

ZONING BOARD OF ADJUSTMENT

MINUTES

AUGUST 21, 2019

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 21, 2019 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. David Pandora, Building Inspector, was in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **CHRISTOPHER CRONIN** in regards to §190-30.B.(2)(e) of the Conway Zoning Ordinance to **allow the raising of the existing structure to obtain a first floor elevation above the 100-year floodplain elevation** at 215 Transvale Road, North Conway (PID 251-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 9, 2019.

Christopher Cronin appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Cronin submitted additional information to the Board [in file]. Mr. Cronin stated this application is very similar to what he proposed last year on Moat Brook Drive. Mr. Cronin stated this request is to get the living area out of harms way. Mr. Cronin stated the big question last time was floodplain versus floodway and this property is out of the floodway.

Mr. Bartolomeo asked if he is seeking to raise the building so the first floor is above the 100-year flood level. Mr. Cronin answered in the affirmative. Mr. Bartolomeo asked how far above the flood level is he seeking to raise the building. Mr. Cronin answered three-feet. Mr. Bartolomeo stated this is to raise the underside of the floor and sill joist. Mr. Cronin stated this is exactly how the last approval was done, and he is looking to do the exact same thing for this property.

Mr. Cronin stated the house is in excellent condition; there is a newer septic design and a well that is there. Mr. Cronin stated he just received the elevation certificate this afternoon. Mr. Bartolomeo asked how far will the floor be above the existing grade. Mr. Cronin stated he is not exactly sure; it needs to be marked. Mr. Bartolomeo asked if it needs a larger stair print. Mr. Cronin stated that is part of the application; there are two sets of stairs now and connecting the two which will reduce the amount of the footprint in the floodplain.

Mr. Bartolomeo asked how much is new footprint. Mr. Cronin answered just the grey part [on the drawing submitted at the beginning of the meeting] is new. Mr. Bartolomeo stated it looks like a significant expansion; it appears to be proposing a significant footprint expansion. Mr. Irving asked what is the area of the expanded footprint. Mr. Bartolomeo stated he would like to see a better drawing.

Adopted: September 18, 2019 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

Mr. Cronin stated he was proposing one set of stairs, but he would keep the two sets of stairs if the Board preferred. Ms. Sherman stated the three-dimensional envelope appears to be expanding; just raising it is expanding it.

Mr. Chalmers stated he would support the raising of the structure, but not the expansion without knowing what the expansion is. Mr. Bartolomeo stated he would like to have better drawings before making a decision; this is a significant expansion that is simply not allowed here. Mr. Cronin stated this is the same thing as 30 Moat Brook Drive. Mr. Bartolomeo stated that was lifting something up, not expanding it. Mr. Cronin stated he thought one set of stairs would be better, but it can remain with two set of stairs.

Mr. Irving asked if the surveyor indicated the elevations on the property. Mr. Cronin stated he doesn't have any markings, and the building inspector came down last time. Mr. Irving stated the building inspector will verify the markings, but he will not mark it for you.

Mr. Bartolomeo stated if a surveyor has been there then there should be a mark. Mr. Irving stated this is similar to the discussion the Board had last time, a surveyor needs to mark the elevation. Mr. Cronin asked if the Board could approve it on the same premise as Moat Brook, that it will be marked three-feet above the floodplain.

Mr. Pandora stated Ron Briggs, the land surveyor, did mark the elevation on Moat Brook Drive and he will need to set a bench mark for this one. Mr. Chalmers stated the drawing is inconsistent; a hand sketch with the correct dimensions would be helpful. Mr. Bartolomeo stated this Board needs to make a decision on what was submitted. Mr. Pierce stated there is not enough information to make a decision.

The Board asked for an elevation benchmark and exact drawings of what currently exists and what the applicant is proposing. Mr. Cronin stated this was not done for his prior house, and he doesn't understand why the Board needs this information for this property. Mr. Cronin stated the property is located in the floodplain and not the floodway. Mr. Chalmers stated the expansion of footprint appears to be a considerable expansion of a non-conforming structure within the floodplain.

Mr. Colbath asked for public comment; there was none. The Board asked the applicant to provide elevation points, dimension of the full structure, the square footage of the existing structure, and the square footage of the expansion. Mr. Bartolomeo asked the applicant to provide the existing number of treads and how many more are needed.

Mr. Steiner made a motion, seconded by Mr. Chalmers, to continue the public hearing and review of the application for Christopher Cronin until September 18, 2019 at 7:00 pm with new information to be submitted by 4:00 pm on September 9, 2019. Motion carried unanimously.

A public hearing was opened at 7:26 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **BRIAN FRAM** in regards to §190-31, Definition of Residential/Dwelling Unit of the Conway Zoning Ordinance **to appeal the Building Inspector's determination that the proposed use is lodging rooms or dormitory style living accommodations and not a residential/dwelling unit** at 878 Eastman Road, North Conway (PID 245-8). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 9, 2019.

Shawn Bergeron of Bergeron Technical Services and Josh Cahill, manager of the property, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bergeron stated he would like to start out that he is respectfully appealing Mr. Pandora's decision. Mr. Bergeron stated he and Mr. Pandora have worked on many projects together in the past, and he respects what Mr. Pandora does.

Mr. Bergeron stated this is an appeal from administrative decision made by the building inspector denying an application for a zoning permit which requested approval to occupy a residential/dwelling unit as defined in Conway's Zoning Ordinance for non-transient occupancy by seasonal workers only some of which may be blood related. Mr. Bergeron stated many of us know buildings in Conway are housing seasonal workers, often referred to as J1's; this is a common term used amongst people who are employing usually foreign, young adults that come here on J1 visas to work seasonal employment.

Mr. Bergeron stated the facts he finds relative to this appeal; number one, by Conway definition residential/dwelling unit is a single unit providing complete and independent living facilities for one or more persons living as a household including provisions for living, sleeping, eating, cooking and sanitation.

Mr. Bergeron stated that is the definition right out of the Zoning Ordinance. Mr. Bergeron stated it is the Zoning Ordinance that goes hand in hand with this permit application. Mr. Bergeron stated this definition exactly represents the proposed occupancy that Mr. Cahill wishes to have. Mr. Bergeron stated it is important to note as it says, living as a household, however, within the Zoning Ordinance, household is not defined.

Mr. Bergeron stated number two, as many of us have been dealing with land use for many years we have learned in the past that if the word is not defined in the zoning ordinance and the word is determined important the next thing you do is go to a dictionary and find the dictionary definition. Mr. Bergeron stated he thinks that household is an important word within Conway's definition, and from Merriam-Webster's Dictionary, 11th edition, copyrighted 2014, household is defined as those who dwell under the same roof and compose a family, also a social unit composed of those living together in the same dwelling.

Mr. Bergeron stated family by definition is a group of individuals living under one roof, usually under one head. Mr. Bergeron stated there will be a head of household in this dwelling; someone is there to keep things organized.

Adopted: September 18, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

Mr. Bergeron stated number three, in the July 2nd letter of denial Mr. Pandora states “the Zoning definition of residential/dwelling unit is clearly the problem” and goes further to say “this occupancy that you are trying to achieve is lodging rooms or dormitory style living accommodations”.

Mr. Bergeron stated within the Conway Zoning Ordinance there is no definition for lodging or lodging rooms, in fact in the definition section of the Conway Zoning lodging only appears three times; it appears twice in the definition of Bed and Breakfast, and it is within the title of Owner-Occupied Lodging.

Mr. Bergeron stated that is the only time that word, although Mr. Pandora references it, appears in the ordinance. Mr. Bergeron stated the word dormitory or phrase dormitory style living accommodations as the recommended occupancy by Mr. Pandora are not within Conway’s Zoning Ordinance.

Mr. Bergeron stated number five [four], in the July 2nd letter of denial Mr. Pandora states “my primary concern here is life safety and to protect those individuals residing within the dwelling unit so let’s call it what it is lodging rooms and dormitory style living”. Mr. Bergeron stated most importantly and he cannot emphasize this enough, the property owner Brian Fram, Josh, and certainly Bergeron Technical Services share that same concern; the most important thing we can do in any structure is to make sure the folks inside that building are adequately safe.

Mr. Bergeron stated when the zoning permit is granted for this residential/dwelling unit to house seasonal workers, we, Josh, myself and Brian, plan to work with Mr. Pandora and Redstone Fire, because it is within their jurisdiction, to design and install whatever appropriate life safety systems that are required. Mr. Bergeron stated we are not looking to forego life safety by any stretch of the imagination, it is paramount.

Mr. Bartolomeo asked if Mr. Bergeron said non-transient seasonal. Mr. Bergeron answered in the affirmative. Mr. Bartolomeo asked isn’t that a contradiction. Mr. Bergeron answered in the negative and stated we have transient within the building code and the fire code, but not within zoning. Mr. Bergeron stated but in the building code and fire code we have non-transient versus transient. Mr. Bergeron stated non-transient is defined as more than 30 days and transient is defined as up to 30 days.

Mr. Bergeron stated from a building and fire code perspective, and not from a zoning ordinance perspective, that is incredibly important because people who live in a structure for an extended period of time become familiar with the structure and it requires less inherent safety equipment within that structure because they know the building and they know what to do in an emergency. Mr. Bergeron stated short term, say Airbnb, kind of occupancies are always transient and we put them by the nature of the occupancy at greater risk because they are very unfamiliar with the structure, some only being there for very short periods of time, sometimes hours.

Mr. Bergeron stated what is important here to remember is that this is non-transient seasonal, mostly six months. Mr. Cahill stated mostly three and half months. Mr. Bergeron stated mostly they will be there the summer season, and then he has another client that brings in workers for the winter season.

Adopted: September 18, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

Mr. Bergeron stated by definition within the Conway Zoning Ordinance this building can legitimately be occupied on a non-transient basis by any group of people living as a household. Mr. Bergeron stated households in 2019 are not the households that many of us grew up in the 50's, 60's and 70's. Mr. Bergeron stated he has a client who is a mother and a dad, who are not married, they have four adopted children, none of which are blood relatives, and they have a nanny that is in the home; to them they are a family living has a household.

Mr. Bergeron stated it doesn't meet any typical definition of what a family used to be back in the day. Mr. Bartolomeo stated but they are living in a single-family home. Mr. Bergeron agreed. Mr. Bergeron stated he thinks it is important to realize that household and families in 2019 are not necessarily the same as households and families in the 1960's, 1970's and 1980's.

Mr. Chalmers stated he presumes this is a rental situation versus a family who adopted children who are presumably not paying rent. Mr. Bergeron stated the family is paying rent, they don't own where they live. Mr. Bergeron stated Mr. Pandora explained in his denial letter the problem within the definitions of the Conway Zoning Ordinance. Mr. Bergeron stated while every possible occupancy can't be defined, we can't correct the deficiency we have in the ordinance by reaching a conclusion that is not supported in the ordinance.

Mr. Bergeron stated a zoning ordinance is a fluid, flexible document. Mr. Bergeron stated this particular section of the Conway Zoning Ordinance, the residential/dwelling unit, has been there for about a decade now as is. Mr. Irving stated it was tweaked a few years ago. Mr. Bergeron stated but unfortunately there is nothing in there regarding short-term or long-term, non-transient or transient.

Mr. Bergeron stated if this property cannot be approved as a residential/dwelling unit that we are proposing, every business in Conway that is providing temporary housing for their employees and every Airbnb and every VRBO in the Town of Conway is also not a residential/dwelling unit and we will open up the largest can of worms.

Mr. Pierce asked if this is a single-family residence. Mr. Bergeron stated we don't have a definition for a single-family residence; sure, it looks like a single-family structure when you drive past it, but the closest definition we have is residential/dwelling unit. Mr. Pierce asked if it is a one-family or a two-family. Mr. Bergeron stated recently it was a one-family home. Mr. Pierce stated it is a single unit on one piece of deeded land. Mr. Bergeron agreed. Mr. Irving stated it is a single-family residential dwelling unit as you would have contemplated.

Mr. Pierce stated he is not sure what the building inspector's objection is. Mr. Irving referred to and read §190-5, Interpretation. Mr. Pandora stated when he stopped by the property in July of 2017 it was clearly dormitory style living in the building. Mr. Pandora stated that there were paddle locks on one or two of the rooms to keep other people out of their rooms. Mr. Pandora stated his concern was if he treated it as a one- or two-family residential dwelling unit then he has no right to impose any of the regulations other than smoke detectors and egress windows.

Mr. Pandora stated if we open that door up, we have opened another door that will happen all over town; we will have R2 occupancies when R3 is listed, and he is looking at this as R2. Mr. Pierce asked if we have a definition of dormitory. Mr. Bergeron stated we do not. Mr. Pandora

Adopted: September 18, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

stated only through NFPA or IRC or IBC. Mr. Irving stated which are codes adopted by the Town. Mr. Bergeron stated he objects to that because this application is a zoning permit application, it is not a building permit application and it is not a fire code application.

Mr. Bergeron stated to jump from zoning into the building code or into the fire code to get a definition that fits because we have an unusual circumstance is a leap of faith. Mr. Bergeron stated you need to stay within the ordinance that the application is applied for and it is specifically a zoning permit application. Mr. Bergeron stated later, as he stated earlier, we will have to come back and deal with Mr. Pandora in regards to building code and fire code issues. Mr. Bergeron stated we need to get the zoning item out of the way.

Mr. Pierce stated if Mr. Pandora is calling this a dormitory, and since we don't have a definition than it is reasonable to find out what that interpretation is so the Board can understand where he is coming from. Mr. Pierce stated his definition of dormitory is a room without a kitchen. Mr. Bergeron stated he doesn't think it is unreasonable to ask Mr. Pandora of what his interpretation of the definition is, but it is very important that within the realm that we are dealing currently, the Conway Zoning Ordinance, that definition doesn't exist; he had to reach outside of that to the building code and fire code, and at some point in time we will have to go there, but this application should be approved as a residential/dwelling unit.

Mr. Bergeron stated then later in this process, away from the Board, deal with the building and fire code. Mr. Pierce stated he doesn't see the problem with what the applicant is asking for. Mr. Pierce stated he is trying to understand Mr. Pandora's interpretation. Mr. Bartolomeo asked the zoning. Mr. Bergeron answered highway commercial.

Mr. Steiner stated for him this is like the third rail, very common. Mr. Steiner stated the discussion that was had yesterday regarding long-term, Airbnb rentals, there are more of these buildings in this Town, you will shut this Town down. Mr. Steiner stated this is just the tip of the iceberg. Mr. Steiner stated J1's needs a place to stay, the businesses in this Town need labor and the only thing he would want is that the building is totally safe. Mr. Bergeron stated safety of a building takes precedent over the zoning aspects of a building.

Mr. Chalmers stated he applauds Mr. Bergeron's effort for that, but his client could fire him tomorrow, and this gets approved as a single-family dwelling. Mr. Bergeron stated this is a problem that we have, it is a Conway problem. Mr. Bergeron stated we have state building code and a state fire code, but we don't have inspections of one- and two-family dwellings. Mr. Chalmers stated he agrees and that is what concerns him about this being a single-family dwelling. Mr. Chalmers asked if he is saying we shouldn't look at our zoning ordinance under §190-5.

Mr. Pierce asked if the septic has capacity. Mr. Bergeron stated the septic will have to have capacity for the number of bedrooms. Mr. Pierce stated one of his concerns is that you pile it full of people, like 10 people to a bedroom. Mr. Bergeron stated in the State of New Hampshire septic systems are designed by the number of bedrooms in a home. Mr. Bergeron stated there is a residential structure in Birch Hill that is presently part of the vacation rental by owner, it is advertised as sleeping 32 people and it is on a septic system. Mr. Bergeron stated the septic system design for that particular home is a four-bedroom design; that is 8 people per bedroom.

Mr. Bergeron stated there is nothing we can do about that because that is the State of New Hampshire's regulation. Mr. Bergeron stated people say that a bedroom has to have a closet, but that is incorrect, there is no definition of a bedroom in the State of New Hampshire. Mr. Bergeron stated we have all of these little conundrums going on that we fail to address, yet we deny applications.

Mr. Bergeron stated in regards to §190-5, Interpretation, it says "...in interpreting any provision of this chapter..."; the chapter is zoning. Mr. Bergeron continued reading §190-5 and stated the most restrictive, if we are considering life safety, will be to say we need to put in the adequate safety provisions and we have already agreed they are going to do that as part of the building permit process. Mr. Bergeron stated specifically mentioned in §190-5 there is reference to RSA 676:14 which is determination of which local ordinance takes precedence, that's a New Hampshire statute.

Mr. Bergeron stated whenever a local land use ordinance is enacted or regulation is adopted which differs from an authority of an existing ordinance or any other regulation the provision which imposes the greater restriction or higher standard shall be imposed. Mr. Bergeron stated in this case from a zoning perspective we can call this what it is, a residential/dwelling unit; then when the time comes for a building permit, which we are saying publicly now that we are going to have to apply for because we are going to make improvements to that structure, then we are going to have to look at the appropriate building code and fire code requirements for the occupancy.

Mr. Chalmers asked then you would not be looking at an occupancy of a single-family home, that is not the occupancy you would be going for. Mr. Bergeron stated when they apply for a building permit, they are going to have to comply with the International Building code and the Life Safety code. Mr. Chalmers stated it is going to be lodging and rooming. Mr. Bergeron stated it is going to be lodging and rooming and as Mr. Pandora stated it is going to be R2 in the building code.

Mr. Colbath stated we had a member of the public come before the Board of Selectmen at their meeting yesterday, and he also happens to be a member of the Planning Board, with a concern about regulating seasonal rentals and vacation rentals. Mr. Colbath stated last Fall as a Selectmen he attended the Municipal Association's annual conference where we discussed what legislation we wanted to promote to go before this last legislative session that would best favor municipalities, and what rose to the top of the discussion was Hampton, Gilford and Conway have all these same problems.

Mr. Colbath stated Conway is not unique to these issues that are going on; it is a big issue as to how to provide property rights to people while still regulating the use of these and what it does to the infrastructure and the residential areas of the municipality.

Mr. Bergeron stated he Chairs the State Building Code Review Board and he is dealing with this issue from Pelham to Canada, from Vermont to Maine. Mr. Bergeron stated it is everywhere, but this application tonight deals with the zoning aspects of it, and we are not dealing with the short-term rental situation here, we're dealing with a long-term rental situation. Mr. Bergeron stated the whole conversation about short-term rentals is a conversation we have taken up in Conway,

Adopted: September 18, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

and it hasn't been taken up in many communities in New Hampshire because it is a double edge sword. Mr. Bergeron stated everyone is scared to death of it, so we're all ignoring it and pretending it's not out there, but it is starting to raise its ugly head.

Mr. Steiner stated he was strictly talking about Airbnb's; he was not talking about long-term rentals at all. Mr. Colbath agreed and stated he was talking about short-term, vacation rentals.

Mr. Bartolomeo asked Mr. Pandora when he observed these dormitory situations, are you talking about aimless arrays of bunkbeds like a dormitory. Mr. Pandora stated it was multiple rooms with three or four cots in each room. Mr. Pandora stated the major issue here is it is a single-family residential unit that they want to use as R2. Mr. Pandora stated it does not give him the authority to make them apply to the codes; they are willing to apply the code, but what about the next time.

Mr. Pandora stated what happens when the next individual comes in with a single-family residential unit and has 22 kids in the building; he can't apply the codes unless they are willing to do it. Mr. Pandora stated on an R2 permit, anything that is commercial has to be signed off by the Planning Department and the Fire Department; if it is no longer a residential permit, he can't just issue it.

Mr. Colbath stated there are commercial units that have multiple people living in them. Mr. Pandora agreed and stated it is an allowed use in that zone; they can apply to site plan and probably get approved. Mr. Pandora stated it is an allowed use, they are just trying to circumvent it by staying residential.

Mr. Colbath asked why not seek a change of use since it is in a commercial zone. Mr. Bergeron stated just because the property sits in a commercial zone doesn't make it commercial; commercial is not an occupancy definition. Mr. Bergeron stated if we look at what we call a single-family home, that is a residential structure. Mr. Bergeron stated by the building code and fire code the Holiday Inn Express is a residential structure, just a different categorization within the building and fire code of residence.

Mr. Bartolomeo stated Randy Cooper years ago expanded on that; he said people living in an apartment building think it is a residential use, but for the person who owns the apartment building and maintains it, it is a commercial use as he's collecting rent and making money. Mr. Bartolomeo stated the Holiday Inn Express is clearly commercial use, it is a commercial building. Mr. Bergeron stated it is a commercial use in a commercial building, but the codes say it is a residential occupancy.

Mr. Bergeron stated what he has asked for is a zoning permit application based on the zoning ordinance. Mr. Bergeron stated we are publicly saying that we are going to, after this is approved, deal with Mr. Pandora and Redstone Fire for appropriate building code and life safety code safety issues. Mr. Bergeron stated we should not allow this denial to clean up deficiencies we have within this ordinance.

Adopted: September 18, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

Mr. Bartolomeo asked if an R2 use is permitted in this zone. Mr. Pandora answered in the affirmative. Mr. Bartolomeo asked if this is considered R2 would that mean he would have to go to the Planning Board. Mr. Pandora answered in the affirmative. Mr. Bartolomeo asked if that is what you are seeking to avoid. Mr. Bergeron answered in the affirmative. Mr. Bartolomeo stated he understands Mr. Pandora's interpretation; you don't have a single-family, the use has turned it into an R2.

Mr. Chalmers asked about parking and if you don't have to go to the Planning Board none of that needs to be addressed. Mr. Bergeron stated it is important to know what do the neighbors think, and we have written letters from the neighbors supporting this particular use. Mr. Bergeron stated it is important to keep the building safe and it is important that we don't harm the neighborhood. Mr. Bergeron stated he does not think there is anything to be gained by taking this property to site plan review where we are going to at least ask for waivers for things like paving, granite curbing, street trees, all those requirements that are inherit in site plan review that are not appropriate for a structure of this nature.

Mr. Bartolomeo stated that he understands that the Planning Board regulations are cumbersome and burdensome, but the truth is if we didn't have such regulations North Conway would look like Weirs Beach. Mr. Bartolomeo stated those are the things that help embellish the property and make it look good. Mr. Bergeron asked if Mr. Bartolomeo has been to Weirs Beach recently, as he was there within the last few weeks and it looks nice.

Mr. Colbath asked for public comment; Carolyn Brown stated she owns Carolyn's Tailor Shop and she has been there for 32 years. Ms. Brown stated she has seen this property with private homeowners with families and she has seen the student living and the student living has not been a problem. Ms. Brown stated her concern is that the septic system probably needs to be upgraded. Mr. Cahill stated he will certainly take care of that.

Ms. Brown stated she also has a concern with the pipes that broke this winter, and if you are going to put students in there then it needs to be safe. Ms. Brown stated she is concerned that there might be mold in that building and an inspection should take place. Ms. Brown stated she has a concern with the bicycles; when the winter comes, they are not taken care of and they are snow plowed into a big pile. Ms. Brown stated outside her window she has a view of this big pile of bicycles; she would love to see them taken away.

Ms. Brown stated there is also a trailer there that has not been used and that concerns her. Mr. Cahill stated he is waiting for the trailer to be taken away, and he thought the bikes had already been taken care of; he will see that they are taken care of. Ms. Brown stated her issue is safety of the people who live there, and she doesn't really think 20 people should be living there; not sure if there would be a cap on how many people can accommodate that building.

Ms. Brown stated she has never had a problem with them; sometimes they work until 11:30 at night, that's when the party usually starts, but they are over by usually 1:00 or 2:00 in the morning. Ms. Brown stated when you live directly beside them it does get a bit disturbing. Ms. Brown stated she is okay with it as long as they take care of safety issues.

Adopted: September 18, 2019 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

Mr. Pandora stated if it stays residential, he has no authority to inspect or limit the number of people who live there; all that goes away. Mr. Pandora stated it's R2 use in a residential setting; he is going to have difficulty issuing a permit knowing its R2. Mr. Pandora stated he is going to have to go against everything he has been doing for 20 years; it is going to make it tough.

Mr. Bergeron stated having sat in Mr. Pandora's position for nine years, he understands that; but he can't speak with enough emphasis that what we have is being used 100% according to the residential/dwelling unit definition in the zoning ordinance; and the application that was applied for was 100% appropriate. Mr. Bergeron stated the issues Mr. Pandora speaks to are the deficiencies within the Town of Conway's regulation and the fact that the Town of Conway has taken upon themselves to not inspect one- and two-family dwellings.

Mr. Bergeron stated the Town of Conway has made their own bed, and now he is saying you need to sleep in it. Mr. Bergeron stated at some point in time the Town of Conway needs to catch up to 2019 and start dealing with one- and two-family dwellings appropriately, and stop pretending that these things are not going on out there. Mr. Pierce stated the dilemma is residential versus commercial and does it meet the definition of residential.

Vicki Fadden stated she has several apartments and she has to pay commercial for all of them. Ms. Fadden stated so when he is renting to multiple people why would that be residential. Mr. Bergeron stated taxation is taxation; Ms. Fadden has apartment buildings with numerous units so she pays taxes based on the value of the building and this will be the same. Mr. Colbath closed public comment.

Mr. Chalmers stated he is having a hard time considering this a single-family residential unit. Mr. Chalmers stated he has been in lots of households in his career and padlocks on doors is not typical. Mr. Chalmers stated to consider it a single-family home, it just does not seem that that is what this is. Mr. Bergeron stated he doesn't necessarily disagree, but show him the definition of a single-family unit within the Town of Conway Zoning Ordinance. Mr. Bergeron stated the application stands on its own merits; it stands on the requirements of the ordinance.

Mr. Bergeron stated we are going to make that building code compliant safe. Mr. Chalmers asked if it is a residential unit who is in charge of policing that. Mr. Bergeron stated where it is a rental, Redstone Fire has the right to do inspections.

Mr. Pierce stated within the definition it states living as a household; and he agrees that it is not very clear. Mr. Steiner stated some people use paddle locks and some use door knobs with locks, it's not up to us to tell someone how to live. Mr. Steiner stated he thinks this is an effort to try to regulate long-term rentals and Airbnb's and he is not going to take away someone's property rights.

Mr. Chalmers stated this is not an Airbnb, and his issue is if we consider this a residential unit, we're now throwing this on the very small Redstone Fire Department rather than the building department where he believes this belongs. Mr. Bergeron stated, unfortunately, the Town has not been doing something right, and his client is being held hostage because of it.

Mr. Irving referred to the zoning application where it says the existing use is a residential dwelling unit and the proposed use is a residential dwelling unit. Mr. Irving stated it is the same structure, but it is the use that is the question and it is the use that created the issue for the Building Inspector. Mr. Bergeron stated the reason for the application under other says to allow non-transient seasonal workers to live in this residential dwelling unit. Mr. Irving stated which is the use.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to support the decision of the Building Inspector. After a brief discussion, Mr. Chalmers withdrew his second and Mr. Bartolomeo withdrew his motion.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to grant the appeal of the Administrative Decision. Mr. Colbath asked for Board comment; Mr. Bartolomeo stated he agrees with Mr. Pandora. Mr. Pierce stated he agrees with the Building Inspector, but it is not defined in the codes. **Motion carried with Mr. Steiner, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Pandora left at this time.

A public hearing was opened at 8:14 pm to consider a **SPECIAL EXCEPTION** requested by **CHRISTIAN MANHARD AND JESSICA DIPIETRO** in regards to §190-18.B.(5)(a) of the Conway Zoning Ordinance **to allow a third residential unit [to be located] in the barn** at 237 West Main Street, Conway (PID 277-200). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 9, 2019.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Jessica DiPietro and Christian Manhard were in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Bergeron stated two residential units exist in the home and a third residential unit is proposed in the barn. Mr. Bergeron stated most, if not all, of the structure was constructed prior to 1930; there will only be three units; the lot is approximately 19,626 square feet, which meets the 15,000 square foot requirement; there are no changes to the exterior of the building; there is adequate parking; the structure is connected to both municipal water and sewer; an architectural plan was submitted; and the proposed third unit will have 876 square feet of living space.

Mr. Colbath stated this was Charlie Perkin's house; in the 1930's there was a hurricane where the elm trees came down on the porch. Mr. Colbath stated this property housed employees of the Kennett Mill. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that substantially all of the structure was constructed prior to 1930.** 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. Chalmers, that the modification to the interior does not create more than four (4) units.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that no less than 5,000 square feet of land area must be provided on the parcel for each unit that exists or is to be constructed thereon.** 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. Chalmers, that no significant changes to the exterior lines of the building or exterior architectural detail are made which would diminish the historical appearance of the structure.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that adequate area is available for parking outside the setback and buffer areas.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the parking is not ideal, but there is enough area. **Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that a compliant State of New Hampshire and Town of Conway approved in-ground sewerage disposal system already exists or will be constructed as a condition of this approval; or the property is connected to municipal sewerage.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Steiner made a motion, seconded by Mr. Chalmers, that architectural design plans and a to-scale site sketch must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with [1] through [7] within this section.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Steiner made a motion, seconded by Mr. Chalmers, that accessory structures must have at least three hundred (300) square feet of living space per unit suitable for conversion to a dwelling unit and not conflict with the purpose and intent of this section.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-18.B.(5)(a) of the Town of Conway Zoning Ordinance to allow a third residential unit [to be located] in the barn be granted. Motion carried unanimously.

Adopted: September 18, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019

A public hearing was opened at 8:34 pm to consider a **VARIANCE** requested by **TOM FADDEN AND VICKI GRAVES/GSSG NEW HAMPSHIRE, LLC** in regards to §190-13 and §190 – Permitted Use Table of the Conway Zoning Ordinance **to develop an industrial scale solar collection system** on Green Hill Road, Center Conway (PID 224-2 & 225-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 9, 2019.

Clay Mitchell and Michael DiGregorio appeared before the Board. Vicki [Graves] Fadden was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Mitchell stated this is a use variance request. Mr. Mitchell stated that the panels are oriented north-south, and that is because it is on a tracking system which tracks the sun in the sky from east to west.

Mr. Mitchell stated the panels will shift throughout the day following the track of the sun to maximize the outlet and allows us to keep the array very low. Mr. Pierce asked does the tracking create noise. Mr. Mitchell answered in the negative because it is a completely sealed system. Mr. Bartolomeo asked if it uses its own generated power to run the tracking. Mr. Mitchell stated it would be grid connected.

Mr. Bartolomeo asked if it would be fed back into the grid, are they selling power. Mr. Mitchell answered in the affirmative and stated they hope to be net metered, but, if not, they will have a different arrangement. Mr. Bartolomeo asked who else can plug into this. Mr. Mitchell stated it would be metered and will be fed into the grid. Mr. Colbath asked if this is a forested lot. Mr. Mitchell answered in the negative and stated it is an open field. Mr. Mitchell stated it is an old farm field. Ms. Sherman stated it has not been productive. Mr. Mitchell stated the existing trees would remain.

Mr. Mitchell stated this will have to go to site plan review. Mr. Colbath asked the zoning district. Mr. Irving answered it is in the residential agricultural zone. Mr. Irving stated it is not a permitted use in this district. Mr. Irving stated this is an industrial use and would be allowed in the industrial district.

Mr. Irving stated the only concern is we do not have extensive buffers and setbacks in our zoning ordinance or in the site plan regulations for this type of use. Mr. Irving asked what are the setbacks to the southern property line. Mr. Mitchell stated the red line on the map submitted are the utility easements, and the width of that is 100-feet, so looking at approximately 100-feet. Mr. Irving stated if there was a condition applied to this variance saying the minimum setback from property lines for the solar field was 100-feet, would that be acceptable. Mr. Mitchell answered in the affirmative.

Mr. Bartolomeo asked how much area does the array use. Mr. Mitchell answered the lot is 40-acres, and the array covers 30-acres. Mr. Bartolomeo asked if they have these somewhere else in the state. Mr. Mitchell answered in the affirmative. Mr. Pierce asked if it would be visible from the roads. Mr. DiGregorio stated it might be visible from the powerlines, but it would be tough. Mr. Colbath asked if there is an operator. Mr. DiGregorio answered in the negative and stated they are really maintenance free, twice a year someone might mow the lawn. Mr. DiGregorio stated everything is monitored remotely.

**Adopted: September 18, 2019 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 21, 2019**

Mr. Pierce asked the life span on the panels. Mr. Mitchell stated they don't know yet because every panel that has been built is still in operation. Mr. Mitchell stated they guarantee an output level which declines over time, and most panel manufacturers will guarantee an output of 80% of the design specifications which is 25 to 30 years into the future. Mr. Mitchell stated that the estimate is that a panel will last 40 to 50 years.

Mr. Pierce asked why Mr. Irving was suggesting a 100-foot setback. Mr. Irving stated that would provide not only a 50-foot buffer but a 50-foot clear area so there is no encumbrance or shadowing along the edge. Mr. DiGregorio stated they are okay with that.

Mr. Colbath asked for public comment; Robin Crocker, an abutter, asked if there have been any health risks associated with these installations. Mr. Mitchell stated not to his knowledge. Mr. Mitchell stated the materials in the panels are sealed themselves, and they don't leak. Mr. Mitchell stated there is no electromagnetic fields coming off these. Mr. Colbath closed public comment.

Mr. Mitchell stated in regard to the first criteria, §190-3.J encourages solar; therefore, this is in the public's interest and definitely not contrary to it. Mr. Mitchell stated in regard to criteria #2, you need to look at the ordinance more in general; this use does not drastically change the effect on the neighborhood because of the buffers and the location. Mr. Mitchell stated there is virtually no services to this; it is a very low impact use.

Mr. Mitchell stated in regard to criteria #3, this is domestic energy, getting us off foreign oil; is the public benefited by not having that grid there, he believes that is not true. Mr. Mitchell stated it is potentially benefited by having a local, larger scale solar array. Mr. Mitchell stated in regard to criteria #4, we've already discussed a visible buffer along the south easterly border to minimize any potential impact. Mr. Irving stated he is not suggesting at this time that the Board stipulate what the buffer is, he is only suggesting at this time is the setback. Mr. Irving stated the Planning Board through its review can increase the buffer up to 50-feet.

Mr. Mitchell stated in regard to criteria #5, this property is uniquely situated in the town as it is a large property bisected by two overhead electrical easements, which is hard to find. Mr. Mitchell stated not saying this is an issue, but people do have issues with electrical easements, and this use loves overhead powerline easements as it gives us a place to connect to the grid and its stabilized power. Mr. Mitchell stated these are special conditions of this property that make this use not only reasonable, but optimal for the property. Mr. Mitchell stated we are requesting that the Board grant the variance to have this reasonable use.

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

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

Mr. Colbath read item 3. **Mr. Steiner made a motion, seconded by Mr. Chalmers, 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. Chalmers, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers read item 5.a.i. **Mr. Steiner 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.** 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. Chalmers, that the proposed use is a reasonable use.** Mr. Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Steiner 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 carried unanimously.**

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


Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-13 and §190 – Permitted Use Table of the Town of Conway Zoning Ordinance to develop an industrial scale solar collection system be granted with the condition that the solar collection system structures be setback no less than 100-feet from adjacent property lines. **Motion carried unanimously.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the minutes of July 17, 2019 as written. **Motion carried with Mr. Colbath abstaining from voting.**

Meeting adjourned at 9:20 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant