

## ZONING BOARD OF ADJUSTMENT

### MINUTES

AUGUST 18, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 18, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:35 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hylen; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

#### PUBLIC HEARINGS

A public hearing was opened at 7:35 pm to consider a **SPECIAL EXCEPTION** requested by **NORTH CONWAY AMUSEMENTS, LLC** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change one non-conforming use, a waterslide, to another non-conforming use, batting cages**, at 2129 White Mountain Highway, North Conway (PID 230-107). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 4, 2010. This hearing was continued from June 16, 2010 and July 21, 2010.

Peter Gagne and Larry Manson of North Conway Amusements, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there were only four members present and they are entitled to a five member Board. Ms. Sherman asked if they would like to proceed with four members or continue the hearing until five members were present. Mr. Gagne agreed to proceed with four members.

Ms. Sherman stated that the Board asked for clarification on the noise factor and the Board met last Wednesday for a demonstration of the wooden bats and rubber balls. Mr. Colbath asked if aluminum bats would be used. Mr. Gagne answered in the negative.

Mr. Colbath asked if the four batting cages would be located where the pool was. Mr. Gagne stated they don't have the actual location, but it will be in the pool area. Mr. Colbath asked if it would be lower than the parking lot. Mr. Gagne stated it would be 18-feet below grade. Mr. Manson stated there would be a retaining wall and they would be hitting toward the street. Ms. Sherman asked for public comment; Howard McGlaulin stated that he and his wife, Joan, have discussed this with Mr. Gagne and they don't have any objections. Mr. McGlaulin stated they have been told there will be no additional lighting. Mr. Irving asked if there is any proposed lighting. Mr. Gagne answered in the negative and stated since they are ending at 8 pm there is no need for additional lighting.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to noise.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance nighttime lighting.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.14.1.2 of the Town of Conway Zoning Ordinance to change one non-conforming use, a waterslide, to another non-conforming use, batting cages, be granted with the provision that wooden bats and rubber balls be used as per the demonstration to the Board. Motion unanimously carried.**

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A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **ROBERT AND VALERIE KEMPF** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow the construction of a garage within the side setback** at 310 Blueberry Lane, North Conway (PID 232-85). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 6, 2010.

Robert and Valerie Kempf appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there were only four members present and they are entitled to a five member Board. Ms. Sherman asked if they would like to proceed with four members or continue the hearing until five members were present. Mr. Kempf agreed to proceed with four members.

Mr. Kempf stated that he is not sure where the property line was so he wanted to make sure he met the setback. Mr. Kempf stated both lots on either side of him are vacant. Mr. Colbath asked if he wanted to encroach by two-feet. Mr. Kempf stated approximately, but he is not sure where

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the line is. Mr. Colbath asked if the garage will be attached to the house. Mr. Kempf answered in the negative. Mr. Colbath asked if there was anywhere else on the lot the garage could be built. Mr. Kempf stated there is wetland.

Mr. Colbath asked if the lot closest to the garage is vacant. Mr. Kempf answered in the affirmative. Mr. Colbath asked if they have looked at purchasing the lot. Mr. Kempf stated he doesn't have the money to purchase it. Mr. Colbath asked if the lot is currently for sale. Mr. Kempf answered not that he is aware of. Mr. Colbath asked if the garage was attached to the house would it meet the setback. Mr. Kempf stated there is a shed attached to the house and then the garage would be attached to the shed. Mr. Colbath asked if he wanted to remove the shed. Mr. Kempf answered in the negative.

Ms. Sherman asked for public comment; there was none. Ms. Sherman asked if there was a way to move it two feet to encompass the shed. Mr. Kempf answered in the negative. Ms. Sherman asked if there were any way to find the actual property line. Mr. Irving stated that this is a variance that might be needed, but he is not really sure. Mr. Chalmers stated that the State's definition of hardship has become more restrictive and he is having a hard time seeing hardship as imposed by the State.

Mr. Colbath stated that he is not concerned with hardship; he is more concerned with abutters. Mr. Chalmers stated that it was voted in by the Town and they may not feel they have to show up. Mr. Hylen stated that he is more concerned with not having an accurate measurement and not knowing where the actual property line is; not sure where to go from here without that information.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Hylen, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Hylen, that 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.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that they cannot locate the boundary pins and they are trying to design it around an existing shed. Ms. Sherman stated access to the

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rear of the property is not an issue; the reason for having the 15-foot setback. Mr. Hylen stated that he is more comfortable with 5.b as he does not see any unnecessary hardship under 5.a, but there is unnecessary hardship as the garage is a reasonable use and cannot be done without a variance. **Mr. Colbath withdrew his motion. Mr. Hylen withdrew his second.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Hylen, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the construction of a garage within the side setback with a maximum encroachment of two-feet be granted. Motion unanimously carried.**

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A public hearing was opened at 8:15 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERT AND MABEL DUTTON** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 231 Thompson Road, North Conway (PID 219-303). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 6, 2010.

Robert Dutton appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there were only four members present and they are entitled to a five member Board. Ms. Sherman asked if they would like to proceed with four members or continue the hearing until five members were present. Mr. Dutton agreed to proceed with four members.

Ms. Sherman asked if this would be owner-occupied. Mr. Dutton answered in the affirmative. Mr. Colbath asked how big the apartment is. Mr. Dutton answered just less than 800 square feet. Mr. Colbath asked if this is for rental. Mr. Dutton stated not at the moment as it is really for guests, but he would reserve the right to rent.

Mr. Colbath asked what is in the barn. Mr. Dutton stated tractors and chickens. Mr. Chalmers stated that the ordinance states this is to provide for year round rentals. Mr. Dutton stated he may in the future do that, but for now it is for guests. Mr. Dutton stated his elderly father comes up and visits and he could use it.

Ms. Sherman asked for public comment; Dave Powers, an abutter, stated that he is here out of curiosity; he doesn't have any opinion against it. Mr. Powers stated that he is far happier with this proposal than with the original proposal for 26 units.

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Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the New Hampshire Department of Environmental Services shall issue a permit for construction for sewerage or waste disposal system.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the apartment is architecturally compatibility with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Hylen, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Hylen, that an Accessory Apartment Application was submitted for the ZBA review.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

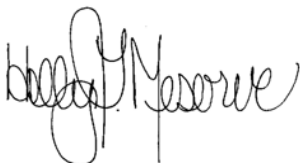
**Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted with a subsequent condition that an NHDES Septic Construction Approval is obtained. Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Chalmers made a motion, seconded by Mr. Hylen, to approve the Minutes of June 16, 2010 as written. Motion carried with Mr. Colbath abstaining from voting.**

**Mr. Chalmers made a motion, seconded by Mr. Hylen, to approve the Minutes of July 21, 2010 as written. Motion unanimously carried.**

Meeting adjourned at 8:35 pm.  
Respectfully Submitted,



Holly L. Meserve, Planning Assistant