

## ZONING BOARD OF ADJUSTMENT

### MINUTES

NOVEMBER 17, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, November 17, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:31 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Dana Hysten; Sheila Duane; Alternate, Jeana DeWitt; Code Enforcement Officer, David Pandora; and Planning Assistant, Holly Meserve.

#### APPOINTMENT OF ALTERNATE MEMBER

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

#### PUBLIC HEARINGS

A public hearing was opened at 7:31 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERTA BELL** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 115 Red Ridge Lane, North Conway (PID 232-61). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010. This hearing was continued from October 20, 2010.

Roberta Bell appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if she would like to construct an apartment in a barn on the property. Ms. Bell answered in the affirmative. Mr. Chalmers asked about septic. Ms. Bell stated that the garage has its own septic. Mr. Chalmers asked if there were two septic systems on this lot. Ms. Bell answered in the affirmative.

Ms. Sherman asked if there would be any changes to the exterior of the barn. Ms. Bell answered in the negative and stated that it is only 10 years old. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Ms. Duane made a motion, seconded by Mr. Hysten, 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. **Ms. Duane made a motion, seconded by Mr. Hysten, 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. **Ms. Duane made a motion, seconded by Mr. Hysten, that the New Hampshire Department of Environmental Services has issued a permit, CA2009097766, for construction for sewerage or waste disposal system.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 4. **Ms. Duane 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. **Ms. Duane 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. **Ms. Duane 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. Chalmers 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. Motion unanimously carried.**

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A public hearing was opened at 7:38 pm to consider a **SPECIAL EXCEPTION** requested by **MARY LEVOY** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 213 Thompson Road, North Conway (PID 219-305). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 5, 2010.

Mary Levoy appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Levoy stated that the apartment exists and was built with the home. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Hylen made a motion, seconded by Ms. Duane, 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. Hylen made a motion, seconded by Ms. Duane, 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. Hylen made a motion, seconded by Ms. Duane, that the site is serviced by precinct water and 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. **Ms. Duane 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. Hylan made a motion, seconded by Ms. Duane, 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. Hylan made a motion, seconded by Ms. Duane, that an Accessory Apartment Application was submitted for the ZBA review.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Hylan made a motion, seconded by Ms. DeWitt, 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 a NHDES Septic Construction Approval is obtained. Motion unanimously carried.**

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A public hearing was opened at 7:44 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **HENRY FOLEY** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow a garage to be 2.42-feet into the side setback** at 148 South Pines Road, Center Conway (PID 268-23).

Mark Twardowski of MET General Contracting appeared before the Board. Henry Foley was in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Twardowski stated this is not a question of whether we were rushing; the owner allowed the Center Conway Fire Department to burn the building for training services. Mr. Twardowski stated that they took their time doing this, but inadvertently, the garage is within the setback.

Mr. Twardowski stated that Mr. Foley contracted with Thaddeus Thorne Surveys for several items, one of them being setting the property corners. Mr. Twardowski stated that he has an invoice for these items dated January 30, 2009 and it was paid two weeks later. Mr. Twardowski stated when he came on site; Mr. Foley thought he knew where his property bounds were located. Mr. Twardowski stated that the back of the property drops off, so when they looked over embankment they couldn't find the property markers; however, they did find the two property markers in the front.

Mr. Twardowski stated that they found a flag at the back of the property that they thought was the property line. Mr. Twardowski stated they found out after the foundation was poured that Thorne Surveys had not set the property bounds; Mr. Foley did not receive what he had paid for. Mr. Twardowski stated this was not done on purpose and he apologizes that this happened.

Ms. Sherman asked if the house is already built. Mr. Twardowski answered in the affirmative. Mr. Twardowski stated that the septic design was using the existing structure, but the age of the building had a lot of problems and agreed to rebuild. Mr. Twardowski stated that the new system required an as-built; so when the Surveyor came in to redesign the septic, it was discovered the garage was within the side setback.

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Mr. Chalmers stated that this was discovered by the owner and not the Town. Mr. Twardowski answered in the affirmative. Ms. DeWitt stated the greatest encroachment is just over 2 feet. Mr. Twardowski answered in the affirmative. Mr. Twardowski stated the house sits in the middle of the lot; the house on the left hand side is only eight feet from the lot line; aesthetically it looks like it should be where it is. Mr. Foley submitted letters from the abutters to the Board.

Ms. Sherman asked for public comment; there was none. Ms. Sherman asked for Board comment; there was none.

Ms. Sherman read item 1. **Ms. DeWitt made a motion, seconded by Ms. Duane, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. Duane made a motion, seconded by Mr. Hysten, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Mr. Hysten that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. DeWitt made a motion, seconded by Ms. Duane, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. DeWitt made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow a garage to be 2.42-feet into the side setback be granted. Motion unanimously carried.**

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A public hearing was opened at 7:55 pm to consider a **VARIANCE** requested by **HENRY FOLEY** in regard to §147.13.1.4 of the Conway Zoning Ordinance to **allow a garage to be 2.42-feet into the side setback** at 148 South Pines Road, Center Conway (PID 268-23).

Mark Twardowski of MET General Contracting appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Twardowski withdrew the variance.

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A public hearing was opened at 8:00 pm to consider a **SPECIAL EXCEPTION** requested by **EASTERN SLOPE ELKS LODGE #2055/CAITLIN AND SHAWN BALDWIN** in regard to §147.14.1.2 of the Conway Zoning Ordinance to **change one non-conforming use, a fraternal organization to another non-conforming use, a for-profit rentable social function hall** at 1000 White Mountain Highway, Conway (PID 251-157).

Caitlin Baldwin appeared before the Board. Shawn Baldwin was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Baldwin stated that they are proposing the same uses; various parties, weddings, breakfast, and lunches. Ms. Baldwin stated that she will be fixing it up to match her other building next door. Ms. Baldwin stated that it wouldn't have any further impact as it is going from a fraternal use to a function hall.

Ms. Duane stated that it is going from a member's only club to a commercial use. Ms. Baldwin stated that the uses are similar to the fraternal use; same sized kitchen; same amount of people. Mr. Hylen stated that the Elks didn't just use it; they rented it out for the same type of functions she is proposing.

Ms. Duane stated that she is concerned with more use of the building; the effect on the abutters; and the ingress and egress. Ms. Duane stated there are residents in the area. Ms. Meserve stated that the existing use is a commercial use in a residential district. Mr. Pandora stated that the State dealt with the driveway on the building next door. Ms. Baldwin stated that they would be addressing the driveway issue once they own the building.

Mr. Pandora stated that those uses have existed there and they were taxed commercially; don't think there would be any increase, but cannot guarantee that. Mr. Chalmers stated that the site has been quiet for the last few years. Ms. DeWitt agreed with Mr. Chalmers, but stated that she does remember when it was very busy.

Ms. Sherman asked for public comment; there was none. Mr. Chalmers asked Mr. Pandora about his letter dated January 25, 2008. Ms. Baldwin stated the occupancy would be for no more than 125 people. Ms. Baldwin stated that the building has been sprinkled and that number could increase, but they are not asking to increase the number. Mr. Pandora stated there was water damage and over the last two years they have been in the process of repairing that damage. Mr. Baldwin stated that the property has not been in use for the past few years due to the damage and the repairs.

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Ms. Sherman read item 1. **Mr. Hylan made a motion, seconded by Ms. Duane, 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. Hylan made a motion, seconded by Ms. Duane, 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.**

Ms. Sherman read item 3. **Mr. Hylan made a motion, seconded by Ms. Duane, 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. Hylan made a motion, seconded by Ms. Duane, 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 carried with Ms. Duane and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5. **Ms. Duane made a motion, seconded by Mr. Hylan, 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. Hylan made a motion, seconded by Ms. Duane, 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. Hylan made a motion, seconded by Ms. Duane, 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. DeWitt made a motion, seconded by Ms. Duane, 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 fraternal organization, to another non-conforming use, a for-profit rentable social function hall be granted. Motion unanimously carried.**

#### **REVIEW AND ACCEPTANCE OF MINUTES**

**Ms. DeWitt made a motion, seconded by Ms. Duane, to approve the Minutes of September 15, 2010 as written. Motion unanimously carried.**

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**Ms. DeWitt made a motion, seconded by Ms. Duane, to approve the Minutes of October 20, 2010 as written. Motion carried with Mr. Hylen abstaining from voting.**

**2011 ZONING BOARD OF ADJUSTMENT MEETING DATES**

**Ms. Duane made a motion, seconded by Mr. Hylen, to approve the 2011 Zoning Board of Adjustment meeting dates. Motion unanimously carried.**

Meeting adjourned at 8:26 pm.

Respectfully Submitted,



Holly L. Meserve  
Planning Assistant