

## ZONING BOARD OF ADJUSTMENT

### MINUTES

SEPTEMBER 18, 2019

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 18, 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; Richard Pierce; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

#### APPOINTMENT OF ALTERNATE MEMBER

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

#### 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. This hearing was continued from August 21, 2019

Christopher Cronin appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Cronin stated he is looking to raise the structure out of the floodplain, and to have the bottom floor joist 3-feet above the floodplain. Mr. Cronin stated the 100-year floodplain is located 53-inches above grade; and once lifted that first floor will be 89-inches above grade.

Mr. Cronin reviewed two options with the Board; Option A and Option B [in file]. Mr. Cronin stated he would prefer Option A. Mr. Chalmers stated this is just support for that structure, there is no habitable space under it. Mr. Cronin stated it is a block foundation that will be extended to raise the building; it will continue to be unhabitable space.

Mr. Bartolomeo asked why does a tiny house need two set of stairs. Mr. Cronin stated there are two doors. Mr. Chalmers asked what is the square footage of the deck in option A. Mr. Cronin answered approximately 200 square feet. Mr. Chalmers asked if it was 20' x 15'. Mr. Cronin answered in the affirmative, but stated that it is missing a whole corner by the front door. Mr. Cronin stated all of that is above the floodplain.

Mr. Bartolomeo stated expansion is not allowed in the floodplain and should try to minimize the impact. Mr. Cronin stated Option A eliminates the two sets of stairs. Mr. Pierce stated for property egress you need two.

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Mr. Colbath stated with the deck that is being removed and the new proposed deck under Option A there is approximately 120 additional square feet. Mr. Chalmers stated plus the new set of stairs on the front. Mr. Bartolomeo stated the solution that minimizes the impact in the floodplain is Option B with two sets of stairs.

Mr. Chalmers stated he is more inclined to support the application if the stairs were inside the footprint of the proposed deck. Mr. Cronin stated that is doable. Mr. Pierce stated he likes the thinking on Option A, but that is taking the maximum expansion where it could be minimized. Mr. Chalmers stated the proposed deck under Option A is almost the same size as the existing dwelling and that does not conform with our ordinance at all.

Mr. Bartolomeo asked Mr. Cronin if he had to pick one entrance which one would it be. Mr. Cronin stated it currently has two entrances that are very useful and eliminating one would be difficult. Mr. Bartolomeo asked if the expanded footprints meet the setbacks. Mr. Cronin answered in the affirmative. Mr. Pierce stated Option B is the expansion needed; suggest taking that square footage and do something more creative with it to solve your problem.

Mr. Colbath asked for public comment; there was none. There was a brief discussion to allow the raising of the building 3-feet above the floodplain and to expand the stairs to reach grade with no additional decks or turns allowing Mr. Cronin to align the stairs in any direction he chooses.

Mr. Colbath read item 1. **Mr. Bartolomeo 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. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo 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. Bartolomeo 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. Colbath read item 5.a.i. **Mr. Chalmers 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. Chalmers 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. Chalmers 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. Colbath read item 5.b. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that item 5.b. is not applicable. Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Bartolomeo 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.** Mr. Colbath asked for Board comment; Mr. Chalmers asked if this will be constructed in a flood appropriate manner where water flows in and water flows out. Mr. Cronin answered in the affirmative. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that item 7 is not applicable. Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers 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.**

**Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §190-30.B.(2)(e) of the Town of Conway Zoning Ordinance to allow the raising of the existing structure to obtain a first floor elevation 3-feet above the 100-year floodplain elevation with the condition that the stairs only come off the existing decks with no additional decks, turns or landings be granted.**

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A public hearing was opened at 7:38 pm to consider a **SPECIAL EXCEPTION** requested by **CMR PROPERTIES, LLC** in regards to §190-24.K.(6) of the Conway Zoning Ordinance to allow the construction of a resort hotel in the Recreational Resort District at 165 Skimobile Road, North Conway (PID 214-84.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 6, 2019.

Christopher Meier of Cooper Cargill Chant appeared before the Board. Mr. Meier stated the applicant wishes to ask for a continuance until the October meeting to be able to meet with the condominium owners and review the project with them.

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

**Mr. Bartolomeo made a motion, seconded by Ms. Sherman, to continue the public hearing and consideration of the application for CMR Properties, LLC until October 16, 2019 at 7:05 pm with any new information to be submitted by 4:00 pm on October 7, 2019. Motion carried unanimously.**

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A public hearing was opened at 7:39 pm to consider a **SPECIAL EXCEPTION** requested by **CMR PROPERTIES, LLC** in regards to §190-28.I.(6) of the Conway Zoning Ordinance **to allow pavement within the wetland buffer at 165 Skimobile Road**, North Conway (PID 214-84.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 6, 2019.

Christopher Meier of Cooper Cargill Chant appeared before the Board. Mr. Meier stated the applicant wishes to ask for a continuance until the October meeting to be able to meet with the condominium owners and review the project with them.

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

**Mr. Bartolomeo made a motion, seconded by Ms. Sherman, to continue the public hearing and consideration of the application for CMR Properties, LLC until October 16, 2019 at 7:06 pm with any new information to be submitted by 4:00 pm on October 7, 2019. Motion carried unanimously.**

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A public hearing was opened at 7:40 pm to consider a **SPECIAL EXCEPTION** requested by **MARY, RANDY AND KIMBERLY GAUDETTE** in regards to §190-26.B.(1)(d) of the Conway Zoning Ordinance **to allow underground utilities in the Floodplain Conservation Overlay District** at 3557 West Side Road, North Conway (PID 201-23). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 6, 2019.

Wes Smith of Thorne Surveys appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Smith stated there are water lines and underground electric to the greenhouses. Mr. Smith stated they didn't realize they were in the floodplain when they were installed. Mr. Smith stated there was no way of knowing it was floodplain until a formal survey was done.

Mr. Colbath asked how long have these utilities been installed. Mr. Smith answered since 2015. Mr. Chalmers asked if the greenhouses were permitted. Mr. Smith stated they are not permanent structures.

Mr. Colbath asked for public comment; William Abbot of the Upper Saco Valley Land Trust stated that there is no intention of selling the farm land, but they are creating a two-lot subdivision to allow a mortgage on the home lot and put the farmland into a conservation easement.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, 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 comments; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Ms. Sherman, that item 2 is not applicable.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Ms. Sherman, 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. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(d) of the Town of Conway Zoning Ordinance to allow underground utilities in the Floodplain Conservation Overlay District be granted. Motion carried unanimously.**

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A public hearing was opened at 8:00 pm to consider a **VARIANCE** requested by **VARAHI NORTH CONWAY REALTY, LLC/KAMLESHBHAI PATEL** in regards to §190-20.M.(2) of the Conway Zoning Ordinance **to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property and the Residential Agricultural District** at 2039 White Mountain Highway, North Conway (PID 230-119). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 6, 2019.

Kamleshbhai Patel appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Patel stated he is putting in a small coffee shop with a drive-thru and would like to be allowed to have speakers. Mr. Patel stated the residential property is right behind them, but there is a substantial number of trees and elevation.

Mr. Bartolomeo asked if he has a decibel rating. Mr. Patel answered in the negative and stated they do have the capability to reduce the sound. Mr. Pierce asked the distance to the residential property. Mr. Patel stated where the house is located it is more than 600-feet. Mr. Irving stated the residential property line does about this property.

Mr. Bartolomeo asked the location of speakers. Mr. Patel answered at the front of the building. Mr. Chalmers asked if there was any plan for sound abatement, such as a wall at the rear of this building, to negate some of the impact. Mr. Patel stated he believes it is very unlikely the residential property will hear this, but if it does becomes a hassle for the residential property, they can create that.

Mr. Bartolomeo asked how far is the speaker to the house. Mr. Patel stated to the house is more than 600-feet. Mr. Patel stated this will create jobs for the town. Mr. Bartolomeo asked if he intends to sell before 9 am and after 5 pm. Mr. Patel answered in the affirmative. Mr. Irving stated the proposed speaker is 225-feet to the property line and the existing service window is 183-feet to the nearest property line.

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Mr. Colbath asked for public comment; Kirk Saunders stated he is representing Glenn and Sonnhilde Saunders; he grew up in that house, and trees and elevation do not make a difference. Mr. Saunders stated he could hear the speakers when they had them for the gasoline. Mr. Saunders stated the vegetated buffer is essentially the same now as it was then. Mr. Bartolomeo stated 225-feet is a far cry from 600-feet.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Ms. Sherman, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated it is clearly against the public's interest. Mr. Pierce stated the ordinance was designed with 600-feet for a reason. **Motion defeated unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Ms. Sherman, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated there is a far cry between 225-feet to 600-feet. Mr. Colbath stated the spirit of the ordinance is to protect residential property from commercial activity. **Motion defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the benefit to the owner out ways the benefit to the public. Mr. Colbath stated justice is to be greater to the residential land owner as identified in the ordinance. **Motion defeated unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; Mr. Chalmers stated they could potentially be diminished by the impact of the speaker. Ms. Sherman stated it was demonstrated by the comments of the abutter that it will have an impact and a negative effect on property values. **Motion defeated with Mr. Chalmers, Ms. Sherman, Mr. Pierce and Mr. Colbath voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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; Mr. Bartolomeo stated there is nothing unique that distinguishes this property. Mr. Chalmers stated this property can still operate in the same manner. Mr. Colbath stated there is no hardship inherit in the land. **Motion defeated unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers 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. Chalmers made a motion, seconded by Ms. Sherman, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Motion defeated unanimously.**

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Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Ms. Sherman, 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.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated there are no special conditions and the property can be reasonably used. **Motion defeated unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-20.M.(2) of the Town of Conway Zoning Ordinance to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property and the Residential Agricultural District be granted. Motion defeated unanimously.**

**REVIEW AND ACCEPTANCE OF MINUTES**

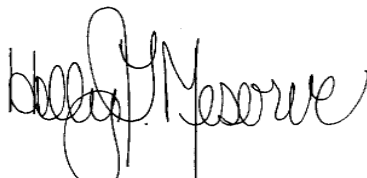
**Mr. Chalmers made a motion, seconded by Ms. Sherman, to approve the minutes of August 21, 2019 as written. Motion carried unanimously.**

**2020 ZBA DATES AND SUBMITTAL DEADLINES**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the 2020 ZBA Dates and Submittal Deadlines as presented. Motion carried unanimously.**

Meeting adjourned at 8:30 pm.

Respectfully Submitted,



Holly L. Meserve  
Planning Assistant