

ZONING BOARD OF ADJUSTMENT

MINUTES

OCTOBER 21, 2015

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 21, 2015 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Dana Hylan; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:04 pm to consider a **VARIANCE** requested by **GARY AND KIM SYLVESTER** in regards to §147.15.2 of the Conway Zoning Ordinance **to allow an accessory apartment greater than 800 [1,063] square feet** at 1707 East Conway Road, Center Conway (PID 255-31). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2015.

Ms. Sherman read the application and the applicable section of the ordinance. Wes Smith of Thaddeus Thorne Surveys and Gary Sylvester appeared before the Board. Mr. Smith stated there is currently an existing house on the site that is 1,063 square feet; they would like to convert the existing house into an accessory apartment to construct a new main house across the wetland at the back of the property. Mr. Smith stated that a special exception was granted a few months ago for a wetland crossing.

Ms. Sherman asked for Board comment; Mr. Colbath asked for the existing house to be described. Mr. Sylvester stated this home came from Cape Cod and was a three car garage; it looks like a Cape style house. Mr. Sylvester stated it now has a two-bay garage with one bedroom, living area, kitchen and bath. Ms. Sherman stated Mr. Bartolomeo was on the committee that developed the accessory apartment special exception. Mr. Bartolomeo stated it was to create affordable apartments for the work force; and in this case the 1,063 square foot house exists. Mr. Bartolomeo stated he does not have a problem with this one. Ms. Sherman stated it is only a one-bedroom; that will limit the affordability anyway.

Ms. Sherman asked if the Town had any concerns. Mr. Irving answered in the negative; however, suggested that a lot merger should be a condition of this approval or of the next applications approval. Ms. Sherman asked for public comment; Linda Kearney asked if the existing house would be the apartment and a new house constructed. Mr. Sylvester answered in the affirmative.

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 carried with Mr. Colbath, Mr. Chalmers, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Hylen voting in the negative.**

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 carried with Mr. Colbath, Mr. Chalmers, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Hylen voting in the negative.**

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 unanimously carried.**

Ms. Sherman read item 5.a.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 carried with Mr. Colbath, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Hylen and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5.a.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 carried with Mr. Colbath, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Hylen and Mr. Chalmers voting in the negative.**

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

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.15.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment greater than 800 square feet be granted. Motion carried with Mr. Colbath, Mr. Chalmers, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Hylen voting in the negative.

A public hearing was opened at 7:16 pm to consider a **SPECIAL EXCEPTION** requested by **GARY AND KIM SYLVESTER** in regards to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 1707 East Conway Road, Center Conway (PID 255-31). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2015.

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Ms. Sherman read the application and the applicable section of the ordinance. Wes Smith of Thaddeus Thorne Surveys and Gary Sylvester appeared before the Board. Ms. Sherman asked when the new home is constructed will it be owner-occupied. Mr. Sylvester answered in the affirmative.

Mr. Colbath stated that the apartment will not be used until the new house is built. Mr. Sylvester stated they still want to come up here, so they have no intention of doing that. Ms. Sherman stated the parking will be sufficient. Mr. Hylen asked how they can have an accessory apartment when there is nothing to be accessory to. Mr. Irving stated the existing structure will be the main structure until they obtain a building permit to construct a new home; at that time they will invoke the special exception and the existing structure will become the accessory apartment.

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

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 to be built.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Colbath, that item 2 is not applicable.** 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; Ms. Sherman stated the structure exists. Mr. Bartolomeo asked what it looks like. Mr. Irving stated it is a Cape Code style home. **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. Bartolomeo made a motion, seconded by Mr. Colbath, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted with a condition that no building permits be issued until PID 255-31 & 32 are voluntarily merged. Motion unanimously carried.

A public hearing was opened at 7:31 pm to consider a **VARIANCE** requested by **VERNON AND ROBIN CAMPBELL** in regards to §147.14.2.2.5 of the Conway Zoning Ordinance to **allow an expansion of the three-dimensional envelope by adding two dormers to the existing structure within the Floodplain Conservation District** at 200 Pequawket Drive, Conway (PID 276-204). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2015.

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Ms. Sherman read the application and the applicable section of the ordinance. Vernon and Robin Campbell appeared before the Board. Mr. Campbell stated there was a survey done to indicate the floodplain elevation; the ribbon in the picture is a foot above the floodplain. Mr. Campbell stated the living area of the structure is above the floodplain.

Ms. Sherman asked if the expansion would expand beyond the dimensions of the footprint. Mr. Campbell answered in the negative; it is just to gain more headroom. Mr. Bartolomeo asked if it would be the full length of the house. Mr. Campbell answered in the affirmative. Mr. Chalmers asked if there would be an increase in the number of bedrooms. Mr. Campbell answered in the negative; there are two-bedrooms upstairs and the bedroom downstairs is used as a closet.

Mr. Colbath asked if they live there year round. Mr. Campbell answered in the negative and stated it is a second home that they have owned for 20-years. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for if the Town had any comments; Mr. Irving answered in the negative. Ms. Sherman asked for public comment; there was none.

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 unanimously carried.**

Ms. Sherman read item 5.a.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 carried with Mr. Colbath, Mr. Hylen, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5.a.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 carried with Mr. Colbath, Mr. Hylen, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

Ms. Sherman read 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers that item 5.b is not necessary.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.14.2.2.5 of the Town of Conway Zoning Ordinance to allow an expansion of the three-dimensional envelope by adding two dormers to the existing structure within the Floodplain Conservation District be granted. Motion unanimously carried.

A public hearing was opened at 7:46 pm to consider a **VARIANCE** requested by **MARTIN AND CYNTHIA RAAB** in regards to §147.13.4.4 of the Conway Zoning Ordinance **to allow a porch to be constructed within the front setback** at 39 Oak Street, North Conway (PID 219-9). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2015.

Ms. Sherman read the application and the applicable section of the ordinance. Martin Raab appeared before the Board. Ms. Sherman asked if the proposed porch encroached 6-feet 6-inches into the setback. Mr. Raab answered in the affirmative and stated that the stairs in front of the house were not usable and was removed. Mr. Raab stated the proposed porch would be aligned with his neighbor's house; and most of his neighbors have porches. Mr. Raab stated this would provide a safe and protected entry into the house as well as protect the foundation; it also matches the entire neighborhood from an aesthetics point of view.

Mr. Chalmers stated that he did conduct a site visit and the Town tax map is fairly accurate. Mr. Chalmers stated while the homes are fairly close to the street, they are not right on the street. Mr. Bartolomeo stated that it appears to be uniformly. Mr. Bartolomeo asked if Mr. Raab had pictures of the neighborhood. Mr. Raab showed pictures of the neighborhood to the Board that was on his computer.

Mr. Irving asked if the house currently encroaches into the setback. Mr. Raab answered in the affirmative. Mr. Bartolomeo asked if he was then asking for a larger encroachment. Mr. Irving answered in the affirmative and stated he is asking for additional 6-feet, 6 inches of encroachment.

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Mr. Bartolomeo suggested continuing the hearing so the Board members could view it themselves. Mr. Colbath stated that he knows the neighborhood well and they are all pretty close. Mr. Colbath stated adding the porch would enhance the house and the neighborhood; and there are no abutter's here. Mr. Chalmers stated that the Board has had ample time to go to the site to look at it. Mr. Chalmers stated if it was continued to obtain surveyed information would be one thing, but not for the Board to conduct a site visit that should already have been done.

Mr. Steiner stated that it has been represented that the other houses have porches and this one does not go any closer than those that already exist. Mr. Steiner stated it is going to increase the taxes as well; it is a win-win situation. Mr. Irving stated that the encroachment is no greater than the other houses that have porches.

Mr. Chalmers asked Mr. Raab if he is using the house now. Mr. Raab answered in the affirmative. Andrew Narducci stated this would be a nice aesthetic change to the neighborhood; and this neighborhood has been getting better with improvements such as this. Mr. Narducci stated this would improve the quality of our neighborhood.

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; Mr. Chalmers stated that he thinks the ordinance is clear; we have an ordinance to maintain the character of the neighborhood. **Motion carried with Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

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; Mr. Chalmers stated granting the variance does not follow the guidelines suggested by the State of New Hampshire. **Motion carried with Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

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 carried with Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

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 unanimously carried.**

Ms. Sherman read item 5.a.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; Mr. Chalmers stated there is nothing that distinguishes or makes this property any different from the other properties in the neighborhood. **Motion defeated with Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Hylen, Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

Ms. Sherman read item 5.a.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 carried with Mr. Hylen, Mr. Colbath, Mr. Bartolomeo and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

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 defeated with Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Hylen, Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

Ms. Sherman read 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that if the criteria is subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.**

Ms. Sherman asked for Board comment; Mr. Chalmers stated that the applicant is able to use and occupy this property without the further encroachment into the setback. **Motion defeated with Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Hylen, Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

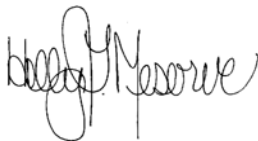
Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.4.4 of the Town of Conway Zoning Ordinance to allow a porch to be constructed within the front setback be granted. Motion defeated with Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Hylen, Mr. Chalmers and Mr. Bartolomeo voting in the negative.

REVIEW AND APPROVAL OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of August 19, 2015 as written. Motion carried with Mr. Hylen abstaining from voting.

2016 ZBA Dates and Submittal Deadlines: Mr. Colbath made a motion, seconded by Mr. Hylen to approve the 2016 ZBA Dates and Submittal Deadlines. Motion unanimously carried.

Meeting adjourned at 8:26 pm.
Respectfully Submitted,



Holly L. Meserve, Recording Secretary