

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 19, 2023

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 19, 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; Richard Pierce; Jonathan Hebert; Deputy Town Manager/Town Engineer, Paul DegliAngeli; Town Planner, Ryan O'Connor; Zoning Officer, Nick DeVito; and Planning Assistant, Holly Whitelaw.

Mr. Colbath led the Pledge of Allegiance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **JOHN R. VATALARO, III** [FILE #23-28] in regards to §190-13.B.(4)(b) & §190-18.B.(5)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 52 Colbath Street, Conway (PID 277-175). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, July 7, 2023.

Mr. Colbath notified the applicant there were only four members of the Board present. The applicant is permitted to have a full board of five members hear the application; it will need the affirmative vote of three members to be approved. The public hearing could be postponed until the August meeting, if the applicant wished. The applicant decided to move forward with the hearing.

John Vatalaro appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Vatalaro stated his intent is to convert the basement of his primary residence into an ADU and use it as a long-term rental. There are the required egress points.

Mr. Colbath asked for Board comment. The Board clarified the size of the ADU and parking location.

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 §190-13.B.(4)(b) & §190-18.B.(5)(b) of the Town of Conway Zoning Ordinance for an accessory dwelling unit be granted. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

A public hearing was opened at 7:10 pm to consider a **SPECIAL EXCEPTION** requested by **SHANNON NARTOWICZ** [FILE #23-29] in regards to §190-15.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 66 Quint Street, Conway (PID 276-164). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, July 7, 2023.

Shannon Nartowicz appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Nartowicz would like to place a 587 square foot mobile home on her mother's property to use as her residence. The Board discussed parking and driveway requirements.

Mr. Colbath asked for Board comment; Mr. Hebert clarified the size of the mobile home.

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 §190-15.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory dwelling unit be granted. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

A public hearing was opened at 7:22 pm to consider a **VARIANCE** requested by **MOUNTAIN TOP MUSIC CENTER** [FILE #23-30] in regards to §190, Permitted Use Table of the Conway Zoning Ordinance **to allow a ground-mounted solar energy system within the Floodplain Conservation Overlay District** at 36 Main Street, Conway (PID 265-45). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, July 7, 2023.

Mr. Colbath notified the applicant there were only four members of the Board present. The applicant is permitted to have a full board of five members hear the application; it will need the affirmative vote of three members to be approved. The public hearing could be postponed until the August meeting, if the applicant wished. The applicant decided to move forward with the hearing.

Sarah Kimball on the Board of Trustees for the Mountain Top Music Center appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Kimball explained the reasons Mountain Top Music Center wants to install a solar energy system, including cost reduction and to be more environmentally aware. It must be ground mounted, as the building will not support the weight of the system. The system would be located at the edge of the 100-year floodplain, as the parking lot is needed by the neighboring businesses. While half of the system would be in the floodplain, only the support will be impacted by floodwaters and not impede them.

The Board discussed possible locations for the system on the property to avoid the need for a variance.

Mr. Colbath asked for Board comment. The Board discussed other possible locations for the system on the property to avoid the need for a variance.

Mr. Colbath asked for public comment.

Megan Ulin of ReVision Energy noted with the increasing cost of energy, Mountain Top Music Center would incur a hardship if not issued this variance. Neighboring businesses might have buildings able to support the weight of a solar system and not incur the same hardship. Mr. Colbath clarified that the hardship has to be caused by a condition inherent in the land, not a financial or social hardship.

Mr. Colbath asked for staff comment. Town Planner Ryan O'Conner noted the unique features of the property should be considered when determining hardship.

Mr. Colbath asked for Board comment.

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The Board discussed the number of parking spaces needed for site plan approval. They also discussed alternative solar system designs. The Board noted the need for a corrected plan showing the location of a recently installed storage trailer. Mr. Colbath said the Town attempts to protect the floodplain. Mr. Hebert stressed the importance of highlighting what is unique about the layout of this property in consideration of neighboring properties.

Mr. Colbath noted that zoning ordinances for solar systems need to be revisited when revising the Master Plan.

The applicant requested a continuance of the public hearing to August 16th at 7:00 p.m.

A public hearing was opened at 7:53 pm to consider a **VARIANCE** requested by **JUSTIN AND JULIE HUSSEY/REVISION ENERGY, INC.** [FILE #23-31] in regards to §190, Permitted Use Table of the Conway Zoning Ordinance **to allow the construction of a community solar energy system within the Floodplain Conservation Overlay District** off Valley View Road, North Conway (PID 231-139.01). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, July 7, 2023.

Mr. Colbath notified the applicant there were only four members of the Board present. The applicant is permitted to have a full board of five members hear the application; it will need the affirmative vote of three members to be approved. The public hearing could be postponed until the August meeting, if the applicant wished. The applicant decided to move forward with the hearing.

Megan Ulin and Charlie Hanna of ReVision Energy, and Jason Gagnon, superintendent of the North Conway Water Precinct, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Hanna presented the details of the project. The solar array and interconnecting facility will be on two different properties, 0 Valley View Road (a field) and 72 Valley View Road.

Mr. Gagnon presented background on the project. The original plan was to install a rooftop array at 72 Valley View Road. The project was revised to maximize the return to the precinct's customers and lower water rates. They intend to use federal and state grant funds to construct the project. The hardship exists on 72 Valley View, as there is not enough space to install this system on this property. He stated there will be no new impact to the floodplain in installing the array. He said there are other options for locating the array, but they believe this is the best option to return the most value to taxpayers.

The Board noted that while they appreciate the attempt to lower rates, since there are no variances required by installing the array in other locations, it would be difficult to grant this variance.

Mr. Gagnon withdrew the application.

OTHER BUSINESS

Frank Noto and Susan Stefanyk [File #23-20]/Judy Waugh [File #23-32] – Motion for Rehearing: This is a request in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance to **allow an accessory dwelling unit** at 1955 East Conway Road, Center Conway (PID 255-13). Judy Waugh was in attendance.

The Board reviewed the request. Mr. Hebert said he visited this property and spoke with the applicants, so clarified there was no confusion regarding the property discussed at the public hearing. The Board agreed the application was well presented and the finding of fact was directed at the information the Board had. They agreed there was no technical error made and no new facts were available.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to grant the motion for rehearing. Motion was defeated unanimously.

Settlers R1, Inc. [File #23-02] – Motion for Rehearing [File #23-33]: This is a request 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). Michael Mitchronev of OVP Management was in attendance.

The Board reviewed the request. The Board noted no new information was presented in this appeal. They stressed that by the definitions and the zoning ordinances, murals meet the standards and qualifications of signs and they have to be treated as signs. They discussed the cost of correction during the public hearing and believe it was a well-considered decision. Mr. Colbath noted this is a motion to exist.

Mr. Hebert made a motion, seconded by Mr. Chalmers, to grant the motion for rehearing. Motion was defeated unanimously.

Settlers R1, Inc. [File #23-03] – Motion for Rehearing [File #23-34]: This is a request in regards to §190-20.F.(3) of the Conway Zoning Ordinance to **allow the existing “wing” mural on Building B1 to remain** at 2 Common Court, North Conway (PID 235-99). Michael Mitchronev of OVP Management was in attendance.

The Board reviewed the request. They said they considered the cost of correction presented by the applicant during the public hearing. Mr. Colbath said this is a motion based on equitable waiver, that the degree to which they invested in doing this would outweigh removing it. He did not feel this would come into ruling here.

Mr. Colbath noted that zoning ordinances for signs need to be revisited when revising the Master Plan.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to grant the motion for rehearing. Motion was defeated unanimously.

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Settlers R1, Inc. [File #23-04] – Motion for Rehearing [File #23-35]: This is a request 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). Michael Mitchroneoy of OVP Management was in attendance.

The Board reviewed the request. They felt no new information was presented and there was no technical error.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to grant the motion for rehearing. Motion was defeated unanimously.

1675 WMH, LLC [File #23-08] – Motion for Rehearing [File #23-36]: This is a request 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). Michael Mitchroneoy of OVP Management was in attendance.

The Board reviewed the request. Ms. Whitelaw clarified this is an appeal of the administrative decision; the equitable waiver was granted. The request is that this should not be classified as a sign. They noted the mural includes social media hashtags, which presents it as advertising. They stressed that by the definitions and the zoning ordinances, murals meet the standards and qualifications of signs and they have to be treated as signs.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to grant the motion for rehearing. Motion was defeated unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Pierce, to approve the Minutes of June 21, 2023, as written. Motion carried, with Mr. Hebert abstaining from voting.

A motion was made and seconded to adjourn. Motion carried unanimously.

Meeting adjourned at 8:34 pm.

Respectfully submitted,

Beth Hanggeli
Recording Secretary