

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 18, 2015

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 18, 2015 at the Conway Town Office in Center Conway, NH, beginning at 7:05 pm. Those present were: Acting Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Dana Hylan; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Mr. Steiner as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:05 pm to consider a **VARIANCE** requested by **THOMAS DEAN** in regards to §147.13.4.4 of the Conway Zoning Ordinance **to allow an addition to the existing home within the side setback** at 15 Oak Street, North Conway (PID 219-12). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 5, 2015.

Thomas Dean appeared before the Board. Mr. Dean stated he is proposing a 12' x 12' bedroom addition; the existing house is setback 11-feet from the property line. Mr. Dean stated this is the only section of the house that makes sense for the addition. Mr. Dean stated he would like a bedroom on the first floor.

Mr. Colbath asked if the existing house is 11-feet from the property line, which is currently less than the 15-feet. Mr. Dean answered in the affirmative and stated there are no other options without changing the roof line. Mr. Bartolomeo asked if they would not be getting any closer to the property line. Mr. Dean answered in the affirmative. Mr. Dean submitted photos to the Board. Mr. Chalmers asked if there a garage. Mr. Dean answered in the affirmative. Mr. Colbath asked for public comment; there was no public comment.

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

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

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

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

Mr. Colbath read item 5a.i. **Mr. Hylan made a motion, seconded by Mr. Steiner, 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. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 5.a.ii. **Mr. Hylan made a motion, seconded by Mr. Steiner, that the proposed use is reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Hylan made a motion, seconded by Mr. Chalmers, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 5.b. **Mr. Hylan made a motion, seconded by Mr. Chalmers, that item 5.b. is not applicable to this application.** Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.13.4.4 of the Town of Conway Zoning Ordinance to allow an addition to the existing home within the side setback be granted. Motion unanimously carried.

A public hearing was opened at 7:11 pm to consider a **SPECIAL EXCEPTION** requested by **CHUCK ROAST EQUIPMENT INC** in regards to §147.14.1.2 of the Conway Zoning Ordinance **to increase the approved number of children from 27 to 42, to convert 2,327 square feet from light industry to office space and retain the remaining area for light industry space for one employee** at 90 Odell Hill Road, Conway (PID 266-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 5, 2015.

Chuck Henderson appeared before the Board. Mr. Henderson stated he started his business in 1973 and over the next 39 years we had some major ups and downs, expanded the business and then closed in 2008. Mr. Henderson stated this is a grandfathered, non-conforming use. Mr. Henderson stated there is a successful childcare center that occupies space and they would like to expand. Mr. Henderson stated on the other end of the building he is trying to take what was open space and create affordable office space. Mr. Henderson stated this would have a lesser impact than the operation of Chuck Roast as we had 35 employees and trucks entering and exiting the site.

Mr. Steiner asked where the kids play now. Mr. Henderson stated there is a good outdoor play area that has been expanded into the woods, but they don't play there in the winter. Mr. Colbath

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stated between the building and Odell Hill Road there is a fenced in play area. Mr. Irving stated that staff has no issue with the requested Special Exception.

Mr. Colbath asked for public comment; Donald Haynes stated that he lives next door and his only concern is traffic. Mr. Haynes stated they drop the kids off first thing in the morning and he has almost been hit three times; if traffic can be addressed, then he has no concern. Mr. Haynes suggested a speed limit sign. Mr. Steiner stated that he could also contact the Police Department. Mr. Haynes suggested even posting something inside the daycare. Mr. Chalmers asked if traffic would be addressed during the site plan review process. Mr. Irving stated that they might not need site plan review.

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

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

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

Mr. Colbath read item 4. **Mr. Hylan made a motion, seconded by Mr. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Mr. Colbath asked for Board comment; Mr. Chalmers stated we have heard testimony there is an impact with traffic when the kids are dropped off in the morning. **Motion carried with Mr. Chalmers voting in the negative.**

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

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

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

Mr. Chalmers made a motion, seconded by Mr. Steiner, 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 increase the approved number of children from 27 to 42, to convert 2,327 square feet from light industry to office space and retain the remaining area for light industry space for one employee be granted. Motion unanimously carried.

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **ADVENTURE AND ENTERTAINMENT PROPERTIES INC** in regard to §147.16 of the Conway Zoning Ordinance **to construct an ADA accessible pool, associated concrete pad, ADA accessible bathrooms, and associated concrete walkways within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 5, 2015.

Josh McAllister of HEB Engineers; Keith Wolters of Adventure and Entertainment Properties; and Chris Meier of Cooper Cargill Chant appeared before the Board. Mr. McAllister stated all of the campsites on this property are within the Floodplain Conservation Overlay District. Mr. McAllister stated the applicant previously received a Special Exception for 89 sites compatible to open space, gravel drives, and water and sewer hookups to those sites. Mr. McAllister stated they received a NHDOT driveway permit to allow the 89 sites and the Planning Board found 25 of the approved 89 sites were insignificant to the rest of the development and did not require site plan review.

Mr. McAllister stated we are proposing to construct an ADA accessible pool, an ADA accessible building and associated pathways for movements around this facility. Mr. McAllister stated they will be removing some of the pathways and the existing pool facility. Mr. McAllister stated the site has no ADA compliant facilities at this time and ADA requirements require that a bathroom facility be within 500 feet of the campsites. Mr. McAllister stated this is a scaled back version of what was proposed previously; the previous request had a total impervious area of just over 13,000 square feet and this proposal is just over 11,000 square feet with a reduction of structures.

Chris Meier stated the applicant brought me on to help fit the best variance criteria and to ensure that this parcel is built out in regard to ADA requirements. Mr. Meier stated the project has been scaled back to essentially swap the old facilities out and replace with new facilities in their place that are ADA compliant. Mr. Meier stated the first three criteria's to granting a variance, that it is not contrary to public interest, that the spirit of the ordinance is observed and that substantial justice is done are easily met by incorporating ADA facilities into the property.

Mr. Meier stated the goal is to promote the public health and safety and general welfare and safety of the public and creating ADA facilities does exactly that; it allows people to use the facility where they could not before. Mr. Meier stated this benefits the public without varying from the object of the ordinance.

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Mr. Meier stated that it would not diminish the surrounding property values. Mr. Meier stated this property is located behind the Route 16 strip; beside the TJ Maxx facility and behind other retail stores. Mr. Meier stated there is a significant buffer between this property and the Dahl property; and the property to the North is owned by the Barsamian Family and is developable. Mr. Meier stated there is no evidence taking a grandfathered campsite and adding ADA facilities will adversely affect surrounding property values.

Mr. Meier stated in regard to hardship, there are two avenues. Mr. Meier stated the RSA has the ability to swap out the ADA disability variance for hardship; the alternative is RSA 674:33, 5. Mr. Meier stated in regards to hardship the Board would have to find that there is something special about this property. Mr. Meier stated that the Zoning Ordinance treats this property differently as you have a campground that is completely within the Floodplain Conservation Overlay District; there is no place to put ADA facilities outside of the floodplain and that is the uniqueness of the property and that is why there is a hardship.

Mr. Chalmers asked so there are no other readily achievable ways to provide ADA facilities on this site. Mr. McAllister stated they would have to create a secondary pool with a ramp and a building adjacent to that pool. Mr. Chalmers asked about a lift. Mr. McAllister stated that it would only serve one person at a time; the new proposal is better for all users. Mr. Meier stated the new structure is an improvement and designed to be in the Flood zone. Mr. Steiner asked the elevation of the proposed pool. Mr. McAllister stated it is the same elevation; two-feet higher than where the existing pool is.

Mr. Colbath asked the dimensions of the proposed building. Mr. Wolters stated the proposed building will house his and her bathrooms and the pool apparatus; it is about 600 square feet smaller than what was previously proposed. Mr. Wolters stated the proposed building will have louvers in it; water goes up and water goes down. Mr. Wolters stated if there is a flood it will have no impact on the building.

Mr. Colbath asked if the proposed building will have a retail area. Mr. Wolters answered in the negative. Mr. Colbath asked if this is the minimum need. Mr. Wolters answered in the affirmative and stated we removed some of the things that were important to us, but the Board did not see as important; we have the bare essentials. Mr. Colbath asked if the walkway would be ADA compliant. Mr. Wolters answered in the affirmative.

Mr. Bartolomeo stated that he appreciates the applicant's efforts to trim this done. Mr. Bartolomeo asked when they came in for the approval for the 89 sites did they know about the ADA requirements. Mr. McAllister stated they were not aware of the requirement to provide those buildings. Mr. McAllister stated upgrading the pool is a new requirement that went in effect in 2013. Mr. McAllister stated we did not foresee this, we found this after the fact.

Mr. Irving stated the Town would have caught it during site plan review, but this site did not go through site plan. Mr. Chalmers stated the ADA gives you all kind of alternates as they don't want to put anyone out of business; it is a nice plan and meets the intent, but there are other ways to comply and he would have felt better if you came in with the minimum first, it would have

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been a more genuine argument. Mr. Chalmers asked if all the other campgrounds in our area have to apply.

Mr. Wolters stated the ADA works that if you have the means to do it you must do it; there are no alternatives if you have the means and I have the means to comply. Mr. McAllister stated if you are financially able to do than you have to make a reasonable effort. Mr. McAllister stated what has been proposed meets the requirements for ADA and this is the only process to have it approved. Mr. Chalmers stated you are in a floodplain and he has a hard time believing if there is another way to achieve this that it would not be an acceptable method.

Mr. Chalmers asked if denied the variance, it does not preclude you from complying with ADA. Mr. Wolters stated the bathrooms are within the floodway and to expand those to accommodate for what we have for usage is a major expansion. Mr. Wolters stated you can install a lift, but there are calculations for the number of lifts, the number of staff available and the patio area. Mr. Wolters stated he spoke to a couple ADA experts and they don't think I have many options. Mr. Wolters stated we are trying to make the property better and comply with the laws; and what we are proposing is what is required based on other components.

Mr. Hylen stated it seems as though this more benefits your customers than the Town of Conway and you are using the ADA requirements to improve your business. Mr. Hylen stated that is the impression he got; this is just a comment and is not going to affect the way he votes. Mr. Bartolomeo stated will the improvements benefit the clients and the owner, absolutely; but will there be no benefit to the Town of Conway, no. Mr. Bartolomeo stated there will be a benefit to Town and as it sits now this is something that he can support.

Mr. Colbath stated that he has a daughter who is handicap; part of ADA is so they can be included with the rest of the public and have the same opportunities. Mr. Colbath stated he doesn't think we should be filling in the floodplain with structures, but they have a plan that meets the public benefit and he thinks the public will be well served by doing this. Mr. Colbath asked for public comment; there is none.

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

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

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

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

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Mr. Colbath read item 5a.i. **Mr. Hylen made a motion, seconded by Mr. Steiner, 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. Colbath asked for Board comment; Mr. Bartolomeo asked if this is the point the Board has to determine if they are going to use the RSA. Mr. Irving stated if the Board determines there is not a hardship. **Motion unanimously carried.**

Mr. Colbath read item 5.a.ii. **Mr. Hylen made a motion, seconded by Mr. Steiner, that the proposed use is reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Hylen made a motion, seconded by Mr. Steiner, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 5.b. **Mr. Hylen made a motion, seconded by Mr. Steiner, that item 5.b is not applicable to this application.** **Motion unanimously carried.**

Mr. Colbath read item 6. **Mr. Hylen made a motion, seconded by Mr. Steiner, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 7 is not applicable to this application.** **Motion unanimously carried.**

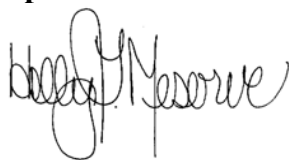
Mr. Colbath read item 8. **Mr. Hylen made a motion, seconded by Mr. Steiner, that the variance is necessary, considering the flood hazard, to afford relief.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.16 of the Town of Conway Zoning Ordinance to construct an ADA accessible pool, associated concrete pad, ADA accessible bathrooms, and associated concrete walkways within the Floodplain Conservation Overlay District be granted. **Motion unanimously carried.**

REVIEW AND APPROVAL OF MINUTES

Mr. Hylen made a motion, seconded by Mr. Steiner, to approve the Minutes of February 18, 2015 as written. **Motion carried with Mr. Bartolomeo abstaining from voting.**

Meeting adjourned at 8:15 pm.



**Respectfully Submitted,
Holly L. Meserve, Recording Secretary**