

ZONING BOARD OF ADJUSTMENT

MINUTES

APRIL 20, 2022

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 20, 2022 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; Jonathan Hebert; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternate Steven Steiner was in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **THE RESIDENCES AT SACO RIVER, LLC** [FILE #22-03] in regards to §190-20.B.(1) of the Conway Zoning Ordinance **to permit 102 residential dwelling units on a 16.15-acre lot** at 1552 White Mountain Highway, North Conway (PID 246-23). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 3, 2022. This hearing was continued from March 16, 2022.

Mr. Colbath stated that the applicant has withdrawn the application.

A public hearing was opened at 7:05 pm to consider a **VARIANCE** requested by **BARNES DEVELOPMENT, LLC** [FILE #22-04] in regards to §190-20.B.(1) of the Conway Zoning Ordinance **to permit 32 residential dwelling units on a 3.5-acre lot** at 110 Barnes Road, North Conway (PID 235-82). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 3, 2022. This hearing was continued from March 16, 2022.

Mr. Colbath stated that the applicant had withdrawn the application.

A public hearing was opened at 7:05 pm to consider a **VARIANCE** requested by **STANLEY ANTHONY AND LYNN PARKHURST** [FILE #22-05] in regards to §190-28.B.(1) of the Conway Zoning Ordinance **to allow the construction of a 1-foot addition to the rear of the building within the Wetland and Watershed Protection Overlay District** at 45 Main Street, Conway (PID 276-279). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 8, 2022.

Lynn Parkhurst appeared before the Board. Stanley Anthony was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. It was supposed to be a 12-foot addition, not a 1-foot addition, therefore, the abutters need to be re-notified.

Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the hearing until May 18, 2022 at 7:00 pm. Motion carried unanimously.

A public hearing was opened at 7:13 pm to consider a **VARIANCE** requested by **STANLEY ANTHONY AND LYNN PARKHURST** [FILE #22-06] in regards to §190-18.D. of the Conway Zoning Ordinance **to allow the construction of an exterior staircase to the second floor within the side setback** at 45 Main Street, Conway (PID 276-279). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 8, 2022.

Lynn Parkhurst appeared before the Board. Stanley Anthony was in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Ms. Parkhurst stated there is a second floor with office space and there is only an interior stairwell; they would like an exterior entrance to use that office space without it having to go into the current business. Mr. Colbath asked the age of the building. Mr. Anthony stated it was built in 1958.

Mr. Bartolomeo asked if the Town told them they didn't need two means of egress. Ms. Parkhurst answered in the affirmative, and stated they reviewed their project with the Conway Village Fire Chief. Ms. Parkhurst stated it would be a good thing to have a second means of egress. There was discussion regarding the neighbors building also being within the 10-foot setback, as well as a 6-foot right-of-way in the neighbor's deed for access to the bridge in the back. Mr. Colbath stated both buildings were constructed prior to zoning.

Mr. Bartolomeo stated historically if this is a life safety issue, he has allowed life safety to trump zoning setback requirements; he believes it is more important. Mr. Hebert stated but this is not required; there is an existing business that has been running and established. Ms. Parkhurst stated we are now two separate businesses in that building; so, we are running the auto repair shop, which is a license business, and we have a tenant, Bellen's, and Stan is running is auto sales license business out of the building. Ms. Parkhurst stated to be legal with the state we need two separate spaces with separate entrances.

Ms. Parkhurst stated if we do not do an addition to the building, we will be using the second-floor office for the auto sales. Ms. Parkhurst stated in order to keep their business running they have to have a second location on the property. Ms. Parkhurst stated currently we cannot use the second floor as our office space because there is no exterior exit; the state will not allow us to use the space upstairs without an exterior means of egress separate from the repair shop because then we would not be legal with the state.

Mr. Colbath asked for public comment; there was none. Mr. Chalmers stated if the first is approved, then this is not required or necessary; he is having a hard time seeing hardship. Mr. Hebert stated the hardship only comes into play when you go from one successful business to two businesses. Mr. Colbath stated its hardship inherit in the land; they don't have the full 10-feet here because these are grandfathered buildings that were built prior to zoning setbacks.

Mr. Hebert stated but the business can run and has run in the condition that it has been. Mr. Colbath stated how the business runs and what it does is not necessarily what we are concerned about; we are concerned about can this stairway be built closer to the 10-foot then it is supposed to, and that is the hardship. Mr. Colbath stated its whether it's a hardship in the land to build it, not a hardship with the business or the finances. Mr. Pierce asked if they could consider safety as a hardship. Mr. Bartolomeo stated he thinks life safety trumps the setback.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Hebert stated he believes this is contrary to public interest. **Motion carried with Mr. Pierce, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Hebert voting in the negative.**

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 with Mr. Pierce, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Hebert voting in the negative.**

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; there was none. **Motion carried with Mr. Pierce, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Hebert voting in the negative.**

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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated he agrees that the special condition is the setback of the old, grandfathered building. **Motion carried with Mr. Pierce, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Hebert voting in the negative.**

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 with Mr. Pierce, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Hebert voting in the negative.**

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

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-18.D. of the Town of Conway Zoning Ordinance to allow the construction of an exterior staircase to the second floor within side setback be granted. Motion carried unanimously.

A public hearing was opened at 7:41 pm to consider a **SPECIAL EXCEPTION** requested by **NFB REALTY, LLC** [FILE #22-07] in regards to §190-16.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit accessory to unit 3** at 213 Seavey Street, North Conway (PID 219-142). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 8, 2022.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Bergeron stated this is a request to allow building number 4 to become an accessory dwelling unit to building number 3. Mr. Bergeron stated there are presently three, single-family homes; building number 4 would become the ADU to cottage #3. Mr. Bergeron submitted photos of the existing buildings, and stated they are compatible with the neighborhood. Mr. Bergeron stated there is sufficient parking available on site; four spaces are accessed from Seavey Street and six spaces are accessed from Patton Court.

Mr. Bergeron stated all units, one through four, will be occupied for long-term residency; there will not be any short-term residency allowed. Mr. Hebert asked the square footage of the accessory dwelling unit. Mr. Bergeron answered 640 square feet.

Mr. Colbath asked for public comment; Patsy Wolber asked if they are taking the flat roof building and making it a single-family unit. Mr. Bergeron answered in the affirmative. Ms. Wolber asked if there was any new construction proposed. Mr. Bergeron answered in the negative. Ms. Wolber asked if the parking lot that abuts her property is a six-space parking lot. Mr. Bergeron stated there are four spaces available off Seavey Street, and there is area for six cars off Patton Court.

Ms. Wolber stated there is a dumpster there now, and when there are four cars in that area it is tight. Mr. Bergeron stated there is enough space for 10 parking spaces available from a measurement perspective; only eight if they had to go to site plan review would be required. Mr. Bergeron stated these units are small, and finding especially in the villages people don't have a vehicle or only one vehicle.

Steven Steiner asked if Patton Court is a private road. Mr. Bergeron answered in the affirmative. Mr. Steiner asked if there would be a maintenance agreement. Mr. Bergeron stated there is a maintenance agreement presently in place; the owners of that property pay into that maintenance agreement now and they will continue to they pay into the maintenance agreement.

Pam Memmolo of 46 Patton Court asked how many people would be living in each of the units. Ms. Memmolo stated it is going to cause a lot more traffic; Patton Court is a dead-end road that is owned by the 12 people. Ms. Memmolo asked if there is any stipulation on how many people can live in those units. Mr. Bergeron stated there is no limit within our ordinance; the realty is you have to rely upon the owners being reasonable people. Mr. Bergeron stated the goal here is to create workforce type housing, housing that is available for workers in the Mount Washington Valley.

Mr. Torres stated this is a unique request, based on how the ordinance is written and thinks this was indigent for a more traditional lot with a single-family home for an accessory dwelling unit. Mr. Torres stated technically they could come back for two additional accessory dwelling units based on how the lot is set up. Mr. Bergeron agreed with Mr. Torres, but stated they could not meet the parking.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert 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 a motion, seconded by Mr. Hebert, 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. Hebert, 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. Chalmers made a motion, seconded by Mr. Hebert, 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. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-16.B.(4)(b) of the Town of Conway Zoning Ordinance to allow an accessory dwelling unit accessory to unit 3 be granted. Motion carried unanimously.

A public hearing was opened at 8:25 pm to consider a **VARIANCE** requested by **NFB REALTY, LLC [FILE #22-08]** in regards to §190-16.B.(1) of the Conway Zoning Ordinance **to permit an existing accessory building to be converted to a fourth unit, a single-family home, on an undersized lot** at 213 Seavey Street, North Conway (PID 219-142). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 8, 2022.

Shawn Bergeron Technical Services appeared before the Board. Mr. Bergeron withdrew the application. **Mr. Hebert made a motion, seconded by Mr. Bartolomeo, to accept the withdrawal of the application. Motion carried unanimously.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of March 16, 2022 as written. Motion carried with Mr. Hebert abstaining from voting.

ELECTION OF OFFICERS

Mr. Bartolomeo nominated, seconded by Mr. Chalmers, Mr. Colbath as Chair. Motion carried with Mr. Colbath abstaining from voting.

Mr. Bartolomeo nominated, seconded by Mr. Hebert, Mr. Chalmers as Vice Chair. Motion carried with Mr. Chalmers abstaining from voting.

Meeting adjourned at 8:27 p.m.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant