flood areas, air and water quality, quartering of domestic animals, junk yards and dumps, dangerous or unsightly ruins, landfills, waste disposal systems, fire protection, outdoor lighting, and site plan review. He said the health club complies with all these provisions and nothing has changed. He said in addition, the public will benefit from the services of a health club and the commercial use will increase the tax base for the town.

Atty. Cooper recalled that the planning board had voted unanimously to recommend this special exception and noted the town had voted overwhelmingly to adopt the change. He said his client, Mr. Magazzu, was here now to enable the club to continue its operations and was willing to answer any questions.

Peter Pelletier asked how much daily use the club was expected to have. Mr. Magazzu said over the past 30 years, the daily use had been approximately 15-20 people during week days and between 40-50 on the weekends which was when the bulk of the crowd came up from down south. Mr. Pelletier said he was talking about how many association members used it now. Mr. Magazzu said over the years, association members had always used it. Mr. Pelletier said he saw a thirty-three-year-old septic system and what might be adequate today may not be adequate in another two or three years. Mr. Magazzu said it was a 2,000-gallon system and both pumps had been replaced last year and the leachfield was rebuilt in 2005 by the previous owner. Additionally, Mr. Magazzu said the system had been underutilized during the time the amenities building was closed. Anita Burroughs asked how many members the club had and how many were pickleballers. Mr. Magazzu said there were approximately 150 members, 100 of which were pickleball players. However, there were usually only ten or fifteen players there at any one time.

Chairman asked if there were any further questions from the board. When no comments were forthcoming, the public comment period was opened. With no public comment forthcoming, the public comment period was closed and the board deliberated and voted on the seven conditions which must be met before a variance can be granted, as follows:

1. The site is an appropriate location for the proposed use: Vote: 5 yes (unanimous).
2. A preponderance of evidence is found that property values will not be reduced due to incompatible land use by such a use: Vote taken: 5 yes (unanimous).
3. No traffic hazard will be created: Vote taken: 5 yes (unanimous).
4. No nuisance or other hazard is involved: Vote taken: 5 yes (unanimous).
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Vote taken: 5 yes (unanimous).
6. There is adequate area for safe and sanitary sewage disposal according to state regulations: Vote taken: 5 yes (unanimous).
7. Operations in connection with such a use shall not violate the provisions of Article IV of this ordinance: Vote taken: 5 agree (unanimous).

Atty. Cooper asked for board to state that they found the application for a sports/health complied with all the conditions of Item (y) under Article XVII, Section D(1). The board indicated they found that to be so. Based on the above vote, the Chairman called for a motion to grant the special exception. Motion was made by Peter Pelletier; seconded by Anita Burroughs. Vote: All in favor. The selectmen will be notified of the board's decision.

The minutes of the November 15, 2015 meeting were reviewed. Motion to approve the minutes, as written, was made by Julia King; seconded by Norman Head. Vote: 3-0-2, with Peter Pelletier and Anita Burroughs abstaining since they had not attended the meeting.

With no further business, a motion to adjourn was made by Julia King; seconded by Anita Burroughs. Vote: All in favor. Meeting was adjourned at 8:53 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary

[Clarifying note on vote: After the meeting had officially adjourned, Norman Head advised the Chairman and secretary that he had neither voted yes or no on any of the conditions, nor the final decision. Nor did he give notice that he was abstaining from the vote. Mr. Head's decision not to vote was based on his belief that Mr. Magazzu had been fully-aware that the health club was not authorized to be in operation, but had deliberately ignored this fact. These minutes reflect a unanimous vote as that was not disputed at the time the Chairman announced the results of the vote.]