

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 15, 2023

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 15, 2023 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 Jac Cuddy was in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **SETTLERS R1, INC.** [FILE #23-02] in regards to §190-20.F.(3) & §190-31 of the Conway Zoning Ordinance **to appeal the Zoning Officer’s determination that the existing “wings” mural on Building B1 is a sign** at 2 Common Court, North Conway (PID 235-99). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Appeal from Administrative Decision requested by Settlers R1, Inc. until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **SETTLERS R1, INC.** [FILE #23-03] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “wings” mural on Building B1 to remain** at 2 Common Court, North Conway (PID 235-99). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Equitable Waiver of Dimensional Requirement requested by Settlers R1, Inc. until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **SETTLERS R1, INC.** [FILE #23-04] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “wings” sign on Building B1 to remain** at 2 Common Court, North Conway (PID 235-99). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

Adopted: April 19, 2023 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 15, 2023

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Variance requested by Settlers R1, Inc. until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **SETTLERS R2, INC.** [FILE #23-05] in regards to §190-20.F.(3) & §190-31 of the Conway Zoning Ordinance **to appeal the Zoning Officer’s determination that the existing “Conway Heritage” mural on Unit 1 is a sign** at 39 Settlers Green Drive, North Conway (PID 235-89.004). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Appeal from Administrative Decision requested by Settlers R2, Inc. until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **SETTLERS R2, INC.** [FILE #23-06] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “Conway Heritage” mural on Unit 1 to remain** at 39 Settlers Green Drive, North Conway (PID 235-89.004). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Equitable Waiver of Dimensional Requirement requested by Settlers R2, Inc. until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **SETTLERS R2, INC.** [FILE #23-07] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “Conway Heritage” sign on Unit 1 to remain** at 39 Settlers Green Drive, North Conway (PID 235-89.004). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Variance requested by Settlers R2, Inc. until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

Adopted: April 19, 2023 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 15, 2023

A public hearing was opened at 7:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **1675 WMH, LLC** [FILE #23-08] in regards to §190-20.F.(3) & §190-31 of the Conway Zoning Ordinance **to appeal the Zoning Officer’s determination that the existing “Welcome to North Conway” mural on Building M is a sign** at 1699 White Mountain Highway, North Conway (PID 235-85). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Appeal from Administrative Decision requested by 1675 WMH, LLC until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **1675 WMH, LLC**[FILE #23-09] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “Welcome to North Conway” mural on Building M to remain** at 1699 White Mountain Highway, North Conway (PID 235-85). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Equitable Waiver of Dimensional Requirement requested by 1675 WMH, LLC until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **1675 WMH, LLC** [FILE #23-10] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow the existing “Welcome to North Conway” sign on Building M to remain** at 1699 White Mountain Highway, North Conway (PID 235-85). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. Roger Williams of OVP Management was in attendance.

The applicant has requested a continuance until April 19, 2023. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for the Variance requested by 1675 WMH, LLC until April 19, 2023 at 7:05 pm. Motion carried unanimously.**

Adopted: April 19, 2023 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 15, 2023

A public hearing was opened at 7:05 pm to consider a **SPECIAL EXCEPTION** requested by **LINDSEY AND IAN ANDERSON** in regards to §190-20.B.(5)(b) of the Conway Zoning Ordinance to allow an accessory dwelling unit at 30 Haven Lane, Conway (PID 277-292). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023.

Lindsay Anderson appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Anderson stated they are converting an existing 650 square foot space.

Mr. Colbath asked for Board comment; Mr. Colbath asked about parking. Ms. Anderson stated there is enough space for 4 to 6 parking spaces. Mr. Colbath asked if the single-family home and the accessory dwelling unit are both for long-term rental. Ms. Anderson answered in the affirmative. Mr. Colbath asked if either would be used for short-term rental. Ms. Anderson answered in the negative.

Mr. Colbath asked for public comment; Pam Wickers of 20 Haven Lane stated she is concerned with it turning it into a short-term rental as this structure is located 10-feet from her property line. Ms. Wickers asked how many bedrooms. Ms. Anderson answered it would be a studio. Mr. Hebert asked if a neighbor files a complaint what would the town do. Mr. Torres stated it would be a violation of their approval and we would make sure that it stopped.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the apartment 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 apartment 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. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-20.B.(5)(b) of the Town of Conway Zoning Ordinance for an accessory apartment be granted. Motion carried unanimously.

Adopted: April 19, 2023 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 15, 2023

A public hearing was opened at 7:18 pm to consider a **SPECIAL EXCEPTION** requested by **THOMAS AND BETSY WEILER** in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance to allow an accessory dwelling unit at 25 Crescent Drive, Conway (PID 262-44). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023.

Thomas Weiler appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Weiler stated he would like to convert the second floor of an existing garage to an accessory dwelling unit.

Mr. Colbath asked for Board comment; Mr. Colbath asked the size of the accessory dwelling unit. Mr. Weiler answered 600 square feet with an 8x10 entry porch. Mr. Bartolomeo asked if there is an exterior stairway. Mr. Weiler answered in the affirmative. Mr. Hebert asked about parking. Mr. Weiler stated there was space enough for six vehicles.

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 apartment 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 apartment 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 §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory apartment be granted. Motion carried unanimously.

A public hearing was opened at 7:27 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **REBECCA MULKERN** [FILE #23-13] in regards to §23-4, §23-13, §23-15 & §23-16 of the Conway Building Construction Code, §190-5, §190-20 & §190 – Permitted Use Table of the Conway Zoning Ordinance and §110-2 & §110-2.A., B., & E. of the Conway Site Plan Review Regulations **to appeal the Building Inspector’s issuance of a building permit to Conway Poker Room & Casino, LLC** at 234 White Mountain Highway, Conway (PID 265-147). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Mr. Bergeron stated that the property owner is going to be filing an application to the Conway Planning Board on March 21, 2023 for the April 13, 2023 Planning Board meeting, therefore, he would like to request a continuance until April 19, 2023.

Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the public hearing for Rebecca Mulkern until April 19, 2023 at 7:10 pm. Motion carried unanimously.

A public hearing was opened at 7:33 pm to consider a **SPECIAL EXCEPTION** requested by **VARAHI NORTH CONWAY REALTY, LLC** [File #23-14] in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance to allow the construction of six (6) residential dwelling units at 2039 White Mountain Highway, North Conway (PID 230-119). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023.

Dan Lucchetti of HEB Engineers and Andy Dean of Cooper Cargill Chant appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Dean stated they would like to construct an apartment building at the back of the property. Mr. Dean stated they are allowed up to six units under the special exception. Mr. Dean stated two of the units would be deed-restricted for long-term rental, and the units would be approximately 512 square feet.

Mr. Colbath asked for Board comment; Mr. Hebert asked if they would be serviced by municipal water and sewer. Mr. Lucchetti answered in the affirmative. Mr. Chalmers stated an affidavit has been submitted that they will not be short-term rented. Mr. Dean stated they will not be short-term renting these at all. Mr. Hebert asked if the store would remain. Mr. Dean answered in the affirmative.

Mr. Colbath asked for public comment; Glen Saunders submitted a letter and pictures to the Board [in file]. Mr. Saunders stated he opposes this proposal. Mr. Saunders stated they feel it is a very different entity and project compared to what Amethyst Hill Road is as there are pretty large lots on Amethyst Hill Road. Mr. Saunders stated there are deed restrictions to access Amethyst Hill Road; a restriction that there would be no access allowed from that property.

Mr. Saunders stated there has also been a 40-foot buffer zone between the properties, which was verified on the landscape plan on file with the town on the property to the south. Mr. Saunders stated that buffer zone has run straight through since the middle-1980's.

Mr. Saunders stated the building proposed is almost totally in this buffer zone; the buffer zone between the highway commercial district and the residential agricultural district. Mr. Saunders stated we feel that there needs to be a bigger than a 10-foot buffer zone between commercial and residential activities. Mr. Saunders stated there is a memo from a planning person that identifies the 40-foot buffer zone on the Club property but it goes the whole length.

Adopted: April 19, 2023 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 15, 2023

Mr. Saunders stated there isn't sufficient greenspace, there is a lack of storage for snow removal and probably no storage for bikes etc. Mr. Saunders stated there doesn't appear to be any trash removal. Mr. Saunders stated there is a difference in elevation to the property line; there is approximately a 17% slope.

Mr. Saunders stated Amethyst Hill Road does not have sewer lines. Mr. Saunders stated the proposed development and many of the abutters are incompatible; the scale and character of the activities are different from the activities of the residential community that abuts it. Mr. Saunders stated it is important to consider a buffer between highway commercial activities and residential activities. Mr. Saunders stated he strongly urges continuing the 40-foot buffer zone behind the property.

Deborah Fauver stated she lives on Amethyst Hill Road. Mr. Fauver stated she shares Mr. Saunders concerns with greenspace. Ms. Fauver stated they are asking for a lot and not offering a lot. Ms. Fauver stated it would be a disservice if the Board didn't go take a look at the lot.

Jac Cuddy stated in the 1980's this was a very difficult piece of property back then; the buffer in place was because of the residences. Mr. Cuddy asked if this commercial building with multiple units would be sprinkled. Mr. Cuddy asked if NHDOT has been alerted, and the impact on Amethyst Hill Road considered.

Sonnkilde Saunders stated she directly abuts this property, and she requests an on-site visit by the ZBA. Ms. Saunders stated this is well over the established guidelines; it is a three-story building which she objects to. Kirk Saunders, a resident of Amethyst Hill Road, stated the size of the project with a three-story building at that elevation is way too big for our area. Mr. Kirk Saunders stated there is no sewer on Amethyst Hill Road.

Mr. Torres stated this is a special exception request with five-specific standards; some of the concerns need to be addressed at the Planning Board level. Mr. Pierce asked if there was a 45-foot buffer requirement. Mr. Lucchetti stated he is unaware of that. Mr. Torres stated the deed-restriction is on the property to the South; he could not find any restrictions on this lot.

