

COÖS COUNTY ZONING BOARD OF ADJUSTMENT
North Country Resource Center, Lancaster NH
August 30, 2022

Roll Call:

PJ Cyr-Absent
Scott Deblois-Present
Mark Evans-Present
Greg Sipple-Absent
Roland “Lefty” Theberge-Present

Also in Attendance: Jennifer Fish, County Administrator; Earl Duval, Duval & Associates LLC; Wayne Presby, President of Mt. Washington Railway Company; Ryan Presby, General Manager of Mt. Washington Railway Company; and members of the public and press.

Scott Deblois, Acting Chair called the meeting to order at 6:15 pm.

APPROVAL OF MINUTES OF OCTOBER 13, 2021

Mark Evans made a motion to approve the minutes as presented. Mark Evans seconded the motion. There was no discussion, and the minutes were approved unanimously by voice vote.

CASE 22-001 Mt. Washington Cog Railway

Chairman Deblois opened the public hearing concerning Case number 22-001. Chairman Deblois explained that the hearing notice was posted in following locations:
County Administration Building, W. Stewartstown
Coös County Nursing Home, Berlin
Coös County Registry of Deeds, Lancaster

Newspapers:

The Colebrook Chronicle 8/19/2022
The News and Sentinel 8/24/2022
The Berlin Daily Sun 8/25/2022
The Coös County Democrat 8/24/2022

Abutters, Applicant, and Attorney -Certified mail 8/17/2022

Chairman Deblois informed the applicant that since there was not a full board present that he had the option to delay the proceedings until a full board was present. The applicant consented to proceed without a full board. Chairman Deblois asked the applicant to present his case. Mr. Wayne Presby introduced his attorney, Earl Duval who presented the application. Mr. Duval stated the Mt. Washington Railway Company is requesting a variance from Article VI section 6.06 of the Coös County Zoning Ordinance to permit the construction of a 28’ x 120’ train platform where 10’ 8” would be within the 25’ setback on property located at 3168 Base Station Road, Thompson & Meserve’s Purchase, Map 1605, Lot 11.

Attorney Duval noted that on September 15, 2021, he discussed with the Coös County Planning Board a proposal to increase the width of the platform at Waumbek Station. The Planning Board consensus was that if a variance was approved by the ZBA that updated plans should be submitted to the Planning Board for the site plan file. Attorney Duval stated that prior to submitting the variance application he discussed on two separate occasions the proposed width changes with Derek Ibarguen, Forest Supervisor, White Mountain National Forest and Brook Brown, Forest Ranger. The US Forest Service-USDA, White Mountain Forest is the only abutter. Attorney Duval conveyed to the board that Forest Service representatives stated to him during the meetings that they had no objection to the platform. A member of

the public, Jon Swan, Dalton NH asked if that was received in writing. Attorney Duval stated that he did not have anything in writing. There were no representatives from the US Forest Service in attendance and no correspondence was submitted directly to the board prior to the meeting.

Board member, Lefty Theberge asked Attorney Duval if the request for the increased width of the platform was for safety or convenience. Attorney Duval responded that the purpose is for safety of the passengers that embark and disembark at Waumbek Station. Mr. Wayne Presby stated that the platform can be very congested. Attorney Duval stated that the construction had begun on the 18'x by 120 platform that had been approved and he has been working with the NH Fire Marshal's office.

Chairman Deblois asked the applicant to respond to the following 5 facts in support of granting the variance:

Attorney Duval responded with the following narrative that was included in the variance application:

1. Granting the variance would not be contrary to the public interest because:

The additional platform is an accessory use to the existing station in an area that is only developed by the railroad and surrounded by thousands of acres of very dense forest on both sides of its tracks.

Granting the variance would not be contrary to the public interest because it does not alter the essential character of the neighborhood, nor does it threaten the health, safety, and general welfare of the public.

2. If the variance were granted, the spirit of the ordinance would be observed because:

In general, it is understood that setbacks are established to promote the health, safety, or general welfare of the public. Setbacks do this by lessening congestion in the streets and prevent landowners from crowding the property of others; allow for the safe placement of utilities; securing safety from fires, panic, and other dangers; and for providing for adequate light and air.

If the variance was granted, the spirit of the ordinance would be observed because it would not threaten the health, safety, or general welfare of the public in that the legal purpose of the setback would not be violated.

As proposed, there would still be a substantial distance (14'4") from the edge of the platform to the property line and all guests visiting Waumbek Station will remain on the platform or on property owned by the Cog.

3. Granting the variance would do substantial justice because:

Granting the variance would do substantial justice because the general public would benefit significantly from having a safe platform, the platform as proposed is consistent with the present use of Waumbek Station and the development will create additional property taxes.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

If the variance were granted, the values of the surrounding properties would not be diminished because the project as proposed is consistent with the present use and it would not alter the existing character of the area.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

1. ***No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:***

Due to the unique size of the Cog's property the required 25' setback requirement makes it impossible to construct a platform that would safely accommodate Cog passengers at Waumbek Station.

The Cogs only abutter at Waumbek Station is the White Mountain National Forest (Map 1605, Lot 5 consisting of 10,665 acres). The entire property line at Waumbek Station consists of dense forest land.

Given the special conditions of the Cog's property, application of the required 25' setback would not advance the purposes of the required setback in any fair and substantial way.

- ii. ***The proposed use is a reasonable one because:***

Given the uniqueness of the property and the environment, the construction of the proposed platform is reasonable as it will provide a safe place for the Cog's passengers to disembark and enjoy a part of Mount Washington.

Chairman Deblois asked if a snow cat or another type of large emergency equipment would be able to maneuver through the remaining 14' setback area to the abutting property in case of an emergency. Attorney Duval and Mr. Wayne Presby responded to the question in the affirmative.

Chairman Deblois asked if anyone from the public wanted to speak regarding the variance request:

Roger Doucette, Whitefield: Mr. Doucette asked if the reason for the increase in platform was to increase the capacity of the shelters at the station. Attorney Duval responded no that it was just to provide more space for passengers on the platform. Mr. Presby stated that there weren't increasing the capacity of the passengers visiting the lean-tos in the winter.

Brian Post, Carroll County resident: Mr. Post asked about a photo that he had seen on a social media website that appeared to him that the 28' wide platform had already been built. Mr. Presby stated that no it hadn't been built yet. Ryan Presby stated that areas off the platform can get icy and last winter two passengers fell and broke their legs. The increased width of the platform would provide more space, so passengers don't wander into non-maintained areas.

Nancy Decourcey, Jefferson. Ms. Decourcey asked how the increased width of the platform could aid in the safety of the general public. Mr. Presby stated that it does assist in the safety of the public because there are hikers and back country skiers that use the right-of-way along the tracks.

Sue Suitor, Whitefield. Ms. Suitor asked if hikers could use the lean-to facilities and Mr. Presby answered in the affirmative.

Sue Wemys, asked what the elevation is at Waumbek station? Ryan Presby stated it was a little less than 4,000 feet. Ms. Wemys asked if it was below the tree line and Wayne Presby stated it was. Ms. Wemys asked if there were any Bicknell's thrush birds in that area. Wayne Presby said he didn't know.

Jon Swan, Dalton. Mr. Swan asked about how many documented accidents or injuries occur on average at Waumbek Station. Ryan Presby stated that last year there were 3 slip and falls. Mr. Swan stated that the board needs to review the request using the five criteria and that this project doesn't meet the hardship criteria because it is already relatively safe at the station, and the request is more than a want then a need.

Mr. Swan also stated that the board should consider that this improvement to Waumbek Station is also part of the Lizzie's Station project of which there is a lot of opposition.

Mr. Duval responded that as a property owner it is their constitutional right to be able to use that property in a viable manner. Mr. Duval said that the five criteria are for the purpose of setback variance. Mr. Presby stated that the increased platform would serve the purpose of public safety because it would reduce the potential for injuries.

Abby Evankow, Gorham. Ms. Evankow stated that historically trains, train tracks, and train depots are long and narrow and that businesses have been building in railroad rights-of-way for over a century and there is no good reason to change it now. The Coös County Planning Board approved a plan with a conforming deck and Ms. Evankow supports the right to build that conforming deck. Ms. Evankow assumes that the planning board would have addressed safety during the approval process, so it doesn't make sense that now it is unsafe. Ms. Evankow stated that it was troubling to read that the applicant had to go before the planning board to address the building of the lean-tos without a permit. Ms. Evankow requested that the board deny the request for a setback variance because the applicant has not met all the requirements

Dennis Pednault-Mr. Pednault stated that he doesn't think the board can use Mr. Duval's statement regarding his discussion with the US Forest Service because it is hearsay and can't be part of the board's deliberations.

Mr. Duval responded that as counsel to the applicant he submitted to the board that he met with Derek Ibarguen and Brooke Brown of the US Forest Service and provided plans, applications and materials and reviewed it with. He stated that he asked if he could relay their discussion to the board and there was no objection. Mr. Presby stated that Mr. Duval is a member of the New Hampshire Bar Association, and it is his fiduciary duty not to lie in a public meeting.

Cam Bradshaw, Berlin. The question was asked how the US Forest Service could agree to something like this since it is public land. It is surprising that there isn't a public process for this. Mr. Duval stated that he didn't say that the US Forest Service said yes just that there were no objections.

Jon Swan, Dalton. Mr. Swan said that the applicant needs to have something in writing from the US Forest Service. Mr. Duval asked if the notice regarding the meeting was sent the US Forest Service. County Administrator Fish stated yes, and the signed certified mail receipt was returned. Mr. Presby stated that the US Forest Service could have sent a representative to the meeting if there were objections to the application.

Lucy Wyman, Lancaster. Ms. Wyman stated that she reviewed the minutes of the planning board minutes and she was confused about the timing of the approval for the lean-tos. Chairman Deblois stated that the approval process for the lean-tos didn't have anything to do with the ZBA. She agreed with others in the room that Cog Railway riders are not members of the general public.

There was no further public comment. The chair asked for motion to close the public hearing. Mark Evans made the motion and Lefty Theberge seconded the motion. The motion was approved by voice vote. 3-0. The board entered deliberations. It was discussed that the board visit the site of the variance request. Mark Evans stated that the applicant is asking for an additional 10 feet and that there is only forest on the other side of the boundary. He doesn't think it necessary to visit the site. Lefty Theberge said sometimes it is a good idea to see the site than to rely on photographs. Mark Evans stated that the only abutter has no complaints because they didn't send a letter or attend the meeting.

On a motion from Mark Evans and with a second from Lefty Theberge to grant the applicant Mt. Washington Railway Company's request for a variance from Article VI section 6.06 of the Coös County Zoning Ordinance to permit the construction of a 28' x 120' train platform where 10' 8" would be within the 25' setback on property located at 3168 Base Station Road, Thompson & Meserve's Purchase, Map

1605, Lot 11. The chair called for a rollcall: Mark Evans-Yes, Lefty Theberge-Yes and Scott Deblois-No. The motion passed 2-1.

OLD BUSINESS

None

DATE AND TIME OF NEXT MEETING

A tentative date for the next meeting was set for September 20, 2022.

Lefty Theberge made a motion to adjourn. Mark Evans seconded the motion. All voted yes. The meeting was adjourned at 7:22 pm.

Respectfully submitted,
Jennifer Fish

Pending Approval