

ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 16, 2022

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, November 16, 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.

OTHER BUSINESS

Forever Young Properties, LLC [FILE #22-40] – Motion for Rehearing (PID 262-62): This is a request in regards to §190-20.F.(3)(a) of the Conway Zoning Ordinance **to allow a 95 square foot wall sign** at 564 White Mountain Highway, Conway (PID 262-62). Sean Young was in attendance.

Mr. Chalmers stated he did not see any information where the Board made a technical error nor did he see any new information. Mr. Bartolomeo stated he came to the same conclusion. Mr. Colbath stated he would agree. Mr. Hebert stated there is nothing that would have changed the result of the presentation. Mr. Colbath stated there appears to be nothing new nor a technical error.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to grant a rehearing to Forever Young Properties. Motion defeated unanimously.

PUBLIC HEARINGS

A public hearing was opened at 7:02 pm to consider a **SPECIAL EXCEPTION** requested by **GAG1568-2019-9, LLC [FILE #22-30]** in regards to §190-17.C(5)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 1568 East Main Street, Center Conway (PID 260-95). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Greyson Carrier appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath asked where is the property located. Mr. Carrier answered across from Camping World in Center Conway. Mr. Colbath asked the size of the accessory dwelling unit. Mr. Bartolomeo answered 721 square feet.

Mr. Colbath asked about water and septic. Mr. Carrier stated there is a well and a new septic system. Mr. Colbath asked if the accessory unit was in the old barn or in the addition on the back. Mr. Carrier answered in the addition on the back. Mr. Colbath asked about parking. Mr. Carrier stated there are at least four spaces in the front and 15 in the back. Mr. Hebert asked if this is for long-term rental only. Mr. Carrier 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. 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 §190-17.C.(5)(b) of the Town of Conway Zoning Ordinance for an accessory dwelling unit be granted. Motion carried unanimously.

A public hearing was opened at 7:09 pm to consider a **SPECIAL EXCEPTION** requested by **CONWAY AREA HUMANE SOCIETY** [FILE #22-31] in regards to §190-13.K(11) of the Conway Zoning Ordinance **to allow an outdoor kennel in the residential agricultural district** at 223 East Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Tim Westwig and Tad Furtado of the Conway Area Humane Society appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bartolomeo stated it looks like it is already built; how did that happen. Mr. Westwig stated there was an issue with the permitting; it was called a dog run on the permit, not sure why it was called that, as we have always referred to it as a dog kennel. Mr. Westwig stated we were shocked when we received a cease-and-desist letter from the Town after it was operating. Mr. Westwig stated we filed this paperwork in order to address that.

Mr. Bartolomeo asked who from the Town discovered this. It was determined that the Town received a complaint. Mr. Colbath asked what size is the lot. Mr. Westwig answered over 25-acres. Mr. Colbath asked where this kennel is located, what are the setbacks. Mr. Furtado stated answered greater than 100-feet in each direction. Mr. Bartolomeo asked if this is considered indoor housing. Mr. Westwig stated it is not even housing, it is an area where the dogs will be outside for a couple of hours.

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Mr. Hebert asked if it is a kennel, or is it not a kennel. Mr. Westwig stated it is a kennel, they refer to it internally as a kennel throughout the construction. Mr. Westwig stated the contractor used more informal language on the application by calling it a dog run.

Mr. Colbath asked if it would house dogs at night. Mr. Furtado answered in the negative, and stated they would not be outside from 6:00 pm to 8:00 am; it will likely be more restrictive. Mr. Colbath asked what is the plan for the waste. Mr. Furtado stated under the original permit that was issued we asked the Conway Village Fire District for a letter of approval which was granted over 20-years ago; the waste is removed through the municipal system per our agreement with them and solid waste is removed via a solid waste contractor.

Mr. Hebert stated animals are to be indoors from 6:00 pm to 8:00 am; what is to prevent them from keeping them in this structure as it is a kennel. Mr. Hebert asked if this could change tomorrow and become the indoor housing for these animals. Mr. Westwig stated it is not the intention to use it that way; we are not increasing the capacity of our animals. Mr. Westwig stated this is for the animals to not be inside for a couple of hours during the day.

Mr. Hebert stated he understands that is not the intention today, but it is a kennel and can be used as a kennel, and animals could be kept there. Mr. Hebert stated there is no requirement to come back if it is approved as a kennel. Mr. Westwig stated item (d) refers to kept indoors; this is clearly an outdoor setup, and not considered indoors.

Mr. Colbath stated the special exception states not housed outdoors, but housed indoors, so for future compliance if a complaint is received there would be a response that they are not meeting the criteria. Mr. Torres stated this is a condition of their approval if the special exception is granted; they would be in violation if they didn't meet these conditions.

Mr. Colbath asked for public comment; Amy Snow of 189 East Main Street, which is directly in front of the Humane Society, stated in the middle of August our peacefulness in our neighborhood was disrupted by the explosion of constant dog barking. Ms. Snow stated she spoke to them that day and asked them to do something about it and was met with resistance. Ms. Snow stated she called and spoke to Mr. Westwig and played him a recording. Ms. Snow played a recording of the dogs barking from her backyard and another recording from inside her kitchen.

Mr. Hebert asked what time of day was that. Ms. Snow stated it was in the middle of the day on a Sunday. Mr. Hebert asked if there have been any issues at nighttime. Ms. Snow answered in the negative. Ms. Snow stated on January 19, 2000 the Humane Society came to this Board to have the kennels approved; Lorraine Cormack, who she bought her house from, and Maureen Pezzuto reviewed the plans, and Ms. Sherman, who she believes was a Board member at the time, stated in the residential agricultural district anything agricultural can be up to the property lines.

Ms. Snow stated the Ms. Cormack went on to ask if they can expand without coming back to the Town, and Mr. Ekberg and Ms. Sherman stated it would require site plan review. Ms. Snow stated Roz, from the Humane Society, went onto say that this is a good location and an asset to the community, which she agrees with, she has nothing against the Humane Society, it is a great organization.

Adopted: December 21, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Ms. Snow that Roz went on to say that this is a large lot that buffers can be maintained in order to be a good neighbor. Ms. Snow stated that Ms. Sherman then asked if the primary problem is the noise and Ms. Cormack answered that noise is a big one and will have an effect on land values. Ms. Snow stated that Roz stated they are not building a kennel with barking dogs, but a state-of-the-art facility. Ms. Snow stated now here we are 22-years later and they are building kennels with barking dogs.

Ms. Snow stated her other problem is that she has been told that this does not have to go to site plan. Ms. Snow stated the Humane Society is a kennel, they built more kennels, which is an expansion and it doesn't have to go to site plan review. Ms. Snow stated two members of the Board in 2000 stated it would have to go to site plan review.

Ms. Snow stated the purpose of the Zoning Ordinance, §190-3.C., is to promote health and general welfare, and that your interpretation, §190-5, in interpreting any provision of this chapter it should be held as the minimum requirement adopted for the promotion of public health, safety and general welfare. Ms. Snow stated those four conditions are the minimum that they have to meet. Ms. Snow stated she understands that the noise ordinance is geared more towards short-term rentals and the noise that comes from them, but it should apply to anything.

Ms. Snow stated she does not have an issue with them building kennels, where they put those kennels is the issue. Ms. Snow stated her house, the woods, the road to the dog park, the kennels are right there. Ms. Snow stated every time a car goes down that road the dogs bark. Ms. Snow stated they have 25-acres, they could have put those kennels anywhere else, there are no buffers to keep the sound from coming into their neighborhood; it renders their houses pretty much unsellable. Ms. Snow stated if that sound was their when she bought her house, she never would have bought her house.

Ms. Snow stated she just spent over \$5,000 on a brand-new deck that she cannot sit and enjoy because of the excessive dog barking. Ms. Snow stated if this is granted then she hopes that the Board would do something to help mitigate the noise that they have to endure.

Mr. Bartolomeo asked if this should have gone to site plan review. Mr. Torres stated he doesn't see any provisions that would require site plan review. Mr. Bartolomeo asked if it is possible to move it to the other side of the building. Mr. Westwig stated not without quite a bit of expense. Ms. Snow stated the intent 20-years ago was to not have outdoor kennels with barking dogs. Mr. Hebert stated noise is not in their purview. Mr. Colbath stated noise is not addressed as one of the criteria.

Ms. Snow stated the special exception for kennels states it "may" be granted; in New Hampshire statute there is a huge difference between "may" and "shall". Ms. Snow stated the ordinance also says it is the minimum that they have to meet; just because they meet the requirements, doesn't mean the Board has to approve it. Mr. Bartolomeo stated it has always been the position of the Board that if it meets all the criteria of the special exception that we cannot deny it. Mr. Hebert stated we don't have noise in this special exception, we have to go by the minimum criteria.

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Mr. Colbath stated it says “may” because every hearing is an individual circumstance and based on the criteria that we hear we as a Board we have to make a decision, so we may or may not approve based on what is presented.

Mike Digregorio stated he is also an abutter on Pollard Street and he is a big believer in its your property you should be able to do what you want with it, but not when it affects others and in this case it does. Mr. Digregorio stated he is quite ways away on Pollard Street, but he can hear the dogs when they were out there. Mr. Digregorio stated he heard Ms. Snow’s recording and it is quite loud and disturbing.

Mr. Digregorio stated 20-years ago there were promises made that it was going to be inside; if the town was notified properly as to what they were building it might have been suggested that it be in a different location. Mr. Digregorio stated they want an outdoor kennel, but perhaps they need to enclose it and due some sound barrier; it just can’t be left the way it is. Mr. Digregorio stated it is not fair to the neighbors; you need to find something in the law that allows you to force these folks, good folks, to install some sound buffering around this.

Mark Thompson of 199 East Main Street stated it is the noise; the value of our house will go down. Ms. Snow stated we can’t open our doors or our windows. Kathy Thompson of 199 East Main Street stated when she opens a window all they can hear is barking dogs. Ms. Thompson stated they cannot sit outside; there is no peace. Mr. Hebert asked if there is any issue at night. Mr. Thompson answered in the negative.

Rebecca Larson stated she is closest to the access road and when volunteers are walking dogs they rile up the other dogs and gets them barking. Ms. Larson stated it is cars and anytime there are volunteers moving around the building; we are getting a noise that is almost constant.

Mr. Westwig stated the outdoor kennels were only in operation for one-week; a lot of the public comments, and he regrets greatly that it is causing discord in the neighborhood, it was not their intention, are from historic ongoing operations, and not the kennels in question today. Mr. Westwig stated we opened the kennel, received the cease-and-desist letter from the Town and complied with it; the kennel was only open for a week. Mr. Westwig stated a lot of the noise heard before that and subsequent to that has nothing to do with this application; it is just the ordinary operation of the Conway Area Humane Society.

Mr. Hebert asked if this is from the dog park. Mr. Furtado stated it could be; different periods throughout the day there are different noises from different areas. Mr. Furtado stated there is the dog park, there are volunteers walking dogs around the property; it is loud, there is no way around it.

Ms. Snow stated she has lived in front of Humane Society for 17-years, there has never been a sound; they don’t hear the dog park and volunteers walking the dogs don’t make any sound. Ms. Snow stated this noise came from the day they started using the outdoor kennel. Ms. Snow stated 12 dogs in close proximity of each other all barking at the same time in a confined space, that is when this noise started.

**Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022**

Mr. Chalmers asked after they received their cease-and-desist letter it got quiet again. Ms. Snow answered in the affirmative. Ms. Snow stated they have been fantastic neighbors for 19-years, but when they started to use the outdoor kennels all hell broke loose. Mr. Hebert stated we are not a Planning Board, and don't have the ability to negotiate on this, hope the applicant would take the neighbors comments to heart. Mr. Bartolomeo stated we cannot make it a condition of approval, but in the spirit of neighborly good will that the applicant would research some sound attenuation mitigation here.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the property meets the minimum two acres lot size.** 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 indoor animal housing areas are set back 40-feet from side and rear property lines and 60 feet from rights-of-way. Pastures/Outdoor exercise areas are set back 15 feet from any property line.**

Mr. Colbath asked for Board comment; Mr. Chalmers stated this obviously is not an outdoor exercise area and the setbacks for interior space we are thinking about sound attenuation; the authors of this were at least thinking about sound. Mr. Chalmers stated we have all these abutters that are testifying that it is ruining their enjoyment of their property. Mr. Hebert asked what is the setback of the kennel. Mr. Furtado stated it is well over the required setbacks; almost three times. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that a written plan for the disposal/removal of animal waste has been submitted along with the application requesting the special exception form the Zoning Board of Adjustment, and this plan is approved by the Board.** 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. Bartolomeo, that all animals shall be kept in an indoor area between the hours of 6:00 pm and 8:00 am.** Mr. Colbath asked for Board comment; Mr. Hebert stated based on the findings and what has been told to us, this is only an outdoor area and not for keeping animals at night; they need to be kept elsewhere and not in this facility. **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 §190-13.K.(11) of the Town of Conway Zoning Ordinance to allow an outdoor kennel in the residential agricultural district be granted. Motion carried unanimously.

Mr. Colbath reviewed the process to request a motion for rehearing.

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

A public hearing was opened at 7:58 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY** [FILE #22-32] in regards to §190-15.B(1) of the Conway Zoning Ordinance **to allow the subdivision of an undersized lot of 0.4 acres in size** at 223 East Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Josh McAllister of HEB Engineers and Tad Furtado of the Conway Area Humane Society appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated this application and the three subsequent applications are all based on the same design; he is going to explain for all of them and then they can be taken individually.

Mr. McAllister stated this site was originally two lots of record; one in the Conway Village Residential District and one that is the rear parcel that was landlocked. Mr. McAllister stated they merged the lots, created the driveway and the shelter lot, and has since been operating as two separate structures on the lot. Mr. McAllister stated they would like to subdivide the front residential piece for sale and maintain the shelter in the rear.

Mr. McAllister stated the way they have proposed to subdivide the lot provides access and frontage to rear lot that the shelter is on all the way through the existing driveway to the front where that lot will have 35-feet of road frontage. Mr. McAllister stated the Humane Society is hoping to maintain control of the access to their facility, and the sign. Mr. McAllister stated to maintain that access to lot 2, which is the residential lot, it would have to be less than the lot required minimum; it also does not have enough frontage, which is a subsequent application.

Mr. McAllister stated the intent is to create a lot in the back with 35-feet of frontage to encompass the driveway; the rear lot will be 24.8-acres and the front lot would be 0.4 of an acre. Mr. McAllister stated this proposal separates the residential use into the Conway Village Residential District; all of the lots, all except for two, along this stretch don't meet the required minimum lot size. Mr. McAllister stated the subdivision of this front lot of this lot size is consistent with the other parcels in the area.

Mr. McAllister stated the lot itself is unique in the fact that it does have two different operating uses on the lot; it is two separate buildings that are encompassed in two separate zones. Mr. McAllister stated subdividing it in the manner that they are proposing as the rear line of lot 2 follows the zoning district line as does all of the back lines of all the other abutting lots on that side of the road. Mr. McAllister stated the lot itself is unique in its character because of the uses that are on it and the location by encompassing two different zones with two different buildings in those zones, and what they are proposing is generally consistent with the other parcels in the area.

Mr. Colbath asked for Board comment; Mr. Hebert stated when they merged the lots, it was done because they couldn't do what needed to be done with the two separate lots; it brought everything into conformity. Mr. McAllister agreed, and stated it created a conforming lot with two uses. Mr. Hebert stated now they want to subdivide it and make something that is not conforming. Mr. McAllister agreed.

**Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022**

Mr. Bartolomeo stated the intention is to sell. Mr. McAllister stated it is to take a residential lot off of the lot that is currently operating as a commercial use. Mr. Bartolomeo asked since it is only one-tenth of an acre shy is a boundary line adjustment a possibility here. Mr. McAllister stated they could do a boundary line adjustment with the back line, but it is in a different zone and would be inconsistent with the other lots.

Mr. McAllister stated they tried to shift the driveway enough to get to 0.50 of an acre, but they couldn't get it without losing the sign onto the residential lot, which is not allowed, or shifting the lot so the house wouldn't be in the setback.

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

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 combining the lots made the lot conforming, and now they want to go backwards; his objections are based on that. **Motion defeated with Mr. Hebert, Mr. Chalmers and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

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; Mr. Bartolomeo stated they have another option with a boundary line adjustment. **Motion defeated with Mr. Hebert, Mr. Chalmers, Mr. Pierce and Mr. Bartolomeo voting in the negative and Mr. Colbath voting in the affirmative.**

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. Colbath stated substantial justice is justice to the public weighed against the applicant and he thinks justice lays greater with the public so he is voting no against this in terms to the applicant. **Motion defeated with Mr. Hebert, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative and Mr. Bartolomeo voting in the affirmative.**

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 a boundary line adjustment would be an easy fix. **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 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 defeated unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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; there was none. **Motion defeated unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-15.B.(1) of the Town of Conway Zoning Ordinance to allow the subdivision of an undersized lot of 0.4 of an acre in size be granted. **Motion defeated unanimously.** Mr. Colbath reviewed the process to request a Motion for Rehearing.