Mr. Hebert asked about water and sewer; how is this lot serviced and how does it get to that lot. Mr. Lucchetti stated the specific location has yet to be confirmed, but there is an existing connection for the gas station and North Conway Water Precinct has confirmed they will service the new building.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers made a motion, seconded by Mr. Bartolomeo, 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 the construction of six (6) residential dwelling units be granted. Motion carried unanimously.

A public hearing was opened at 8:21 pm to consider a **VARIANCE** requested by **VARAHI NORTH CONWAY REALTY, LLC** in regards to §190-20.B.(1) of the Conway Zoning Ordinance to allow the construction of six (6) additional residential dwelling units at 2039 White Mountain Highway, North Conway (PID 230-119). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023.

Dan Lucchetti of HEB Engineers and Andy Dean of Cooper Cargill Chant appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Dean read *Request for Variance Pursuant to Section 190-20.B.(5)(c)* received February 22, 2023 [in file] addressing the five variance criteria.

Mr. Colbath asked for Board comment; Mr. Hebert stated he does not see the hardship. Mr. Dean stated this is a need; there is an ability to do this with the layout of the lot so they are asking to go above and beyond the six. Mr. Chalmers stated there is a residential development behind this. Mr. Dean stated the zoning ordinance has set what is an appropriate buffer for highway commercial districts even adjacent to residential agricultural lots.

Mr. Chalmers stated he is having hard time seeing hardship. Mr. Dean stated it is close to other commercial uses, close to where employee housing would be beneficial within walking distance from other businesses, and it is a residential use not another commercial use. Mr. Dean stated the hardship for this user is trying to find housing for his employees.

Adopted: April 19, 2023 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 15, 2023

Mr. Colbath asked for public comment; Glen Saunders asked that the information he submitted in the last application be applied to this application. Sonnhilde Saunders asked how do you access the property. Mr. Lucchetti stated the plan prepared is simply a sketch, the driveway would be covered under site plan review by the Planning Board.

Mr. Hebert asked Mr. Saunders his position on impact on the property. Mr. Saunders stated this would reduce the property values. Mr. Saunders stated the apartment would have more people living in it than lives on Amethyst Hill Road.

Deb Fauver stated a one-acre lot is a huge difference between the other projects the Board has discussed. Ms. Fauver stated if we shoe-horn 12-units onto every lot we are in real trouble; it overburdens this lot with too much stuff. Ms. Fauver stated in regard to substantial justice, they are already running a successful business. Ms. Fauver stated she thinks there would be a diminution of property values, the Saunders will have to look at the back of this building. Ms. Fauver stated she does not see a hardship.

Sonnhilde Saunders stated her concern is with the elevation; on that elevation would almost be a high-rise. Jac Cuddy stated the issue here is the location and what it is presenting to the community on whether or not it meets all those criteria. Mr. Cuddy stated, however, there is a huge need for housing for employees.

Kirk Saunders stated it will really change the character of the neighborhood by removing the trees and reducing the buffer. Mr. Kirk Saunders stated a building and parking lot will substantially change the neighborhood.

Mr. Pierce stated this has negative impact on people. Mr. Bartolomeo stated 12-units per acre is more than a concession, and that was granted in the first application. Mr. Bartolomeo stated they have taken that concession and now seeking to double it. Ms. Fauver stated her comments in previous hearing should also be applied to this hearing.

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 it is very contrary to public interest. **Motion defeated 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. Bartolomeo stated they are seeking to double the allowable concession. Mr. Colbath stated the spirit of the ordinance is to stay within the limited density and this is above it. **Motion defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Hebert stated he was not compelled by the applicants position. Mr. Bartolomeo stated the balance of justice of who comes out ahead is the developer, not the public. **Motion defeated unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; Mr. Hebert stated several people testified that it would affect their values. Mr. Bartolomeo stated there was testimony from the Saunders that it would affect their property values. **Motion defeated 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. Hebert stated he didn't hear a hardship. Mr. Chalmers stated there was no testimony provided to show that this was different from other properties in the area. Mr. Colbath stated it is hard to prove hardship inherit in the property, and this property is already being successfully used. **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; Mr. Chalmers stated they have already been granted a special exception for additional units on this lot and adding to that is not reasonable. Mr. Colbath stated it is a reasonable use, just an overuse. **Motion carried with Mr. Hebert, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Chalmers and Mr. Pierce voting in the negative.**

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; Mr. Hebert stated they have already been approved for six units. Mr. Bartolomeo stated they are still able to construct six units. **Motion defeated unanimously.**

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 the property has been successfully used in its current state and was just allowed additional units; he doesn't see a hardship here. **Motion defeated unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-20.B.(1) of the Town of Conway Zoning Ordinance to allow the construction of six (6) additional residential units be granted. Motion defeated unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert made a motion, seconded by Mr. Chalmers, to approve the Minutes of February 15, 2023 as written. Motion carried with Mr. Colbath abstaining from voting.

Meeting adjourned at 9:00 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant