

ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 17, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, November 17, 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; Steven Steiner; Planning Director, Jamel Torres; Code Enforcement Officer, Jeremy Gibbs; and Planning Assistant, Holly Whitelaw. Alternate, Jonathan Hebert was in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Mr. Hebert as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **NORMAN AND DARCI GERVAIS** [FILE #21-33] in regards to §190-15.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 117 East Main Street, Conway (PID 265-21). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2021. This hearing was continued from October 20, 2021.

Norman and Darci Gervais appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Gervais stated there will be no structural changes to the outside of the house. Ms. Gervais stated they are splitting the first floor and second floor with long-term tenants.

Mr. Colbath asked for Board comment; Mr. Hebert asked the square footage of each unit. Ms. Gervais answered approximately 1,000 square feet for the first floor, and approximately 700 square feet for the second floor. Mr. Bartolomeo stated the second floor would be considered the accessory dwelling unit.

Mr. Hebert asked how many parking spaces are available. Mr. Gervais stated there is room enough for at least 8 cars and there is still room to turn around. Mr. Colbath asked if this is serviced by municipal water and sewer. Ms. Gervais answered in the affirmative. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the accessory dwelling unit is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made motion, seconded by Mr. Steiner, that the accessory dwelling unit is architecturally compatible with the neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that sufficient parking is located on site.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Colbath made a motion, seconded by Mr. Steiner, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Hebert made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-15.B.(4)(b) of the Town of Conway Zoning Ordinance to allow an accessory dwelling unit be granted. Motion carried unanimously.

A public hearing was opened at 7:10 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **WILMARK I, LLC** [FILE #21-36] in regards to §190-20.F.(2)(a) and §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to appeal the administrative decision to deny the sign permit to allow two grandfathered signs, a 24 square foot internally lit sign 5.3' from the road right-of-way and a 31 square foot internally lit sign 5.3' from the road right-of-way, to become one 55 square foot internally lit sign 5.3' from the road right-of-way** at 822 Eastman Road, North Conway (PID 245-3). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 5, 2021.

Chris Weiss of Wilmark I, LLC appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Gibbs stated he didn't believe he had the authority to authorize the proposed sign due to the size and the setback. Mr. Bartolomeo asked if the proposed square footage is the accumulative total of the two signs that they already have. Mr. Gibbs answered in the affirmative. Chris Weiss stated he has two signs and he would like to combine them into one. Mr. Weiss stated he believes this would be a great improvement to Eastman Road.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated he doesn't see that he is giving anything up; he wants to keep all nonconformities. Mr. Weiss stated part of the concession is going from two signs to one sign.

Mr. Colbath asked if there was any further discussion regarding the appeal from administrative decision. Mr. Gibbs stated under §190-30.C. regarding non-conforming signs it indicates that nonconformities can be reduced, but cannot become increasingly nonconforming; therefore, he could not permit the sign as they were making the sign larger and increasing the nonconformity.

Mr. Colbath asked for public comment; there was no public in attendance.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to uphold the administrative decision to deny this sign application. Motion carried unanimously.

Adopted: December 15, 2021 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 17, 2021

A public hearing was opened at 7:18 pm to consider a **VARIANCE** requested by **WILMARK I, LLC** [FILE #21-37] in regards to §190-20.F.(2)(a) and §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to allow two grandfathered signs, a 24 square foot internally lit sign 5.3' from the road right-of-way and a 31 square foot internally lit sign 5.3' from the road right-of-way, to become one 55 square foot internally lit sign 5.3' from the road right-of-way** at 822 Eastman Road, North Conway (PID 245-3). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 5, 2021.

Chris Weiss of Wilmark I, LLC appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated 5.3-feet is close to the road. Mr. Weiss stated if it were edge of pavement, which is 25', the sign would have to be perpendicular to the road. Mr. Colbath asked how far is the front of the building to the road. Mr. Weiss stated he is not sure.

Mr. Gibbs stated if this sign met all the criteria the sign incentives would allow the sign to be increased to 60 square feet, but they would have to give up all the nonconformities aspects of the sign; the 5.3-foot setback, increasing to at least 25-feet, the internally lit and the second sign.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated a lot this big a 25-foot setback is nothing. Mr. Chalmers stated there is nothing on that lot, there is nothing obscuring that sign. Mr. Bartolomeo stated if they go back to the 25-foot setback they could go up to 60 square feet; and asked if the sign would be perpendicular or parallel to the highway. Mr. Weiss stated it would have to be parallel, otherwise it would go into the pathway into the building. Mr. Weiss stated he does not want to be parallel to the road.

Mr. Gibbs stated because of the design of the sign one post of the sign would be at 25-feet while the other post would be into his parking lot; so, it would have to be peridural so it would not be into his parking lot.

After a brief discussion, the Board and the applicant agreed to modify the request to a 55 square foot sign, externally lit with a 15-foot setback.

Mr. Colbath asked for public comment; there was no public in attendance.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated since it is becoming less nonconforming, it is not contrary. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Hebert 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. Chalmers made a motion, seconded by Mr. Hebert, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated with the compromise the public is well served on the substantial justice. Mr. Colbath stated he thinks it is both; because of the compromise substantial justice is done for both the applicant and the public. **Motion carried unanimously.**

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. Chalmers stated we essentially have a clean slate and now the Board is dealing with compromising non-compliance with the sign ordinance; he is not understanding the hardship. Mr. Hebert stated a compliant sign could be put on this property. **Motion carried with Mr. Steiner, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Chalmers and Mr. Hebert 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. Motion carried with Mr. Steiner, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Chalmers and Mr. Hebert voting in the negative.

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 5.b. 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 §190-20.F.(2)(a) and §190-20.F.(2)(d)[1] of the Town of Conway Zoning Ordinance to allow two grandfathered signs, a 24 square foot internally lit sign 5.3' from the road right-of-way and a 31 square foot internally lit sign 5.3' from the road right-of-way, to become one 55 square foot externally internally lit sign 5.3' 15-foot from the road right-of-way be granted. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the Minutes of October 20, 2021 as written. Motion carried unanimously.

Meeting adjourned at 8:00 p.m.
Respectfully Submitted,

Holly L. Whitelaw, Planning Assistant