A public hearing was opened at 8:24 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY [FILE #22-33]** in regards to §190-15.C.(1) of the Conway Zoning Ordinance **to allow the subdivision of a lot with less than the required 150-feet of road frontage** at 223 East Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Josh McAllister of HEB Engineers and Tad Furtado of the Conway Area Humane Society appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated the frontage of the existing lot is 160-linear feet. Mr. McAllister stated the rear shelter would have 35-feet of frontage, and the residential lot would have 125-feet. Mr. McAllister stated the 35-feet of frontage encompasses the driveway to the shelter and the sign, and the residential structure would meet the setbacks on the eastern side of the lot.

Mr. Colbath asked for Board comment; Mr. Chalmers asked if they have approached Public Service of New Hampshire. Mr. McAllister stated they are applying on what they own. Mr. Hebert stated he has the same issue as the last application; they had two lots which were merged and made it better. Mr. McAllister stated there is zero avenue to subdivide these two independent uses outside of a unit subdivision. Mr. Torres stated it appears if they don't split the lots they cannot really utilize the residential structure reasonably.

Mr. Chalmers stated it doesn't stop them from using the property; they could rent it as a residential space. Mr. Furtado stated they might run into a problem with their non-profit status; it creates other problems. Mr. Furtado stated could it be done, yes, but it is problematic. Mr. Chalmers stated this would be making it more non-conforming, and creating more of an issue where it currently doesn't exist.

Adopted: December 21, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Mr. Bartolomeo stated this is a non-profit. Mr. Westwig stated they don't have the resources to maintain a residential facility. Mr. Chalmer stated it was part of the original purchase. Mr. Furtado stated it was a gift. Mr. Colbath stated he sees this a hardship inherit in the property. Mr. Bartolomeo agreed.

Mr. Colbath asked for public comment; Mike Digregorio stated PSNH owns two pieces of land, and asked if it is an undue hardship for them because they haven't gone to PSNH to ask their opinion yet.

Mr. McAllister asked if it is within the Board's purview to ask us about property that we don't have rights to, or do you have to look at the application as submitted. Mr. McAllister asked if the Board can ask if they've asked everybody around them for land before we come to the Board, or do you have to look at the merits of the application. Mr. Colbath stated we can question if you have approached an abutter. Mr. McAllister stated they have not approached an abutter.

Mr. Hebert stated he thinks what the organization does is tremendous, but the Board has to look at the facts. Mr. Pierce agreed that they do great work, but the town wanted 150-feet of frontage. Mr. Westwig stated we want to help the town by putting it back in the housing stock.

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 as the property stands now it is conforming. **Motion defeated with Mr. Hebert, Mr. Chalmers and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

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; Mr. Hebert stated his reasoning for voting no is the same as before. **Motion defeated with Mr. Hebert, Mr. Chalmers and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

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. Hebert stated his reasoning for voting no is the same as before. Mr. Bartolomeo stated given how many lots along here that have insufficient lot frontage, he thinks two lots here, both with insufficient frontage, is inconsequential. **Motion defeated with Mr. Hebert, Mr. Chalmers and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

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. Chalmers stated the applicant did not explore all options,

such as contacting Public Service of New Hampshire. **Motion defeated with Mr. Hebert, Mr. Chalmers and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

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

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers stated even without the variance they can still continue use of the property in the same manner that it is currently being used. Mr. Hebert agreed. Mr. Colbath stated it has an abatement and is not on the tax rolls; this would allow it to be returned to the tax rolls. **Motion defeated with Mr. Hebert, Mr. Chalmers and Mr. Pierce voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-15.C.(1) of the Town of Conway Zoning Ordinance to allow the subdivision of a lot with less than the required 150-feet of road frontage be granted. Motion defeated with Mr. Hebert, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative and Mr. Bartolomeo voting in the affirmative.

A public hearing was opened at 8:49 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY** [FILE #22-34] in regards to §190-13.C.(1) of the Conway Zoning Ordinance **to allow the subdivision of a lot with less than the required 150-feet of road frontage** at 223 East Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Josh McAllister of HEB Engineers and Tad Furtado of the Conway Area Humane Society appeared before the Board. Mr. McAllister withdrew the application.

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

A public hearing was opened at 8:49 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY** [FILE #22-35] in regards to §190-13.F.(1) of the Conway Zoning Ordinance to **allow an existing freestanding sign to be within the side setback** at 223 East Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Josh McAllister of HEB Engineers and Tad Furtado of the Conway Area Humane Society appeared before the Board. Mr. McAllister withdrew the application.

A public hearing was opened at 8:51 pm to consider a **VARIANCE** requested by **BLUEBIRD PROJECT, LLC** [FILE #22-36] in regards to §190-19.D. of the Conway Zoning Ordinance to **allow the construction of a covered porch attached to the main structure within the side setback** at 109 Pine Street, North Conway (PID 218-69). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Kate Richardson of Bergeron Technical Services and Eliza Grant of Bluebird Project, LLC appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Richardson stated the project is proposing the restoration of the front porch on a building that will hopefully be added to the National Historic Register. Ms. Richardson stated this building is known best as the Bunker Building and it was formerly known as the North Conway House. Ms. Richardson stated this was the first year-round hotel in North Conway Village; it used to be on the corner of Mechanic Street and Route 16 until it was moved to the current location.

Ms. Richardson stated the porch that was originally proposed complied with the building setbacks, however, after receiving approvals from the ZBA and the Planning Board they received word that this building may qualify to be placed on the National Historic Register. Ms. Richardson stated they were issued the requirements for architectural compatibility with the historic nature of this building, and they need to comply dimensionally with the historic porch that had existed on this building in order to comply with the Secretary of Interior architectural requirements for reconstructing that porch.

Ms. Richardson stated the porch would be used as a main entrance, and an often-used entrance. Ms. Richardson stated the roofing on this building is metal so snow shed is going to be an issue; being on the eave side, we feel the porch is necessary to protect the entrance in addition to the historical relevance of the porch.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated they have shown a porch on previous applications that is conforming and still protects the entrance. Ms. Richardson stated if they construct the porch as it is not historically dimensionally accurate they lose the historic designation. Mr. Bartolomeo stated the porch is only going to the edge of the building making it no more non-conforming than it already is. Ms. Richardson stated they are not going beyond the existing building. Mr. Colbath asked what will the setback be. Ms. Richardson answered five-feet.

Mr. Colbath asked for public comment; Ms. Grant stated she spoke with the Diodati's, a neighbor and who they purchased the building from, and they expressed to her, but she does not speak for them, that they would like to see the porch done historically and they do not want to do a boundary line adjustment. Mr. Torres stated the National Historic Registry does make this property rather unique given their strict requirements.

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; 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. Chalmers made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** 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. 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; 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. 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 §190-19.D. of the Town of Conway Zoning Ordinance to allow the construction of a covered porch attached to the main structure within the side setback be granted. **Motion carried unanimously.**

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

A public hearing was opened at 9:12 pm to consider a **VARIANCE** requested by **FRAM REAL ESTATE INVESTMENT CO., INC.** [FILE #22-37] in regards to §190-20.F.(10)(d) of the Conway Zoning Ordinance **to allow an outdoor digital menu board in the drive thru lane** at 1946 White Mountain Highway, North Conway (PID 235-33). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Lori Burgardt of Xcelerate Permits, LLC and Scott Bailey, Dunkin Donuts owner, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Burgardt stated Dunkin Donuts would like to replace the existing menu board with a new digital menu board; this is similar to McDonalds that was recently approved. Ms. Burgardt stated it will sum up the order, it is not something that is going to be changing constantly; it will be as the customer drives through to place their order.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if it is a confirmation of the order and a total. Ms. Burgardt stated it is the menu board so it will show what can be ordered and then it will sum up and show what was ordered on the screen. Mr. Bailey stated it is very similar to McDonald's.

Mr. Pierce asked if it faces the street. Mr. Burgardt stated the sign is angled towards the commercial building next door. Ms. Burgardt stated they will be adding an ordering canopy which sits in front more towards the street. Mr. Chalmers asked if that would block the digital portion of the sign from the street. Ms. Burgardt stated a small portion. Mr. Bailey stated there are existing shrubs there.

Mr. Hebert stated it is exposed to anyone coming south; unless something is being put across the front, he doesn't see how it will be blocked. Mr. Hebert asked where is the hardship. Ms. Burgardt stated Dunkin Donuts is doing this across the entire country; she understands they are specifically not allowed under the ordinance, but it does conform with the national program. Ms. Burgardt stated it is consistency with the brand across the country.

