

## ZONING BOARD OF ADJUSTMENT

### MINUTES

July 19, 2017

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 19, 2017 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm.

Present: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Steven Steiner, Alternate; Planning Director, Thomas Irving; and Recording Secretary, Theresa Ann Gallagher

Also Attending: Mr. Frederick Forbes

#### APPOINTMENT OF ALTERNATE MEMBER

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

#### PUBLIC HEARING

A public hearing was opened at 7:00 pm to consider a variance requested by FORBES FAMILY REVOCABLE TRUST in regards to §190-13.D of the Conway Zoning ordinance to allow the construction of a wooden canopy over an existing brick walkway within the front setback at 66 Bryant Drive, Conway (PID261-5). Ms. Sherman read the zoning regulation in reference: Setbacks. The minimum front setback shall be 25 feet from a platted right-of-way or 100 feet from the platted right-of-way of North-South Road between the extension of the center line of Barnes Road and the center line of Depot Road, and the minimum side or back setback shall be 15 feet.

Ms. Sherman invited Mr. Frederick Forbes to come before the Board and describe this project. Mr. Forbes presented the members of the Board with a map of his property, showing the design and layout of the wooden canopy. Mr. Forbes explained that he and his wife have owned the property since 1974, which started as a second home. Currently they spend more time in the home since they are retired, and they would like to remain in the home as they get older. Over the last ten years the access to the building has been a 50 foot brick walkway. In the winter snow and ice have become a problem on the walkway; he would like to cover the walkway with a 4' by 48' wooden canopy to make it safer for them. The issue is that the 25 foot setback extends into the walkway, and by his calculations, the walkway will begin 18 feet back from the street. He is requesting a 7 foot variance from the Zoning Board. The canopy will be supported by ten posts, and it will be wide open all around. The roof will have a pitch of about 12 to 7 degrees. Mr. Bartolommeo commented that with the brick walkway being 30 inches wide, and the roof being 48 inches wide, the proposed canopy will not offer much protection from the ice and snow. Mr. Forbes stated that his primary interest is solving the problem of ice, when several inches of snow falls followed by rain and then freezing temperatures. From the driveway to the house is a 2.5 foot

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downward slope. Not included in the proposed wooden canopy is the installation of a railing because he would like to go from one side to the other. Mr. Chalmers asked why he would not put the canopy from the rear if the garage? Mr. Forbes stated there is no door from the rear of the garage, and they always accessed the house from the driveway to the front step. He believes that with some landscaping it will have a pleasant appearance for the neighborhood. He stated that it is not a building, just a canopy that he wants to install. Mr. Bartolomeo stated that he is all for aging in place, and if this helps to facilitate that, he can support the installation of the canopy. Mr. Forbes stated that his biggest fear is the ice. Currently his driveway is plowed in the winter. Mr. Bartolomeo asked about the posts; Mr. Forbes clarified they would be 40" apart and the roof would have 4" of overhang on each side. The wooden canopy will be 7' high. Ms. Sherman asked about the snow and the rain that slides off the canopy on both sides; Mr. Forbes stated that he knows there will be piles of fallen snow on the sides of the walkway, which can be shoveled. Mr. Forbes explained that his neighbor has a covered walkway that was built years ago with the house. Mr. Chalmers stated that he doesn't agree with the variance without reviewing other options, and furthermore, what would make his property unique from others that would be cause for a variance. Mr. Steiner also stated that installing a door in the garage is an option, but also to consider the walkway with snow piled up on both sides, and then rain coming down on warmer days would make the walkway a river. He suggests staying within the setback. Mr. Forbes said he would like to keep the existing walkway, since the house was built in 1970's. He goes to the garage by walking on the walkway and then going down the driveway. Mr. Colbath asked if the driveway could be moved back 7 feet, which would mean he will not need a variance. Mr. Forbes said no, it's not financially possible. Mr. Colbath clarified that hardship, by definition, is inherent the land, it is not a financial hardship. He suggested that there can be an alternate way of building the wooden canopy. Mr. Forbes explained that he is trying to complete the project within his budget. Mr. Steiner reviewed the map and stated he has to cut back more than 7 feet if he comes out of the garage; then he has the chance to put in a heated sidewalk to keep the snow off of it. Ms. Sherman asked if there were any more questions. Mr. Forbes explained that a hardship can be an interpretation of the person as well as the location. Ms. Sherman explained that the Board has criteria they are guided by to grant a variance; in this case the criteria is that it would result in an unnecessary hardship. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance provision and a specific application of that provision to the property. Mr. Forbes stated that there is nothing that distinguishes his property from anyone else's property, but if that 7-foot variance were allowed it would not degrade the neighborhood, it would pick it up a little. Mr. Bartolomeo asked how close is the nearest abutter; Mr. Forbes stated 15 feet from the property line, but his house is about 70 feet from the line. Ms. Sherman stated that having a 4 foot porch, it would be almost impossible to keep the snow from coming back in. The proposed vegetation and plants will not help during the winter time. Mr. Bartolomeo suggested flattening the pitch of the roof and putting textured shingles on it, which will hold the snow and ice. Ms. Sherman also commented that the structure has to be

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heavy enough to be able to take the snow. Mr. Chalmers stated that, with all the design elements set aside, the request is for a variance for an encroachment, whereby there are alternatives. He thinks a variance would be granted if there were no alternatives. Mr. Irving explained that, in the spirit of looking at alternatives, it need not be a driveway relocation; Mr. Forbes could extend the driveway out to the edge of the setback, and then turn at a right angle towards the garage with a walkway, which could be left as gravel or a walkway 4 feet wide. Then in the future he could put a canopy over that without requesting a variance. According to the map, it doesn't appear to be a steep slope at all, and an accessible ramp could be installed .

Ms. Sherman asked for any comments from the audience. There were none.

Finding of Facts:

Ms. Sherman read Item C (1)– **The variance will not be contrary to the public interest.** Mr. Colbath moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, No; Mr. Colbath, Yes; Ms. Sherman, Yes.

Ms. Sherman read Item C (2) – **The spirit of the ordinance is observed.** Mr. Colbath moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, No; Mr. Colbath, Yes; Ms. Sherman, No. Ms. Sherman commented that the ordinance was designed for the 25 feet setback.

Ms. Sherman read Item C (3) – **Substantial justice is done.** Mr. Colbath moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, No; Mr. Colbath, No; Ms. Sherman, No. Mr. Chalmers commented that substantial justice is the public best interest to retain the setbacks. Mr. Steiner commented that it is the public's best interest in retaining the setback; Mr. Colbath also commented that the public interest is greater than the applicant's interest.

Ms. Sherman read Item C (4)– **The values of the surrounding properties are not diminished.** Mr. Colbath moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, Yes; Mr. Colbath, Yes; Ms. Sherman, Yes.

Ms. Sherman read Item C (5) – **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. (A) For purpose of this subparagraph, “unnecessary hardship” means that, owing to special conditions on the property that distinguish it from other properties in the area: (i) 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 moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, No; Mr. Colbath, No; Ms. Sherman, No. Ms. Sherman stated that the ordinance specifies 25 feet of setback, and in this particular case there are alternative to achieve the applicant's project.

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Ms. Sherman read Item C (5) A (ii) – **The proposed use is a reasonable one.** Mr. Colbath moved; Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, Yes; Mr. Colbath, Yes; Ms. Sherman, Yes.

Ms. Sherman read – **Based on A(i) and (ii) above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Mr. Colbath moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, Yes; Mr. Chalmers, No; Mr. Colbath, No; Ms. Sherman, No. Ms. Sherman stated for the reasons given A(i).

**A(i) and A(ii) did not carry.**

Ms. Sherman read Item C (5) B – **If the criteria in subparagraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions on the property that distinguish it from other properties in the area, the property cannot be reasonable used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Mr. Colbath moved. Seconded by Mr. Chalmers. No discussion. Mr. Steiner, No; Mr. Bartolomeo, No; Mr. Chalmers, No; Mr. Colbath, No; Ms. Sherman, No. Ms. Sherman stated the property is the same as other properties in the area, used as a residence.

**John Colbath made a motion based on the foregoing findings of fact, the variance from paragraph of §190-13.D of the Conway Zoning ordinance, to allow the construction of a wooden canopy over an existing brick walkway within the front setback be granted for the applicant. Seconded by Mr. Bartolomeo. No discussion. Defeated unanimously (0-5-0).**

Ms. Sherman announced to Mr. Forbes that his variance has not been granted; he has 30 days to apply for a re-hearing. A rehearing will be granted if there was a technical error, and/or no evidence that was available for this hearing. If the Board does not grant a rehearing, Mr. Forbes can take it to the Superior Court.

Mr. Forbes thanked the Board for their time.

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

Ms. Sherman asked for a motion to accept the June 21, 2017 ZBA meeting minutes. Mr. Bartolomeo made a motion to accept the minutes as written; seconded by Mr. Chalmers. No discussion. Motion carried. (5-0-0)

Mr. Chalmers made a motion to adjourn at 7:40 PM; seconded by Mr. Bartolomeo. Passed unanimously.

Respectfully Submitted,

Theresa Ann Gallagher  
Recording Secretary