

ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 18, 2011

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 18, 2011 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; Dana Hysten; Alternate, Jeana DeWitt; Planning Director, Thomas Irving; 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 7:30 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** requested by **SHARYLIN AND STEVEN RICHARDSON** in regard to §147.13.4 of the Conway Zoning Ordinance **to allow a deck and stairs to remain within the setback** at 81B Prospect Road, Conway (PID 276-114). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2011.

Steven and Sharylin Richardson appeared before the Board. David Pandora, Building Inspector, was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Richardson stated they constructed their home in 1976 on family property. Mr. Richardson stated that their lot was subdivided out of a 5-acre parcel. Mr. Richardson stated at the time the house was constructed zoning was not in effect. Mr. Richardson stated that the builder set the house very close to the front boundary.

Mr. Richardson stated there was a small porch at the time the house was constructed. Mr. Richardson stated in 1994 we wanted to construct a larger deck, we applied for a building permit which was granted. Mr. Richardson stated that he provided the measurements to the Town. Mr. Richardson stated they thought the boundary was at the base of a tree that they had removed and they didn't put the post back as they were not sure of its exact location.

Mr. Richardson stated that he took a measurement from the front of his property and his brother's property to a steel post; however we have since discovered that that was not the boundary marker. Mr. Richardson stated that the measurements at the time he applied for the building permit did not comply, but was not aware of that at that time.

Mr. Richardson stated in 2000, they moved the stairs from under the roofline and in front of a bedroom window to the front of the deck. Mr. Richardson stated that he truly believed at that time we had enough room. Mr. Richardson stated in 2006 we wanted to buy some more land so we purchased 1.95 acres to the north from the family. Mr. Richardson stated that they tried to purchase some land in the front, but the family wouldn't go along with it.

Mr. Richardson stated that this past winter we decided, with our children grown we didn't need such a big house, to sell the house. Mr. Richardson stated that is when we discovered that the deck was not represented on the plan during the boundary line adjustment. Mr. Richardson stated when it was added to the plan we discovered it was within the setback. Mr. Richardson stated that he came to the town to see how they could fix it; that is the reason we are here this evening.

Mr. Colbath asked the road location. Mr. Irving stated that it is a land locked piece and does not have road frontage. Mr. Colbath asked if the land that was not available for sale Richardson land. Mr. Richardson answered in the affirmative. Mr. Richardson stated that they wanted to buy to the apple tree as they have mowed this property for years. Mr. Richardson showed pictures to the Board and stated that the flower bed is clearly not on our property and we wouldn't have planted it if we knew it was not our land.

Mr. Colbath asked if he has always mowed and assumed it was their land and no one has objected. Mr. Richardson answered in the affirmative. Mr. Colbath asked if abutters are all family. Mr. Richardson answered in the affirmative. Mr. Colbath asked if he was aware of any concerns by the abutters. Mr. Richardson stated he doesn't think there are any concerns. Ms. DeWitt stated that this is not going to affect the abutting property values.

Mr. Irving stated that this Board is only concerned with the deck and stairs which was constructed with a Town building permit; not with the home which was constructed prior to zoning. There was no public in attendance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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.**

Item 3 is not necessary since items 1 and 2 carried.

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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 5. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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.**

Mr. Colbath made a motion, seconded by Mr. Hylen, 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 deck and stairs to remain within the setback be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Ms. DeWitt, to approve the Minutes of January 19, 2011. Motion unanimously carried.

BYLAWS

The Board agreed for Mr. Irving to modify the bylaws to allow alternates to participate in a limit capacity. Mr. Irving stated that he would bring the proposed amendment to the next Board meeting.

Meeting adjourned at 8:03 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant