

ZONING BOARD OF ADJUSTMENT

MINUTES

APRIL 21, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 21, 2021 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Richard Pierce; Steven Steiner; Planning Director, Thomas Irving; and Planning Assistant, Holly Whitelaw.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **STEVEN AND ANITA CHENEY REVOCABLE TRUST** [FILE #21-11] in regards to §190-Permitted Use Table of the Conway Zoning Ordinance **to appeal the Administrative Decision that the proposed storage facility is not a permitted use in the residential agricultural district and are considered a light industry “warehousing and storage”** at 77 Old West Side Road, North Conway (PID 216-13). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2021.

Andy Fisher of Ammonoosuc Survey Company and Steve Cheney appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Fisher stated a permit was submitted to the Town to construct a 12-unit long-term storage garage; this is for private storage and not intended for commercial use, i.e., landscaping business or shipping and trucking business. Mr. Cheney stated his main use is for his tenants; his tenants have shown interest in garages. Mr. Cheney stated he has plenty of land, but he cannot construct any more units. Mr. Cheney stated they are not going to be units like on Route 16, they will look like the condos; same color, same design, same pitched roof.

Mr. Cheney stated they are proposing one entrance in across from the former North Country Wholesale. Mr. Cheney stated his intention is that his tenants would have first dibs, and if that didn't work, he would be able to rent to other people. Mr. Cheney stated the structure is not going to be 12-units long, he was going to make it six and six so you only see six garage doors when driving by. Mr. Cheney stated a lot of people at Hales have boats and fancy cars; he could rent the whole place even if only a few tenants were on board.

Mr. Cheney stated he understands the neighbors are concerned with traffic, but someone using that type of building might be in there twice a week or might not be in there for three weeks. Mr. Cheney stated with the increased \$50,000 valuation on each unit, for a total of \$250,000 for the condominium building, he would like to maximize use of the land.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if the five-unit building was on the same parcel as this proposal. Mr. Cheney answered in the affirmative. Mr. Fisher submitted and reviewed photographs with the Board.

Adopted: May 19, 2021 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 21, 2021

Mr. Bartolomeo asked if this storage building was exclusively for the tenants and not for the public; would it be a legitimate accessory building. Mr. Irving read the definition of accessory building or use. Mr. Bartolomeo stated if it were available only for the tenants it sounds like it does meet that definition. Mr. Irving stated it would be reasonable to consider this accessory. Mr. Bartolomeo stated the tenants are going to get first dibs and then it is up for grabs by the public. Mr. Cheney agreed.

Mr. Chalmers asked if he was going to have a single-entry as opposed to the two proposed now. Mr. Cheney answered in the affirmative and stated both driveways would be off Old West Side Road. Mr. Cheney stated he would have an entrance to the condos and an entrance to the storage building. Mr. Chalmers stated so it is two entrances onto this lot from Old West Side Road. Mr. Cheney stated that is correct, and stated there would be nothing off West Side Road; and the entrance would be across from North Country Wholesale.

Mr. Cheney stated he just doesn't want to be limited to the tenants. Mr. Pierce asked if this is a commercial lot. Mr. Colbath stated it is one residential agricultural lot and storage facilities are not permitted in the residential agricultural district; they are considered light industry/warehousing and storage. Mr. Colbath stated they were denied a permit to construct this building; this first hearing is for administrative relief; they would like the administrative decision overturned by the Board.

Mr. Cheney asked if there was not a separate driveway and came off the existing driveway couldn't he construct as many garages as he wants. Mr. Irving stated if they were exclusively for the residential use on the lot. Mr. Bartolomeo stated there are five condos, and how many storage units are proposed. Mr. Cheney answered twelve, and stated he was trying to make it financially work. Mr. Cheney stated if he had to go to ten units, a two-car garage for each place, he could live with that.

Mr. Colbath asked for public comment; Rand McAfoose of Forest Park Way stated his objection is the property is in the residential agricultural district. Mr. McAfoose stated we are directly across from this and his opinion is that it would be an eye sore for New Hampshire and the recreational areas that we pride in this area. Mr. McAfoose asked the size of the building. Mr. Cheney answered 84' x 50'. Mr. McAfoose stated that is a pretty big footprint.

Mr. McAfoose stated the other thing to consider is traffic flow; traffic flow to Cathedral Ledge and to Echo Lake is going to be increased and devalue our property from the increased traffic flow and the commercialization of that property. Mr. McAfoose stated it will also impact the quiet and enjoyment of our property with additional traffic flow through there. Mr. McAfoose stated as abutters our objections would be increased traffic flow, devalue in our property and the quiet enjoyment of our property.

Nancy Stewart who lives on the corner of West Side Road and Cathedral Ledge Drive stated this is likely the busiest corner in North Conway other than in Town. Ms. Stewart stated it is incredible, it is terrible traffic, mostly on the weekends, and we need police to carry over after Attitash gets out at 4:00 pm on the weekends. Ms. Stewart stated she just picked up her yard of trash. Ms. Stewart stated she is more concerned with people from Hales using that unit to store their boats and cars; she is more protective of her land.

Ms. Stewart asked if she could construct a garage her yard and rent it out to people at Hales Location to put their boats and cars in. Ms. Stewart stated she understands there are five-units there, but she is not sure how many people in the condos are full-time residents or just weekenders. Ms. Stewart stated

it is still a quiet community, and she hopes it does not get more developed down by Echo Lake. Ms. Stewart stated the traffic is tremendous on that corner all the time.

David Walker stated he and his wife live at 3401 West Side Road and they have owned the property since 1979. Mr. Walker stated they love the area; they love the peace and quiet until the summer comes; the traffic is outrageous and there are many accidents on that corner. Mr. Walker stated his concern is if you built five condos why you would not put a garage in and why you would need seven more garage units for five residential units; why would five residential units would need twelve units.

Mr. Walker stated that the traffic pattern is bad, and the driving on West Side Road is outrageous. Mr. Walker asked what is to force anyone who builds five units of garages to make sure only the residents of condos can use the garages, especially if they are freestanding and separate. Mr. Walker asked what is there to make them stick to that, and why would you need so many units for so few condos.

Mr. Walker stated he is against this proposal; this strikes him as not being a residential property even though it is assigned to a residential property. Mr. Walker stated it is not contiguous with a residential property and it is not a whole unit with garages included. Mr. Walker stated he cannot support the proposal.

Mr. Pierce stated if it was strictly used for the building this Board would not have too much to say about it; if it was for the use of the tenants. Mr. Irving stated the Board is determining whether or not the zoning ordinance was correctly interpreted in this decision. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to uphold the decision to rule against this building application.** Mr. Bartolomeo stated he believes Mr. Irving interpreted the ordinance correctly. **Motion carried unanimously.**

A public hearing was opened at 7:25 pm to consider a **VARIANCE** requested by **STEVEN AND ANITA CHENEY REVOCABLE TRUST [FILE #21-12]** in regards to §190-Permitted Use Table of the Conway Zoning Ordinance **to allow the construction of a multi-unit storage building** at 77 Old West Side Road, North Conway (PID 216-13). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 9, 2021.

Andy Fisher of Ammonoosuc Survey Company and Steve Cheney appeared before the Board. Mr. Irving stated everything said this evening is relevant to this application. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Fisher stated he appreciates everyone's concern with traffic; we have seen an increase everywhere, especially this last year. Mr. Fisher stated he could understand the concern if we were proposing a 15-unit condominium development, something that would explicitly intend to increase the amount of people coming to this neighborhood; that would be a concern. Mr. Fisher stated the proposal is for garage facility, nothing that is going to be commercially based; meaning people coming in and out every day.

Mr. Fisher stated is it not going to be a plumbing supply warehouse where trucks are going to be coming in and out all the time; that is not what is being proposed. Mr. Fisher stated it is commercial in a sense that people would be paying for the space, but it is for long-term storage. Mr. Fisher stated

Adopted: May 19, 2021 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 21, 2021

he doesn't see how that use would increase the amount of people going to Echo Lake or to Cathedral Ledge; that is not why anyone would be coming to this property.

Mr. Fisher stated North Country Wholesale is across the street, and whether North Country Wholesale exists as a commercial enterprise or not, Smithfield has trailers out there, storage bay doors were open, lights were on and people were there. Mr. Fisher stated there certainly is commercial activity and he doesn't believe there are retail sales there, but it is currently being used actively as a commercially based warehouse.

Mr. Fisher stated a warehouse use in this neighborhood already exists; they are proposing a much smaller impact, which this proposal has a smaller impact, than a plumbing supply warehouse. Mr. Fisher stated this sort of storage will be far less impactful as far as traffic is concerned; there will be less in and out daily traffic compared to a plumbing supply warehouse. Mr. Fisher stated this is certainly in keeping with existing uses in the neighborhood.

Mr. Fisher stated the proposed building would be tucked in, and can be done in such a way to not be a visual nuisance. Mr. Cheney stated he doesn't think anyone will be disappointed with what he builds, and he doesn't see any extra traffic.

Mr. Colbath asked for Board comments; Mr. Steiner stated Smithfield owns the North County Wholesale property. Mr. Steiner stated there has to be a hardship and he is not hearing a hardship. Mr. Chalmers stated would it be possible to have a single entrance shared by the existing units so there is not another curb cut on Old West Side Road. Mr. Bartolomeo stated if you live in the condos and people are coming in to off-load their trailers, he thinks the second entrance is better planning.

Mr. Irving stated the Institute of Transportation Engineer's Trip Generation manual's nearest category is mini warehouses and the peak hour of traffic appears to occur on a Saturday; the peak hour of traffic generates .4 trips per 1,000 square feet, so the peak hour of this facility could be estimated about 1.68 trips. Mr. Irving stated that would be one trip in and .68 trips out; it would be less than one car per hour. Mr. Irving stated the peak hour during the weekday would be .29 per 1,000 square feet, being approximately 1.21 trips per hour.

Mr. Bartolomeo stated he doesn't generally support a lot of variances, but the uniqueness of the site plan being presented he sees a low impact operation. Mr. Bartolomeo stated it is 61-foot setback from the setback; it is a very generous setback.

Mr. Bartolomeo stated he had a storage locker for a few years and if he visited it twice a year that was heavy use for him. Mr. Bartolomeo stated it is a really low impact proposal, and this is one variance this Board member can support.

Mr. Colbath asked for public comment; Nancy Stewart stated she doesn't have a problem with five units having garage capabilities, but she does have a problem with opening it up to the public.

David Walker asked if North Country Wholesale is grandfathered. Mr. Irving stated they would more than likely be grandfathered because they legally existed on the property prior to the regulation that prohibited them. Mr. Walker stated whether or not the property values have escalated \$50,000 each is a good thing for the owner of the property when it comes to resale.

Adopted: May 19, 2021 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 21, 2021

Mr. Walker stated all the trees have been stripped down and it is down to lower brush so you can see everything when there were trees year-round. Mr. Walker asked what is to force someone who buys one of these units from using it for less than a garage; who's to say what it is going to be used for. Mr. Walker asked why they could not be contiguous with the five-unit condos, why do they have to be on a separate site. Mr. Walker stated five units for five condos is a reasonable alternative, he thinks twelve is too much; and an 84' x 50' is a very large building.

Mr. McAfoose stated he would object to the second driveway as he thinks it would encourage more traffic. Mr. McAfoose stated he would like to see it restricted to five or six units and that there can be no commercial enterprise in any of those units or any balance of those units; therefore, it would restrict it to strictly residents of that community. Mr. Colbath closed public comment.

Mr. Chalmers stated we are looking at a zone where this is not permitted and it has all the hallmarks of a commercial enterprise in a residential agricultural zone. Mr. Chalmers stated he is empathetic with the tax increase; it goes to show that he has done a beautiful job on those units and he understands wanting to recoup some money on this.

Mr. Chalmers asked if this would have septic. Mr. Cheney stated there would be no water, only electric. Mr. Cheney stated some people who are interested in renting want climate controlled, so some might have AC. Mr. Cheney stated there is not going to be any commercial use there. Mr. Cheney stated five units would not work for him, but he could compromise to ten units.

Mr. Bartolomeo stated Mr. Irving's ruling and the ordinance that he cited this storage use is lumped in with light industry and warehousing. Mr. Bartolomeo stated warehousing implies shipping and receiving of inventory on a regular basis; trucks coming in and going out. Mr. Bartolomeo stated that is not what is happening here, this is storage for residential type use. Mr. Bartolomeo stated it is unfortunate that it is lumped in with these other categories and he voted that Mr. Irving interpreted correctly, however, maybe storage lumped in with more intense uses is not the best place for that.

Mr. Colbath asked if they were five units accessory to the existing, they would not need the variance. Mr. Irving stated if they were exclusive to the residential use on the lot it would have qualified under the accessory. Mr. Bartolomeo asked if every single resident of that condo indicated that they could use additional storage. Mr. Cheney answered in the affirmative, however, when he decides what he needs to get for them they could have second thoughts.

Mr. Colbath asked if each of the units has a full garage. Mr. Cheney stated it is storage underneath; it is 10' x 16'. Mr. Pierce stated it is specifically against the ordinance; if it was limited to the tenants then he could support it. Mr. Pierce stated contrary to what Mr. Bartolomeo said, with one driveway no one has to leave to go out onto West Side Road and come back in again. Mr. Pierce stated then there is zero traffic and zero impact if it was limited to the condos.

Mr. Colbath read item 1. **Mr. Chalmers 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 with Mr. Pierce and Mr. Colbath voting in the negative.**

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; Mr. Chalmers stated the spirit of the ordinance is not observed because they are putting a commercial use in a residential

agricultural area. Mr. Bartolomeo stated he thinks the impact is so low. Mr. Colbath stated it is not a permitted use. **Motion defeated with Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative and Mr. Steiner and Mr. Bartolomeo voting in the affirmative.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Pierce asked substantial justice in which way. Mr. Colbath stated substantial justice is, is the justice greater to the public in this concern. **Motion carried with Mr. Pierce and Mr. Colbath voting in the negative.**

Mr. Colbath read item 4. **Mr. Chalmers 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. Chalmers made a motion, seconded by Mr. Steiner, 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 an economy of scale in the construction industry, and building five-units would cost more per unit than building twelve units.

Mr. Chalmers asked what the hardship is that is different from any other if this were being built across the street. Mr. Bartolomeo stated the owner is looking to create an economic enterprise that benefits his tenants and benefits seven members of the public. Mr. Bartolomeo stated it is a low impact building and it has generous setbacks, 61-feet from the setback. Mr. Colbath asked how that relates to special conditions of the property. Mr. Bartolomeo stated he is still going to say yes.

Mr. Chalmers stated the hardship here is if the owner was no longer able to use this property as it is currently being used without having this additional building and he does not think that is the case. Mr. Chalmers stated the condo unit can still exist without this storage unit. Mr. Colbath stated under testimony there is no special condition that puts this building, as it has already been stated that the land could host five accessory units to the condos; so, there is useful purpose to the property. **Motion defeated with Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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. Steiner, 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 defeated with Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions 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. Colbath stated there is reasonable use of the property. **Motion defeated with Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190- Permitted Use Table of the Town of Conway Zoning Ordinance to allow the construction of a multi-unit storage building be granted. Mr. Bartolomeo stated we can find reasonable uses for any a piece of land; the issue is what the owner wants to do with it, it is his property. Mr. Bartolomeo stated we ruled that it was a reasonable use; that carried unanimously. Mr. Bartolomeo asked what is reasonable; is reasonable only strict compliance with the ordinance, or is what the owner wants to do on his own property is what we should be considering. Mr. Bartolomeo stated he doesn't think what is being proposed is outrageous.

Mr. Pierce stated as it is presented it would be open to the public in some fashion. Mr. Pierce stated he would grant the construction of a multi-storage building given certain criteria which was not presented. Mr. Chalmers stated he thinks Mr. Bartolomeo makes a good argument here. **Motion carried with Mr. Pierce and Mr. Colbath voting in the negative.**

Mr. Colbath explained the appeal process.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of March 17, 2021 as written. Motion carried with Mr. Pierce abstaining from voting.

Meeting adjourned at 8:01 p.m.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Whitelaw". The signature is written in a cursive style with a large, looping initial "H".

Holly L. Whitelaw
Planning Assistant