

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 16, 2011

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 16, 2011 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Acting Chair, Andrew Chalmers; Dana Hysten; Sheila Duane; Alternate, Cynthia Briggs; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Chalmers appointed Ms. Briggs and Ms. Tobin as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **NORTHWOODS REALTY TRUST** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow the construction of a single-family home 8-feet within the front setback** at 43 Pequawket Drive, Conway (PID 276-169). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 4, 2011.

Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Jack McMahon was in attendance. Mr. Chalmers read the application and the applicable section of the ordinance. Ms. Smith stated when the lots were first laid out the road was supposed to be two right angles, but the way it was used people drive curves. Ms. Smith stated when the Town had the bounds set part of the lot became part of the road. Ms. Smith stated the applicant wants to be able to construct a house that is a bit more livable; three of the corners and the deck within the setback.

Mr. Chalmers asked if the original lot was taken by the Town. Mr. Irving stated that he has asked for the 1999 plan that shows the actual boundary of the lot so the Assessing Department can revise our tax maps. Ms. Tobin stated it appears half the lot was lost. Ms. Smith agreed. Mr. Chalmers asked how long the applicant has owned it. Mr. McMahon stated he has owned the lot for a couple of years, but didn't know where the property markers were when he purchased. Mr. McMahon stated that he thought it was larger via the tax maps. Mr. McMahon stated had a survey done after he purchased the lot.

Ms. Smith stated they are requesting 277 square feet within the setback which includes the deck and the front step coming in. Ms. Tobin asked if something smaller could be constructed. Ms. Smith answered in the affirmative and stated it would be quite a bit smaller. Mr. Irving stated this particular parcel before it lost any land was only about a ¼ of an acre, and then with the taking it was cut by even more. Mr. Irving stated if the lot was not on municipal water, may have been completely unbuildable. Mr. Irving stated that he is not sure why the Town didn't take the entire parcel.

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Mr. Chalmers asked for public comment; Susan Riley of 51 Pequawket Drive stated there was a lot of land taken and we were not aware of it either when their house was constructed. Ms. Riley stated we were told this lot was not buildable and she is concerned with the house and the location of the septic system. Ms Duane asked who told you it was unbuildable. Ms. Riley answered the previous owner of her property.

Mr. Irving stated we have an approved septic system for this lot. Mary Copley asked how far is the house going to sit out compared to the other houses next to it. Ms. Smith stated even if parts of it are 8-feet into the setback it is going to be 35 feet to the edge of the road. Ms. Copley asked what type of house. Mr. McMahan stated it will be a bit fancier then what is currently constructed. Ms. Briggs stated this lot existed prior to him purchasing the property. Mr. McMahan agreed. Mr. Chalmers closed public comment.

Mr. Chalmers read item 1. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; Ms. Briggs stated the land should have been surveyed prior to purchasing and this is not something that just occurred. Mr. Chalmers stated that this was inherited in the land when he purchased it. **Motion defeated with Ms. Tobin, Ms. Duane, Ms. Briggs and Mr. Chalmers voting in the negative and Mr. Hylen voting in the affirmative.**

Mr. Chalmers read item 2. **Ms. Duane made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; Mr. Chalmers stated the ordinance is clear that we are trying to maintain the setbacks and this is not something that developed after the purchase of the lot; it is inherited in the lot. **Motion defeated with Ms. Tobin, Ms. Briggs and Mr. Chalmers voting in the negative and Ms. Duane and Mr. Hylen voting in the affirmative.**

Mr. Chalmers read item 3. **Ms. Duane made a motion, seconded by Mr. Hylen, that substantial justice is done.** Mr. Chalmers asked for Board comment; there was none. **Motion carried with Ms. Duane, Mr. Hylen and Mr. Chalmers voting in the affirmative and Ms. Briggs and Ms. Tobin voting in the negative.**

Mr. Chalmers read item 4. **Ms. Duane made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Mr. Chalmers asked for Board comment; Ms. Briggs stated this is putting too large a house on too small a piece of land. Ms. Briggs stated that the setbacks are to protect the neighbors. **Motion defeated with Ms. Briggs, Ms. Duane, Ms. Tobin and Mr. Chalmers voting in the negative and Ms. Hylen voting in the affirmative.**

Ms. Duane stated that she would like to reconsider item 4. **Ms. Duane made a motion, seconded by Ms. Briggs, to reconsider item 4. Motion unanimously carried.** Mr. Irving stated the question is do you believe property values of surrounding properties will be diminished if you grant the variance. **Mr. Hylen made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished. Motion carried with Ms. Briggs, Ms. Duane, Mr. Hylen and Mr. Chalmers voting in the affirmative and Ms. Tobin voting in the negative.**

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Mr. Chalmers read item 5.a.i. **Ms. Duane 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.** Mr. Chalmers asked for Board comment; Ms. Tobin stated there is a reason for the setbacks; the ordinance is there for a reason and it was there when the property was purchased. **Motion defeated with Ms. Briggs, Ms. Tobin and Mr. Chalmers voting in the negative and Ms. Duane and Mr. Hylen voting in the affirmative.**

Mr. Chalmers read item 5.a. ii. **Ms. Duane made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Mr. Chalmers asked for Board comment; Ms. Tobin stated the lot can be used for something smaller. **Motion defeated with Ms. Briggs, Ms. Tobin and Mr. Chalmers voting in the negative and Ms. Duane and Mr. Hylen voting in the affirmative.**

Ms. Tobin made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Chalmers asked for Board comment; there was none. **Motion carried with Ms. Duane, Mr. Hylen and Mr. Chalmers voting in the affirmative and Ms. Briggs and Ms. Tobin voting in the negative.**

Mr. Hylen made a motion, seconded by Ms. Duane, 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 single-family home 8-feet within the front setback be granted. Motion defeated with Ms. Briggs, Ms. Tobin and Mr. Chalmers voting in the negative and Ms. Duane and Mr. Hylen voting in the affirmative.

Meeting adjourned at 8:05 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant