

ZONING BOARD OF ADJUSTMENT

MINUTES

DECEMBER 16, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 16, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Sheila Duane; Alternate, Cynthia Briggs; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

Ms. Sherman appointed Ms. Briggs as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **PTF REALTY TRUST** in regard to §147.13.8.2.5.3 of the Conway Zoning Ordinance to **permit 32 apartment units on 2.99 acres** on White Mountain Highway, Conway (PID 265-161.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 4, 2009.

Christopher Davies of Great Bridge Properties, Randy Cooper of Cooper Cargill Chant, Ed Poliquin, Land Owner, and Mark Lucy of White Mountain Survey appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Lucy stated that the density incentive is to allow 12 units per acre. Mr. Lucy stated the structure has 32 units on three floors; there will be eight full time rental units, six – one bedrooms and two – two bedrooms, which meets the 25% full time rental requirement; the lot is serviced by municipal water and sewage, there is an application before the Conway Village Fire District that is pending; all of the qualifying units will be between 300 and 1,000 gross living space; and architectural elevations have been submitted to the Board.

Mr. Irving stated there is also a schematic showing compliance with the building height restriction. Mr. Cooper stated that they have asked for an administrative interpretation whether it includes decks or mechanical areas and the administrative interpretation by the Planning Director, Mr. Irving, is that it does not include the decks or the mechanical areas.

Mr. Lucy reviewed lot layout, building elevations and floor plans. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for Town comment; there was none. Ms. Sherman asked for public comment; Bob DiPace of 3 Kimberly Way stated that he was asked by Susan Delegal to read her letter to the Board. Mr. DiPace summarized her letter and stated that she does not believe there has been enough notice and would ask the Board to delay their decision.

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Mr. DiPace stated that there was a Homeowner's Association meeting on December 12 in which Mr. Davies attended and reviewed the project. Mr. DiPace stated that he took a poll of the Association via email; 24 were in favor, 11 were against and 6 were undecided. Mr. DiPace stated the Association was nervous of the tenants invading the river and Mr. Davies has stated that he doesn't want people on our property and, if legal, he will have a fine added to the lease for that. Mr. DiPace stated that they don't want snowmobiles or dogs on their property. Mr. DiPace stated that the five nearest owners are in favor of this project.

Richard LaPorte of 206 Poliquin Drive submitted and read four letters from Nels and Suzanne Gustafson, Susan Delegal, Joseph Salah and Richard and Phyllis LaPorte. Charles Coughlin submitted a letter to the Board. Ms. Briggs asked if this is affordable housing. Mr. Davies stated that this will run like a normal rental property; they have to pay their rent. Mr. Davies stated that they receive federal money to build it, but it runs like a normal rental. Mr. Davies stated that they have to keep up the property and we our audited. Mr. Davies stated that they are watched very carefully. Mr. Davies stated that this is a very green building; we have community rooms and a fenced in play area. Mr. Davies stated that this is a moderate income property and the tenants will be paying their rent.

Mr. Cooper stated that this is a two stage process; first, they must receive a special exception from the Zoning Board of Adjustment for the use and then they have to appear before the Planning Board for site plan review. Mr. Cooper stated the Planning Board proposed and the Town of Conway voted specifically to encourage this type of project in the commercial zone. Mr. Cooper stated that this is where the Town wanted work force housing. Mr. Cooper stated the Town encouraged the use by reducing the density to allow it.

Tom Shaw of 102 Poliquin Drive stated that it seems Conway is in need of affordable housing and this is a well planned project that he is in favor of. Marie, not a Conway resident, asked how many units would be allowed if a special exception is not granted. Mr. Irving answered 11 units.

Ed Duffy of 224 Poliquin Drive stated his only issue with the development is a safety issue. Mr. Duffy stated there is no sidewalk on Route 16 in front of this project and there is no crosswalk to the shopping center across the street. Mr. Duffy stated if those items could be addressed and makes this a safe environment he could be in favor of this project. Mr. Duffy stated that the safety issues are his biggest concern. Mr. Colbath stated that this is a special exception for use of the land and it will go forward to the Planning Board which those items can be addressed. Mr. Duffy stated that he understands that, he just want to make sure his concerns were known through the entire process.

Ed Poliquin, land owner, stated there are 24 people in favor and 5 are the nearest abutters. Mr. Poliquin stated that he has worked hard to preserve the green area and has worked hard to have the parking behind the building and not on Route 16. Mr. Poliquin stated that he has required a lot of green to remain to protect the units closest to this building. Mr. Poliquin stated that this lot could have a gas station, a Dunkin Donuts or a VIP warehouse. Mr. Poliquin stated he has done everything he can to protect the abutters. Mr. Poliquin stated that he gave up an easement for a driveway on one side of the property to protect the development.

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Mr. Poliquin stated that he had some beautiful pine trees that were inadvertently cut when they installed the sewer line. Mr. Poliquin stated that he got an injunction and made them replace the trees.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Briggs, that each structure must contain at least three dwelling units.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that all lots must be serviced by municipal water and sewerage.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Briggs, that Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Briggs, that architectural design plans must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the zoning regulations.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.8.2.5.3 of the Town of Conway Zoning Ordinance to permit the construction of 32 apartment units on 2.99 acres be granted. Motion unanimously carried.

OTHER BUSINESS

Thaddeus and Virginia Thorne – Motion for Rehearing in regard to Redstone Properties, Inc (PID 245-65): Thad Thorne was in attendance. Ms. Sherman asked if there was any evidence that there was a technical error. Mr. Colbath stated that he didn't see any. Ms. Briggs stated that she is still uncomfortable with not having the balloon test notified. Mr. Irving stated the actual balloon test was done before they even applied to the Town. Mr. Colbath stated that there was a report on the balloon test. Mr. Chalmers stated that the majority of the Board was comfortable with that test. Mr. Briggs stated that she does not believe there was anything procedurally improper.

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Mr. Colbath made a motion, seconded by Ms. Duane, to deny the motion for rehearing requested by Thaddeus and Virginia Thorne in regard to Redstone Properties, Inc as there was no new information available and there was not a technical error. Motion unanimously carried.

Mr. Thorne stated that radiation is very serious. Ms. Sherman stated that that would have been information that should have been presented at the original hearing in March. Mr. Thorne stated that he was in the hospital in March. Ms. Sherman explained that he could appeal this decision to the Courts.

Olivia Conway Realty, LLC – Motion for Rehearing in regard to Residence Inn by Marriott (PID 246-34): Kim Jackson was in attendance. Ms. Sherman asked if there was a technical error. Mr. Irving stated staff is not aware of a technical error in procedure. Ms. Sherman asked if there was any new information. The Board agreed there was no new information. **Mr. Colbath made a motion, seconded by Ms. Duane, to deny the rehearing requested by Olivia Conway Realty, LLC in regard to Residence Inn by Marriott. Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Mr. Chalmers, to approve the Minutes of November 18, 2009 as written. Motion carried with Mr. Colbath abstaining from voting.

Meeting adjourned at 8:30 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant