

## ZONING BOARD OF ADJUSTMENT

### MINUTES

JUNE 21, 2017

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 21, 2017 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

#### APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Mr. Steiner as a voting member.

#### ELECTION OF OFFICERS

**Mr. Colbath nominated, seconded by Mr. Chalmers, Ms. Sherman as Chair. Motion unanimously carried.**

**Mr. Chalmers nominated, seconded by Mr. Bartolomeo, Mr. Colbath as Vice Chair. Motion unanimously carried.**

#### PUBLIC HEARINGS

A public hearing was opened at 7:01 pm to consider a **SPECIAL EXCEPTION** requested by **ELEANOR BRAIDA** in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory apartment** at 98 Jennifer Lane, Conway (PID 263-19). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 9, 2017.

Eleanor Braida and Daniel Durant appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if this is going to be a separate building. Mr. Durant answered in the affirmative and stated it would be in the back. Mr. Bartolomeo asked the square footage. Mr. Durant answered 24'x24' or about 600 square feet. Mr. Durant stated that they would be installing a new septic system.

Ms. Sherman asked about parking. Mr. Durant stated it would be right beside the garage. Ms. Sherman asked if the house would be owner-occupied. Mr. Durant answered in the affirmative. Mr. Steiner asked if there is a survey or plot plan. Ms. Sherman stated there is not one. Mr. Bartolomeo asked if there is plenty of room to meet the building setbacks. Mr. Durant answered in the affirmative.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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. Chalmers, 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. Chalmers, that the apartment is architecturally compatible with the neighborhood.** 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 sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory apartment be granted. Motion unanimously carried.**

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A public hearing was opened at 7:07 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **MAUREEN ENOS** in regards to §190-13.D. of the Conway Zoning Ordinance **to allow an existing seasonal porch to remain within the front setback** at 514 Pequawket Drive, Conway (PID 277-93). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 9, 2017.

Maureen Enos appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if there is already a structure in the setback. Ms. Enos answered in the affirmative and stated it was constructed in 2005. Ms. Sherman asked if a building permit was issued. Ms. Enos answered in the affirmative and stated a local builder measured the setback. Mr. Bartolomeo asked if the structure has been there for more than 10 years. Ms. Enos answered in the affirmative. Mr. Bartolomeo asked if anyone from the Town said anything. Ms. Enos answered in the negative and stated it does look like there is a large buffer.

Ms. Enos stated that she would like to put a foundation under the three-season porch. Ms. Sherman asked how much does the structure encroach into the setback. Ms. Enos answered approximately five-feet eight inches. Mr. Colbath stated the builder is not present and he knows you cannot speak for him, but when the porch was construct he believed it was not within the setback. Ms. Enos stated that is correct. Mr. Bartolomeo asked how she discovered the encroachment. Ms. Enos stated she applied for a building permit for a foundation under the three-season porch.

Ms. Sherman stated there was a taking of land for the road in 1987. Ms. Enos stated the Town took 520 square feet from the front of that lot to complete that road. Mr. Bartolomeo asked if she had every belief that the builder's measurements were accurate. Ms. Enos answered in the affirmative. Ms. Sherman stated there would be no expansion of the encroachment. Ms. Enos stated that is correct.

Mr. Colbath asked the size of the porch. Ms. Enos answered 9’x12’. Mr. Colbath asked if it was about 5 feet into the setback. Ms. Sherman answered five-feet eight inches.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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. Steiner, 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. **Mr. Colbath made a motion, seconded by Mr. Steiner, that item 3 is not applicable to this application.** **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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; Mr. Bartolomeo stated there are no abutters here objecting. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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. Steiner, that, based on the forgoing findings of fact, the equitable waiver from §190-13.D of the Town of Conway Zoning Ordinance to allow an existing seasonal porch to remain within the front setback be granted.** **Motion unanimously carried.**

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A public hearing was opened at 7:18 pm to consider a **VARIANCE** requested by **MAUREEN ENOS** in regards to §190-13.D. of the Conway Zoning Ordinance **to allow a 112 square foot addition to the existing structure within the side and front setback** at 514 Pequawket Drive, Conway (PID 277-93). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 9, 2017.

**Adopted: July 19, 2017 – As Written**

**CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 21, 2017**

Maureen Enos appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Enos stated she would like to construct a 112 square foot addition within the front and side setback. Ms. Enos stated there is absolutely no place to build on this lot; when the town took part of her land through eminent domain and increased the setbacks there was less buildable area. Ms. Enos stated there were no setbacks in 1978 when she purchased the land, and the deed indicated a ten-foot setback, but the town now requires a 15-foot side setback.

Mr. Bartolomeo asked how wide would the addition be if it met the setbacks. Ms. Enos answered 10-feet, but the interior space would be 9-feet.

Mr. Steiner asked if the land was taken for the bypass. Mr. Irving answered in the negative and stated the land was taken about 30 years ago. Ms. Enos stated it was a private road and the town took it over. Mr. Colbath stated it was a private road that became a town road and enhancements of the road required everyone losing frontage. Mr. Irving stated the development received a better road and the town paid for it.

Ms. Enos stated she is stuck on where she can build. Mr. Chalmers stated this would be germane to all of your neighbors, this is not unique to your situation as everyone along the road lost frontage. Mr. Colbath stated they lost different amounts. Ms. Enos stated some of that land that was lost the Town was trying to give back, she was not one of those lots unfortunately.

Ms. Sherman stated you are asking for 112 square feet within the setbacks. Ms. Enos stated which there is a sliver on the side. Mr. Bartolomeo stated he doesn't have a problem with the sliver, but he does have a problem with the expansion to the front. Ms. Enos stated if you went by the lot and looked in you wouldn't even notice it. Ms. Enos stated she has had this home for 37 years and her intention was to always live here. Mr. Colbath stated he feels the opposite of Mr. Bartolomeo; she has paid taxes for 37 years and there are no abutters here objecting. Mr. Colbath stated because of a nonconforming lot she has a hardship.

Mr. Chalmers stated there is room going to the rear of the lot which would gain the same footage. Ms. Enos stated that is where the septic tank is and the cover is closer to the rock than what is shown on the plan; also by going to the back of the lot you start getting into plumbing and the leach field.

Ms. Sherman asked how much square footage total. Ms. Enos answered a maximum of 396 square feet. Ms. Enos presented a construction paper layout of the actual square footage that she is proposing. Ms. Enos stated that she also has obtained a Letter of Map Amendment [LOMA] in regards to the floodplain. Mr. Chalmers stated the wedge on the side of the property is inconsequential to him; if the septic tank is represented in the wrong location on the plan submitted that would be a different factor that he would consider, but it looks like you could have the same square footage, without the encroachment, on the back of the house.

Mr. Bartolomeo asked if the addition would have a basement. Ms. Enos answered in the negative and stated it would have a 4-foot crawl space like the rest of the house.

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

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated he thinks the front yard encroachment is against the neighborhood's interest. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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. Steiner, 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. Steiner, 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.i. **Mr. Colbath 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.** Ms. Sherman asked for Board comment; Mr. Chalmers stated the purpose of the ordinance is to maintain the setbacks and that is certainly a greater public benefit then it is to the owner. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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

**Mr. Colbath 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.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary.**  
**Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-13.D of the Town of Conway Zoning Ordinance to allow a 112-square foot addition to the existing structure within the side and front setback be granted.**  
**Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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Adopted: July 19, 2017 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 21, 2017

A public hearing was opened at 7:44 pm to consider a **VARIANCE** requested by **MARK GUERRINGUE** in regards to §190-28.B.(1) & 190-28.C. of the Conway Zoning Ordinance to **construct a 24' x 24' garage within the 50-foot wetland buffer and 75-foot wetland setback and construct a driveway within the 50-foot wetland buffer** at 61 Morrill Lane, Center Conway (PID 267-26). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 9, 2017.

Shawn Bergeron and Kate Richardson of Bergeron Technical Services appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mark Guerringue was in attendance. Mr. Bergeron stated there is a small shed in the location now; most of the lots in this area preexist zoning, its tight and confusing. Mr. Bergeron stated there would be no harm to the neighborhood, nor would there be a benefit; it is equal. Mr. Bergeron stated there is only 201 square feet of buildable area when all the setbacks are taken into consideration.

Mr. Bartolomeo stated the wetland buffer is to protect the wetland, but it is not within the wetlands. Mr. Bergeron stated there is not going to be a basement, and during the construction process all proper mitigations will be in place. Mr. Bartolomeo asked when the house was built. Mr. Guerringue answered in the 1940's; it was originally a horse barn. Mr. Guerringue stated the garage would be in the wetlands buffer, but it is basically replacing some lawn. Mr. Bartolomeo stated it seems the house has more encroachment within the setbacks.

Mr. Colbath asked if the gravel drive is there now. Ms. Richardson answered in the negative and stated a paved driveway exists they are proposing pavers to the garage. Mr. Chalmers stated the paver driveway is a pervious surface. Mr. Bergeron stated that is correct. Ms. Sherman asked if the wetland stream is seasonal or year-round. Ms. Richardson stated it is classified as an intermittent stream.

Ms. Sherman asked how much effect the garage would have on the wetland. Mr. Bergeron stated the building is 576 square feet, water will probably infiltrate into the ground before reaching the stream. Ms. Richardson stated the property is also within the NHDES Shoreland Protection area and they have received a permit from NHDES; the structure is designed with a drip strip to infiltrate water into the ground to keep runoff out of the stream.

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. Chalmers, 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. Chalmers, 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. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman read item. 5.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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; there was none. **Motion unanimously carried.**

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

**Mr. Colbath 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary.** **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §190-28.B.(1) & 28.C of the Town of Conway Zoning Ordinance to construct a 24' x 24' garage within the 50-foot wetland buffer and 75-foot wetland setback and to construct a driveway within the 50-foot wetland buffer be granted.** **Motion unanimously carried.**

#### RESIGNATION OF BOARD MEMBER

Mr. Irving stated the Mr. Hylen has submitted his resignation as he has moved out of Conway. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the Board appreciates his service and dedication to the community.** **Motion carried unanimously.**

#### REVIEW AND ACCEPTANCE OF MINUTES

Mr. Irving stated that an applicant at the March 15, 2017 ZBA meeting, Deborah Duggan, has submitted some proposed changes to the minutes for the Board's review. After a brief discussion, **Mr. Steiner made a motion, seconded by Mr. Chalmers, to approve the Minutes of March 15, 2017 as written.** **Motion carried with Mr. Colbath abstaining from voting.**

Meeting adjourned at 8:02 pm.  
Respectfully Submitted,



Holly L. Meserve, Recording Secretary