Mr. Bartolomeo asked what part of this sign flashes the digital display. Ms. Burgardt stated it is not a flashing, it is going to periodically change. Ms. Burgardt stated as a customer is placing their order it will change after the order has been taken; it will show them their order and the amount due. Mr. Bartolomeo asked how big is the message part. Mr. Bailey stated it is usually on the bottom left where there usually is advertisement.

Mr. Chalmers stated the thing that they are looking at changing, the text that is going to change, is related to the order the customer is placing. Mr. Bailey stated which the car would be blocking. Mr. Chalmers stated that is information for the person in that vehicle, everyone on the road is not seeing what they are ordering. Mr. Bailey stated it is not an advertising board. Mr. Chalmers stated the message area of the board is stationary, it is not constantly changing. Mr. Bailey agreed and stated they have the same menu all day long.

Mr. Colbath asked for public comment; Sean Young stated if the Board approved this for McDonald's he doesn't see how the Board cannot approve this. Mr. Torres stated this is not a precedent setting Board. Mr. Hebert stated it is fact specific for each property; every fact in each application is different.

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; 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 with 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; Mr. Hebert stated this is the direct opposite of the specific ordinance. **Motion carried with 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. Pierce stated he does not see a hardship. Mr. Bartolomeo stated he does not see a hardship, and it is out of sync with the ordinance. **Motion defeated with Mr. Pierce, Mr. Bartolomeo, Mr. Chalmers and Mr. Hebert voting in the negative and Mr. Colbath voting in the affirmative.**

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

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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 are other properties in the area that have digital menu boards. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Mr. Hebert voting in the negative and Mr. Pierce and Mr. Colbath voting in the affirmative.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-20.F.(10)(d) of the Town of Conway Zoning Ordinance to allow an outdoor digital menu board in the drive thru lane be granted. Motion defeated with Mr. Pierce, Mr. Chalmers and Mr. Hebert voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.

Mr. Colbath reviewed the process to request a motion for rehearing.

A public hearing was opened at 9:46 pm to consider a **VARIANCE** requested by **13 GREEN STREET PROPERTIES, LLC/DSM REALTY** [FILE #22-38] in regards to §190-20.F.(3)(b) & §190-20.F.(3) of the Conway Zoning Ordinance **to allow a 482.42 square foot wall sign with a height of 26’2” from the undisturbed ground** at 80 Barnes Road, North Conway (PID 235-92). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Brandon Currier and Jim Lamp of Barlo Signs appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Currier submitted additional information to the Board [in file]. Mr. Currier stated the proposed signage was designed to scale which compliments the building, and it will not be distracting or unpleasant to its neighbors as it is in a commercial area with many businesses enjoying the same size of sign.

Mr. Currier stated this is an extremely unique location due to its lot, with its roughly 950-foot-deep setback from Route 16. Mr. Currier stated between Market Basket and the road there are many businesses, landscapes and vehicles blocking the line of site which limits motorists in identifying their designation successfully. Mr. Currier stated having proper signage will effectively aid the public getting to their designation safely.

Mr. Currier stated in this unique situation there are three opportunities to view the façade of Market Basket, each being about one to one and a half seconds long due to previously constructed buildings. Mr. Currier referred to a map in the additional information that was submitted.

Mr. Currier stated Lowe’s, Home Depot, Hannaford and Walmart have larger signs than is allowed by code, but these are not identical situations. Mr. Currier stated they all have access from a main road or have signage on the road, and that is not the case here. Mr. Currier stated they are only seeking relief to put up one building sign that will effectively aid the public. Mr. Currier stated safety is the biggest portion of hardship; there are no signs for this development until you are down Barnes Road. Mr. Currier stated line of site to the property causes a direct hardship because code does specify for a development of this scale.

Mr. Currier stated items specifically for hardship would be the deep setback, it’s a large-scale property, the site line is obstructed by other businesses causing dangerous situations on Route 16, if it was a smaller sign it would cause you take your eyes off the road for longer, and the code does not permit accordingly for a property this size. Mr. Currier stated this letter set is only 5.6% of the overall façade; you can see how large the building is to how small the sign is compared to scale.

Adopted: December 21, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Mr. Currier stated this is a clean, attractive sign; it blends in with everything else in the Settlers Green area. Mr. Currier stated the public will benefit from this as they will be able to locate their designation much easier with a sign of this square footage.

Mr. Colbath asked for public comment; Mr. Pierce asked the square footage of building. Mr. Lamp answered 70,000 square feet. Mr. Pierce asked if they looked for signage options on Route 16. Mr. Lamp answered the affirmative; they spoke to the folks at Settlers Green and at this time there is nothing available.

Mr. Hebert stated he is having a hard time with that it can't be seen from Route 16, but it was built off Route 16. Mr. Currier stated the main artery of traffic is going to be coming from that area, and will be drawing people from further distances, not just from this area. Mr. Currier stated there is no identification up by the road, and having no opportunities up by the road causes a hardship as it can't be identified from the street. Mr. Currier stated they need some identification so people can arrive at their destination safely.

Mr. Bartolomeo stated Walmart received a variance for size. Mr. Bartolomeo stated a sign two and a half times larger than what is allowed seems to be a big jump, but not on a building this size. Mr. Pierce stated proportionately it looks good, but it does not meet the criteria. Mr. Colbath asked what is the hardship. Mr. Currier stated it is deeply setback, it is a large-scale property requiring greater signage to fit within scale, and the site line is obstructed by other businesses which could cause dangerous situations for drivers and motorists looking for their end destination.

Mr. Hebert stated they constructed a business off of Route 16, and now your saying you need to be seen from Route 16; the hardship is where they put their business. Mr. Lamp stated if they could have gotten a lot on Route 16 they definitely would have. Mr. Bartolomeo stated the customer only has to find you once.

Mr. Bartolomeo stated he thinks it is a good-looking sign and fits well on that façade. Mr. Colbath stated he thinks there is an inherit safety issue directing the public safely. Mr. Chalmers asked what is the square footage that is allowed. Mr. Lamp answered 150-square feet. Mr. Pierce stated he thinks the sign looks great, but it is a self-imposed hardship. Mr. Lamp stated if they could have found a lot on Route 16, it would have been preferred; they want a sign that is at least readable.

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

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; 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; Mr. Hebert stated the ordinance is pretty clear; the property is not on Route 16, but it is visible on every road that goes around it. **Motion carried with Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce 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. Chalmers, Mr. Bartolomeo, Mr. Pierce 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. Chalmers stated because this is an offsite very large commercial building and it has limited site lines he would support this. Mr. Colbath stated he supports this as well and thinks it is a safety issue. Mr. Hebert stated they put a building off Route 16, that is not a hardship; it is visible from the other streets they border. **Motion carried with Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce 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. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hebert and Mr. Pierce 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 §190-20.F.(3)(b) & §190-20.F.(3) of the Town of Conway Zoning Ordinance to allow a 482.42 square foot wall sign with a height of 26’2” from the undisturbed ground be granted. Mr. Colbath stated he thinks it is an overwhelming sign, but it is an overwhelming building; it is a safety issue. **Motion carried with Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Hebert and Mr. Pierce voting in the negative.**

A public hearing was opened at 10:33 pm to consider a **SPECIAL EXCEPTION** requested by **BARNES DEVELOPMENT, LLC** [FILE #22-39] in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance **to allow 12 dwelling units per acre [construction of 40 residential dwelling units]** on Puddin Pond Drive, North Conway (PID 235-82). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2022.

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Mark Lucy of White Mountain Survey and Engineering a division of Horizons Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Lucy reviewed the project. Mr. Lucy stated the buildings shown contain more than three units, ten units are designated as rental apartment units, the lot is serviced by North Conway Water Precinct with both water and sewer, the rental apartments are 580 square feet, the upper-level units are 1,000 square feet or slightly less, and architectural plans have been submitted.

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

Mr. Colbath read item 1. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that each structure must contain at least three dwelling units.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that not less than 25% of all dwelling units shall be designated as full-time rental apartments. At the time of Planning Board approval, the units designated as full-time rental apartments must be shown on the plan with a condition that they are leased for twenty years from the date of Planning Board approval by the developer and a deed restriction shall be recorded in the Registry of Deeds as evidence of the same.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that all lots must be serviced by municipal water and sewerage.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that architectural design plans must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the zoning regulations.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Hebert made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-20.B.(5)(c) of the Town of Conway Zoning Ordinance to allow up to 12 dwelling units [construction of 40 residential dwelling units] be granted. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of October 19, 2022 as written. Motion carried unanimously.

Adopted: December 21, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – NOVEMBER 16, 2022

Meeting adjourned at 10:50 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant