

ZONING BOARD OF ADJUSTMENT

MINUTES

JUNE 19, 2019

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 19, 2019 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Luigi Bartolomeo; Steven Steiner; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

ELECTION OF OFFICERS

Mr. Bartolomeo nominated, seconded by Mr. Steiner, Mr. Colbath as Chair. Motion carried unanimously.

Mr. Bartolomeo nominated, seconded by Mr. Steiner, Andrew Chalmers as Vice Chair. Motion carried unanimously.

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:01 pm to consider a **VARIANCE** requested by **ARTHUR KING AND LINDA FALCO** in regards to §190-30.D.(2) of the Conway Zoning Ordinance **to allow a boundary line adjustment between the two lots without impeding the non-conforming frontage** at 49 & 51 Butternut Lane, Conway (PID 264-41 & 42). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2019.

Kevin Tilton of HEB Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated only four members are present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until five-members are present. Mr. Tilton agreed to proceed with four members.

Mr. Tilton stated the non-conformity for both lots is the road frontage. Mr. Tilton stated the applicants would like to swap some land to make one a more regular rectangular shape. Mr. Tilton stated the both lots are conforming in regard to area.

Mr. Bartolomeo asked if the garage would be moved to the Falco property. Mr. Tilton answered in the affirmative and stated that it would be moved out of the setback. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Bartolomeo 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 carried unanimously.**

Mr. Colbath read item 2. **Mr. Bartolomeo 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 carried unanimously.**

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

Mr. Colbath read item 4. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; Mr. Colbath stated there was not any testimony either way so he will assume it will not be affected. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Steiner made a motion, seconded by Ms. Sherman, 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 carried unanimously.**

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

Mr. Steiner made a motion, seconded by Mr. Bartolomeo, 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 carried unanimously.**

Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that item 5.b. is not necessary for this application. **Motion carried unanimously.**

Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that, based on the forgoing findings of fact, the variance from §190-30.D.(2) of the Town of Conway Zoning Ordinance to allow a boundary line adjustment between the two lots without impeding the non-conforming frontage be granted. **Motion carried unanimously.**

A public hearing was opened at 7:18 pm to consider a **SPECIAL EXCEPTION** requested by **DENNIS AND JOANNE GALLANT** in regards to §190-26.B.(1)(f) of the Conway Zoning Ordinance **to allow the placement of fill within the Floodplain Conservation Overlay District for the installation of a new septic system** at 20 Pooles Circle, Conway (PID 276-217). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2019.

Adopted: July 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 19, 2019

Peter Surette of North Conway Builders and Dennis Gallant appeared before the Board. Mr. Colbath stated only four members are present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until five-members are present. Mr. Surette agreed to proceed with four members.

Mr. Surette stated this is an improvement on a septic system that is existing. Mr. Irving stated they are proposing removal of earth from the area adjacent to the house to mitigate for the new septic field location. Mr. Bartolomeo asked if the State has approved the septic design. Mr. Surette answered in the affirmative.

Mr. Bartolomeo asked if this was a gravity system. Mr. Surette stated it has a pump chamber in the tank. Mr. Bartolomeo asked if the existing system is in failure. Mr. Gallant answered in the negative and stated since we do not have an approved design on file, to expand the house a new design is required. Mr. Steiner asked if they plan to install it. Mr. Gallant stated not until the existing system goes into failure.

Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that item 2 is not necessary for this application. Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(f) of the Town of Conway Zoning Ordinance to allow the placement of fill within the Floodplain Conservation Overlay District for the installation of a new septic system be granted. Motion carried unanimously.

A public hearing was opened at 7:26 pm to consider a **VARIANCE** requested by **DENNIS AND JOANNE GALLANT** in regards to §190-30.B.(1)(a) and §190-30.B.(2)(e) of the Conway Zoning Ordinance **to allow the expansion of the two-dimensional and three-dimensional footprint within the Floodplain Conservation Overlay District** at 20 Pooles Circle, Conway (PID 276-217). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2019.

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Peter Surette of North Conway Builders and Dennis Gallant appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated only four members are present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until five-members are present. Mr. Surette agreed to proceed with four members.

Mr. Gallant stated the back of the house is within the 100-year floodplain. Mr. Bartolomeo stated it appears more square footage is being removed than being gained. Mr. Surette stated it is pretty much a tradeoff. Mr. Bartolomeo stated in terms of impact it is a wash. Mr. Surette agreed and stated it is the second floor that is increasing.

Mr. Colbath asked if part of this building is in the floodway. Mr. Irving answered in the negative and stated only in the floodplain. Ms. Sherman stated this building was constructed in 1970 which was before zoning. Mr. Gallant stated the expansion is going away from the floodplain.

Ms. Sherman asked if there are any problems with the neighbors and their view. Mr. Gallant answered in the negative, and stated there is no additional height on the roof. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Bartolomeo 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 carried unanimously.**

Mr. Colbath read item 2. **Mr. Bartolomeo 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 carried unanimously.**

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

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

Mr. Colbath read item 5.a.i. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, 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 carried unanimously.**

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

Mr. Steiner made a motion, seconded by Mr. Bartolomeo, 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 carried unanimously.**

Ms. Sherman made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary for this application. Motion carried unanimously.

Mr. Colbath read item 6. **Ms. Sherman 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 carried unanimously.**

Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that item 7 is not necessary for this application. Motion carried unanimously.

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

Ms. Sherman made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-30.B.(1)(a) and §190-30.B.(2)(e) of the Town of Conway Zoning Ordinance to allow the expansion of the two-dimensional footprint and three-dimensional envelope within the Floodplain Conservation Overlay District be granted. Motion carried unanimously.

A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **STEPHEN AND OLGA MORRILL/BRADFORD AND MARGARET MORRILL/BRUCE MORRILL/GARY AND CAROLINE FOLLMER AND VERTEX TOWER ASSETS, LLC AND NEW CINGULAR WIRELESS PCS, LLC** in regards to §190-13.E.(3) and §190-13.K.(12) of the Conway Zoning Ordinance **to allow the installation of a 165-foot tall Wireless Communication Facility and to allow the Wireless Communication tower to exceed 55-feet in height** on Stritch Road, Center Conway (PID 260-58). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2019.

A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **STEPHEN AND OLGA MORRILL/BRADFORD AND MARGARET MORRILL/BRUCE MORRILL/GARY AND CAROLINE FOLLMER AND VERTEX TOWER ASSETS, LLC AND NEW CINGULAR WIRELESS PCS, LLC** in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow for the construction of an access driveway within the Wetland and Watershed Protection Overlay District** on Stritch Road, Center Conway (PID 260-58). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2019.

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Francis Parisi of Parisi Law Associates and Greg Howard appeared before the Board. Mr. Colbath read both the applications and the applicable sections of the ordinance.

Mr. Colbath stated only four members are present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearings until five-members are present. Mr. Parisi agreed to proceed with four members for both applications.

Mr. Parisi reviewed the applications and stated it will provide better coverage along the Route 302 corridor and provide better in building coverage. Mr. Parisi stated they flew a balloon at 175-feet, as there will be a lightening rod on top of the tower at 171-feet. Mr. Colbath asked if there has been any response from the balloon test. Mr. Irving answered in the negative. Mr. Irving stated he and the Town Manager toured the town during the balloon test. Mr. Parisi showed the Board pictures from the balloon test.

Mr. Steiner asked if there would be lights on the tower. Mr. Parisi answered in the negative. Mr. Bartolomeo asked if there would be a FAA red flashing light. Mr. Parisi answered in the negative and stated the FAA light is not required. Mr. Bartolomeo asked if there would be a generator and/or battery. Mr. Parisi stated there would be both backup generators and batteries.

Mr. Parisi stated there is a wetland crossing for the access driveway. Mr. Parisi stated there would be minimal impact; it would be crushed gravel and have a culvert. Mr. Parisi stated there is an erosion control plan and they have just filed to the State for a wetland crossing permit. Mr. Bartolomeo asked if power would be brought down the access driveway. Mr. Parisi answered in the affirmative and stated it would be underground. Mr. Howard stated it would be under the access driveway which will minimize impact.

Mr. Bartolomeo asked if the compound would be fenced. Mr. Parisi answered in the affirmative and stated it will be unmanned. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Steiner made a motion, seconded by Ms. Sherman, that since the visual impact of wireless communication facilities can transcend town lines, communities that may be visually affected shall be formally notified of applications for such proposed facilities as projects having regional impact. This requirement has been satisfied.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Steiner made a motion, seconded by Ms. Sherman, that the applicant must demonstrate that every reasonable effort has been made to cause the facility to have the least possible visual impact on the town at large, including demonstration of realistic analysis of multiple sites, the need for the proposed height, and any impact on significant roadside viewpoints. This requirement has been satisfied.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Steiner made a motion, seconded by Ms. Sherman, that any wireless communication facility shall be designed to accommodate multiple providers of communication services and will only be approved under the condition that the primary**

developer of the facility will make the facility available upon reasonable terms by lease or other legal instruments to other wireless communication services. This requirement has been satisfied. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Steiner made a motion, seconded by Ms. Sherman, that the Board of Adjustment may request detailed plans from the applicant and may, at the expense of the applicant, engage the services of professional consultants to review and comment on the proposal, and testimony of the applicants or their agents relating thereto. This requirement has been satisfied.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Steiner made a motion, seconded by Ms. Sherman, that a Major Site Plan Approval must be obtained from the Planning Board.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.E.(3) and §190-13.K.(12) of the Town of Conway Zoning Ordinance to allow the installation of a 165-foot tall Wireless Communication Facility and to allow the Wireless Communication tower to exceed 55-feet in height be granted. Motion carried unanimously.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the use is essential to the productive use of land not in the District.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman read item 4. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo that a site plan review approval shall be required prior to construction.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

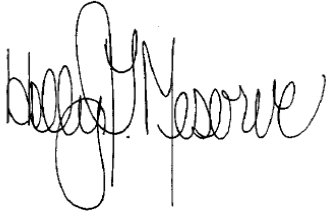
Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-28.I.(4) of the Town of Conway Zoning Ordinance to allow for the construction of an access driveway within the Wetland and Watershed Protection Overlay District be granted. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the minutes of April 17, 2019 as written. Motion carried unanimously.

Meeting adjourned at 8:34 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive, flowing style.

Holly L. Meserve
Planning Assistant