

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

DECEMBER 15, 2004

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 15, 2004 beginning at 7:30 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Jeanna Hale; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

A public hearing was opened at 7:30 p.m. to consider a **SPECIAL EXCEPTION** requested by **RICK AND MARY BRILLARD** in regard to Article 147.13.8.2.5.3 of the Conway Zoning Ordinance to permit two commercial units and 11 dwelling units at 2888 White Mountain Highway, North Conway (PID 215-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, December 8, 2004.

Mr. Bartolomeo stepped down at this time. Shawn Bergeron of Shawn Bergeron Technical Services and Luigi Bartolomeo of Bartolomeo Architects appeared before the Board. Mr. Colbath stated there are only three members present and the applicant is entitled to a five-member Board. Mr. Colbath stated that three votes in the affirmative are necessary for the application to be approved. Mr. Colbath asked if the applicant would like to proceed with three-members or continue the hearing until a five-member Board is present. Mr. Bergeron agreed to proceed with three-members.

Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bergeron stated this property used to be the site of the North Conway Legion. Mr. Bergeron stated that the owner would like to more intensely develop this property. Mr. Bergeron stated the owner would like to maintain the existing building, construct another commercial building to be a drive thru coffee shop and construct two other buildings for residential use.

Mr. Bergeron stated that this site is 1.67 acres. Mr. Bergeron stated if ½ acre were used for the first commercial unit and 10,000 square feet used for the second commercial unit, the rest of the acreage would be used for residential use, which would allow 11 residential units. Mr. Bergeron stated the two residential structures would go toward the rear of the property. Mr. Bergeron stated that each of the residential structures would have three dwelling units and an application would be filed with the Planning Board and meet the requirement for full-time rental units, which are to be serviced by municipal water and sewer.

Mr. Bartolomeo reviewed the floor layout. Mr. Colbath asked if the square footage includes the garage. Mr. Bartolomeo stated that the workforce units do not have a

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garage. Mr. Irving stated that this is the first application of this ordinance and the Board needs to clarify in its decision that each residential structure must contain three dwelling units.

Mr. Colbath asked for public comment; Steve Hartman, owner of the Nearledge Inn, stated that he is concerned with the property itself as it slopes down to his property. Mr. Hartman asked if there would be any change to his property or any fill on the subject parcel. Mr. Bergeron answered in the negative to both questions. Mr. Hartman reviewed the plans. Joseph Rancourt asked out of total land area what part of the land cannot be included in the calculations due to slope. Mr. Bergeron stated since this lot is serviced by water and sewer the slope can be counted. Mr. Rancourt reviewed the plans.

Mr. Chalmers made a motion, seconded by Ms. Hale, that each structure must contain at least three dwelling units. Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Ms. Hale, that not less than 25% of all dwelling units shall be designated as full time rental apartments. At the time of Planning Board approval, the units designated as full time rental apartments must be shown on the plan with a condition that they are leased for twenty years from the date of Planning Board approval by the developer and a deed restriction shall be recorded in the Registry of Deeds as evidence of the same. Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Ms. Hale, that all lots are serviced by municipal water and sewer. Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Ms. Hale, that rental/deed-restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet. Mr. Colbath stated the rental/deed-restricted units are 903 square feet. Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Ms. Hale, that the architectural design plans must be submitted to the Zoning Board of Adjustment at the time of the application to ensure compliance with the zoning regulations. Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Ms. Hale, that, based on the forgoing finding of facts, the Special Exception pursuant to §147.13.8.2.5.3 of the Town of Conway Zoning Ordinance be granted conditionally upon deed restrictions for the full-time rental apartments being recorded in the Carroll County Registry of Deeds. Motion unanimously carried.

A public hearing was opened at 7:50 p.m. to consider an **APPEAL OF ADMINISTRATIVE DECISION** requested by **STANLEY ANTHONY** in regard to §147.14.1.1 of the Conway Zoning Ordinance to allow an expansion of a non-conforming

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use at 45 Main Street, Conway, NH (PID 276-279). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, December 8, 2004.

Mr. Bartolomeo rejoined the Board at this time. Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Mr. Colbath stated there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath stated that three votes in the affirmative are necessary for the application to be approved. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until a five-member Board is present. Mr. Burnell agreed to proceed with four-members. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Burnell stated Todd's Automotive and Car Restoration would use the addition. Mr. Burnell stated there would be very little impact on the site; essentially it is accessory, as it is two more bays to do more of what the building has been used for. Mr. Bartolomeo asked if Todd has been using the existing bays. Mr. Burnell answered in the affirmative. Mr. Bartolomeo asked if the two buildings would be attached. Mr. Burnell answered in the affirmative.

Mr. Anthony stated he hopes to cut down on some of the confusion on Main Street as there would be less activity in the front with the repair portion of the business being moved to the back of the property. Mr. Colbath asked if the two bays in the front would remain. Mr. Anthony answered in the affirmative and stated he would use them more for the used car business, to clean the cars and park in front of the bays.

Mr. Bartolomeo asked the size of the old building. Mr. Burnell answered 1,300 square feet. Mr. Bartolomeo asked the size of the new building. Mr. Anthony answered 1,200 square feet. Mr. Irving stated that he has deferred the decision to the Board and the Board must determine if the proposed expansion is accessory to the existing non-conforming use. Mr. Anthony stated he has operated here for 32 years.

Mr. Colbath asked for public comment on the accessory use; there was none. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the proposed expansion, automotive repair, is accessory to the existing use of car sales and repairs. Motion unanimously carried.**

A public hearing was opened at 8:11 p.m. to consider a **SPECIAL EXCEPTION** requested by **STANLEY ANTHONY** in regard to §147.13.14.3.11 of the Conway Zoning Ordinance to allow the expansion of a non-conforming structure between the 10- and 100-year floodplain at 45 Main Street, Conway, NH (PID 276-279). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, December 8, 2004.

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Mr. Colbath stated there are only four members present and the applicant is entitled to a five-member Board.

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Mr. Colbath stated that three votes in the affirmative are necessary for the application to be approved. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until a five-member Board is present. Mr. Burnell agreed to proceed with four-members.

Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that this lot is serviced by municipal water and sewer.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Ms. Hale, that in the area around Pequawket Pond between the one-hundred-year and the ten-year-flood level [464.6 feet to 461.5 feet], as shown on the maps described herein, development, substantial improvements and building, provided that it is serviced by precinct water and sewerage and the lowest floor is above the one-hundred-year-flood level. Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.11. of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 8:17 p.m. to consider a **SPECIAL EXCEPTION** requested by **STANLEY ANTHONY** in regard to §147.13.15.13.3 of the Conway Zoning Ordinance to allow the expansion of a non-conforming structure in the Shoreline Protection Overlay District at 45 Main Street, Conway, NH (PID 276-279). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, December 8, 2004.

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Mr. Colbath stated there are only three members present and the applicant is entitled to a five-member Board. Mr. Colbath stated that three votes in the affirmative are necessary for the application to be approved. Mr. Colbath asked if the applicant would like to proceed with three-members or continue the hearing until a five-member Board is present. Mr. Burnell agreed to proceed with four-members.

Mr. Colbath read the application and the applicable section of the ordinance. Mr. Burnell stated they tried to position the building flush with the east side of the building to maximize the setback from the shore, which puts the building slightly in the side setback. Mr. Burnell stated there is about 7-feet of the existing building within the setback and the addition is almost out to the setback at the end. Mr. Burnell stated it is impossible to meet the shoreline setback; the building is 69-feet from the shoreline at it's nearest point. Mr. Burnell stated the building is as far away from the shoreline without being to far into the sideline setback.

Mr. Bartolomeo asked if this is an expansion of a non-conforming building why is this not another special exception application. Mr. Colbath stated it is overlapping. Mr. Irving stated this application covered all aspects of non-conformity with the special

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exceptions. Mr. Bartolomeo stated he would agree that it is overlapping and have it covered.

Mr. Irving stated there is some uncertainty of the ownership of the area filled in 1938. Mr. Irving stated he would recommend a subsequent condition that prior to application to Planning Board, the uncertainty of ownership shall be resolved and recorded with the Carroll County Registry of Deeds with a copy submitted to the Town. Mr. Irving stated he would also recommend another subsequent condition that when the application is before the Planning Board for the expansion that a pathway connecting the footbridge to Route 16 be preserved and noted on the site plan. Mr. Irving stated it could be along the water. Mr. Anthony agreed and stated it could tie into the other paths.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that there is a state approved septic system or connection to a municipal sewer. Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Ms. Hale, that any building to be constructed shall be configured and located on the lot to create the maximum shoreline setback practical. Motion unanimously carried.

Mr. Bartolomeo made a motion, seconded by Ms. Hale, that the proposed building encroachment falls within the 50% sideline setback reduction and is appropriate and approved as presented on the plan. Motion unanimously carried.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.15.13.3 of the Town of Conway Zoning Ordinance, including the proposed yard setback reduction, be granted with two subsequent conditions; 1) that the uncertainty of ownership regarding the filled area be resolved and recorded at the Carroll County Registry of Dees (copy to the Town) prior to an application being submitted to the Planning Board; and 2) a path from the footbridge to Route 16 must be preserved and shown on the plans submitted to the Planning Board. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of November 17, 2004 as written. Motion carried with Ms. Hale abstaining from voting.

Meeting adjourned at 8:45 p.m.

Respectfully Submitted,

Holly L. Meserve, Recording Secretary