

ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 15, 2023

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, November 15, 2023, at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 p.m. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Jonathan Hebert; Richard Pierce; and Town Planner, Ryan O'Connor. Alternates Debra Haynes was in attendance. Zoning Officer Nicholas DeVito was also in attendance.

Mr. Colbath led the Pledge of Allegiance.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Debra Haynes as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:00 p.m. to consider a **VARIANCE** requested by **WILLIAM CARVALHO AND ALICE KALT** [FILE #23-50] in regards to §190-13.B.(3) of the Conway Zoning Ordinance **to allow a third residential dwelling unit on an undersized lot** at 3045 East Main Street, Center Conway (PID 257-16). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023.

Chair Colbath read the application and the applicable section of the ordinance.

Andy Dean of Cooper Cargill Chant, William Carvalho, and Alice Kalt appeared before the Board. Mr. Dean described this project, which is to use the finished space above their garage as a long-term rental. There will be no changes to the exterior of the building. There are already bathroom facilities in the space.

Chair Colbath asked for Board comment. The Board verified this will need to undergo site plan review. The Board discussed the option of requesting a lot line adjustment instead of needing a variance.

Chair Colbath asked for public comment; there was none.

Mr. O'Connor noted there is minimal impact, as there is no additional square footage. It could not be treated as an accessory dwelling unit, given a duplex is existing on-site.

Mr. Colbath read item 1. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Piece voting in the negative. He stated it is contrary to the ordinance.**

Adopted: December 20, 2023 – As Amended

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Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Pierce voting in the negative. He stated the spirit of the ordinance is to maintain the ordinance and this is a violation of that.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Pierce voting in the negative. He stated it is a violation of the ordinance.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried 5-0-0.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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 was defeated 2-3-0, with Mr. Chalmers, Ms. Haynes, and Mr. Pierce voting in the negative. They stated there was no hardship by definition. The property can be used in the manner in which it is currently being used without a variance. It does not change the property.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Pierce voting in the negative. He said it is against the ordinance.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that based on i and ii above, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Motion was defeated 2-3-0, with Mr. Chalmers, Ms. Haynes, and Mr. Pierce voting in the negative.

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Motion was defeated 2-3-0, with Mr. Chalmers, Mr. Hebert, and Mr. Piece voting in the negative. The property can still continue to be reasonably used in strict conformance with the ordinance.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the variance from §190-13.B.(3) of the Town of Conway Zoning Ordinance to allow a third residential dwelling unit on an undersized lot be granted. Motion was defeated 1-4-0, based on finding of fact.

**Adopted: December 20, 2023 – As Amended
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A public hearing was opened at 7:27 p.m. to consider a **SPECIAL EXCEPTION** requested by **DLS PROPERTIES, LLC/PAUL RICHARDSON [FILE #23-51]** in regards to §190-26.B.(1)(h) of the Conway Zoning Ordinance **to allow the construction of two, 30'x96' agricultural greenhouses** on Tasker Hill Road/Quint Street, Conway (PID 276-262). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023.

Chair Colbath read the application and the applicable section of the ordinance.

Paul and Jason Richardson of Grand View Farm appeared before the Board. They are requesting a special exception to allow the placement of two greenhouses within the Wetland and Watershed Protection Overlay District. The applicant stated the request would reduce the required setback by 50 feet and is essential due to site constraints. The applicant indicated runoff would not be an issue, as drip irrigation will be used in the greenhouses.

Mr. O'Connor verified that a building permit is needed for temporary structures. However, this project would not need site plan review.

Chair Colbath asked for Board comment. The Board discussed the need for an engineering report with a hydraulic analysis. Mr. O'Connor said it could be set as a condition of approval that this is reviewed by the Town engineer.

Chair Colbath asked for public comment.

Andy Ingall (sp), Quint Street, asked if a driveway would be installed. He would like to see plans for filtering the water coming off the structure and drainage. He said this is a commercial agricultural use in the Conway Village residential district.

Mr. O'Connor clarified that while this is the flood plain, it can be used for agricultural purposes. Mr. DeVito said the flood plain overlay district would supersede the village residential district in this case. Mr. O'Connor noted the use of fertilizers near the water would be controlled by the overlay district. Other associated permits would serve as safeguards to review driveway access and other components of the project.

Mr. Jason Richardson said the access to the greenhouses would be off Quint Street. Mr. Paul Richardson explained the land was part of a dairy farm in the past but is mainly hay/grass. They clarified that without the special exception, the greenhouses will be closer to Quint Street.

Chair Colbath closed public comment.

Mr. Hebert made a motion, seconded by Mr. Chalmers, that this application be continued to December 20, 2023, at 7:00 p.m. to allow for the applicant to review the request with the Town Engineer. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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A public hearing was opened at 7:43 to consider a **VARIANCE** requested by **CONWAY DEVELOPMENT PARTNERS, LLC/ TRACTOR SUPPLY CO.** [FILE #23-52] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow an additional 15.55 square foot wall sign** at 170 North South Road, North Conway (PID 246-56). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023.

Chair Colbath read the application and the applicable section of the ordinance.

Carolyn Parker, agent for the owner, appeared before the Board to present an application to allow an additional wall sign to identify the garden center of the business. She reviewed the conditions of approval.

Chair Colbath asked for Board comment. Mr. Hebert questioned whether the sign is directional. Ms. Parker said signage helps customers find a specific area in a business. Mr. Pierce asked why sign approval was not requested before the building was constructed. Ms. Parker said the Town bylaws are limited, as only one wall sign is permitted for a large building.

Chair Colbath asked for public comment; there was none. Chair Colbath closed public comment.

Mr. O'Connor said the business is approximately 10,000 square feet short of allowing an additional wall sign. He noted a directional three square foot sign would be permitted in the parking lot.

Mr. Colbath read item 1. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried, 3-2-0, with Mr. Chalmers and Mr. Pierce voting in the negative. They stated it is in the public interest to uphold the sign ordinance.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried 3-2-0, with Mr. Chalmers and Mr. Pierce voting in the negative. They stated the spirit of the ordinance is to uphold what the voters have approved for a sign ordinance.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert, 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 was defeated 0-5-0 as there was no presentation of hardship by the applicant.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Chalmers voting in the negative. He stated the business has the appropriate number of signs.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Motion was defeated 0-5-0.

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Motion was defeated 2-3-0, with Mr. Chalmers, Mr. Hebert, and Mr. Pierce voting in the negative. They stated the property can still be used in the manner that the retailer is intending.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the variance from §190-20.F.(3) of the Town of Conway Zoning Ordinance to allow an additional 15.55 square foot wall sign be granted. Motion was defeated 0-5-0 based on findings.

A public hearing was opened at 8:04 p.m. to consider a **VARIANCE** requested by **CONWAY DEVELOPMENT PARTNERS, LLC/ TRACTOR SUPPLY CO.** [FILE #23-53] in regards to §190-20.F.(3) of the Conway Zoning Ordinance **to allow an additional 11.44 square foot wall sign** at 170 North South Road, North Conway (PID 246-56). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023.

Chair Colbath read the application and the applicable section of the ordinance. Carolyn Parker, agent for the owner, appeared before the Board to present an application to allow an additional wall sign to indicate the pickup/drive-thru area.

Chair Colbath asked for Board comment. The Board asked if there were other directional signage on the property and Ms. Parker did not know. She said it was important for the sign to be on the building to be visible and not blocked by trucks in the parking lot. *Mr. Hebert asked the applicant what the difference was between her property and others. Ms. Parker stated she did not know and had not been to the property during the day.*

Mr. Colbath read item 1. **Mr. Hebert made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried 3-2-0, with Mr. Chalmers and Mr. Pierce voting in the negative. They stated the public has approved the sign ordinance, so it is in the public's interest to uphold it.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion was carried 4-1-0, with Mr. Pierce voting in the negative. He said the spirit of the ordinance means it is not there.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert, 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 was defeated 2-3-0, with Mr. Chalmers, Mr. Hebert, and Mr. Pierce voting in the negative. They said there was no testimony from the applicant of hardship.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Ms. Haynes, 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. Hebert, that based on i and ii above, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Motion was defeated 2-3-0, with Mr. Chalmers, Mr. Hebert, and Mr. Pierce voting in the negative.

Mr. Colbath read item 5.b. **Mr. Hebert made a motion, seconded by Mr. Chalmers, 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. Motion was defeated 2-3-0, with Mr. Chalmers, Mr. Hebert, and Mr. Pierce voting in the negative. They said there was no testimony from the applicant of hardship.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the variance from §190-20.F.(3) of the Town of Conway Zoning Ordinance to allow an additional 11.44 square foot wall sign be granted. Motion was denied 2-3-0, with Mr. Chalmers, Mr. Hebert, and Mr. Pierce voting in the negative, based on findings of fact.

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A public hearing was opened at 8:11 p.m. to consider a **SPECIAL EXCEPTION** requested by **ROBERT NELSON/RWN PROPERTY SERVICES, INC.** [FILE #23-54] in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow the extension of Deer Path Lane to create a cul-de-sac within the Wetland and Watershed Protection Overlay District buffer** on Deer Path Lane, Conway (PID 288-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023.

Chair Colbath read the application and the applicable section of the ordinance.

Josh McAllister of HEB Engineers appeared before the Board, representing Bob Nelson. The owner plans to subdivide two lots from the existing property. Deer Path Lane will need to be reconstructed and extended to meet Town road standards and provide frontage for the two lots. There are no wetland impacts associated with the extension; it will run transversely through the buffer, where the road already runs. A wetland crossing will be required to Lot 1. It is not possible to extend or reconstruct Deer Path Lane without being in the wetland and watershed protection overlay district buffer.

Chair Colbath asked for public comment.

Matthew Marshall, owner of Lot 3 on Eaton Road, expressed concern about drainage and the impact of disrupting the wetlands on his well. Mr. McAllister said he believes the driveway will have no impact on water resources with respect to quantity. He said well and drainage systems will be part of the subdivision review process, which would involve the Town engineer. The impact of the driveway on the wetlands will be minimal and the drainage runs away from the road. He clarified there will be no proposed development shown on this lot at this point, except to show that it is buildable for the future buyer.

Mr. O'Connor said the Town reviews the drainage for a road as part of the subdivision process. When a lot is subdivided, the property owner may not know the exact location of future structures. A drainage analysis could be required as part of the building permit, if there are concerns with stormwater effecting abutting properties. The Board has the option to condition the special exception that individual lots be reviewed for drainage at the time of building permit submittal. He said Mr. McAllister has done a good job of minimizing the impacts for the road and wetlands.

Chair Colbath closed public comment.

Chair Colbath read item 1. Mr. Chalmers made a motion, seconded by Mr. Hebert, that the use is essential to the productive use of land not in the district. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Chair Colbath read item 2. Mr. Chalmers made a motion, seconded by Mr. Hebert, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Chair Colbath read item 3. Mr. Chalmers made a motion, seconded by Mr. Hebert, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands. Chair Colbath asked for Board comment; there was none. Motion carried unanimously.

Chair Colbath read item 4. Mr. Chalmers made a motion, seconded by Mr. Hebert, that a site plan review approval shall be required prior to construction. Chair 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 §190-28.(I)(4) of the Town of Conway Zoning Ordinance to allow the extension of Deer Path Lane to create a cul-de-sac within the Wetland and Watershed Protection Overlay District buffer be granted. Motion carried unanimously.

A public hearing was opened at 8:35 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERT NELSON/RWN PROPERTY SERVICES, INC.** [FILE #23-55] in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow a driveway access to proposed lot one to cross a wetland** on Deer Path Lane, Conway (PID 288-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023.

Chair Colbath read the application and the applicable section of the ordinance.

Josh McAllister of HEB Engineers appeared before the Board, representing Bob Nelson. He said the driveway to access the buildable portion of the lot will be located at the smallest point of the wetland. They will meet the Town's standards for transitions and driveways. The impact will be approximately 200 square feet. They have not gotten into the design of the driveway yet.

Chair Colbath asked for public comment; there was none. Chair Colbath closed public comment.

Chair Colbath read item 1. Mr. Chalmers made a motion, seconded by Mr. Hebert, that the use is essential to the productive use of land not in the district. Chair Colbath asked for Board comment; there was none. Motion carried unanimously.

Chair Colbath read item 2. Mr. Chalmers made a motion, seconded by Mr. Hebert, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands. Chair Colbath asked for Board comment; there was none. Motion carried unanimously.

Chair Colbath read item 3. Mr. Chalmers made a motion, seconded by Mr. Hebert, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands. Chair Colbath asked for Board comment; there was none. Motion carried unanimously.

Chair Colbath read item 4. Mr. Chalmers made a motion, seconded by Mr. Hebert, that a site plan review approval shall be required prior to construction. Chair 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 §190-28.(I)(4) of the Town of Conway Zoning Ordinance to allow a driveway access to proposed lot one to cross a wetland be granted, with the condition of approval being that the proposed building site is reviewed by the Town for drainage compliance prior to building permit issuance. Motion carried unanimously.

OLD BUSINESS

Mr. Hebert asked if a meeting could be scheduled to work on the procedures of the Board and make corrections based on laws that have changed and times that need to be adjusted in the policy. Mr. O'Connor agreed this could be scheduled in February 2024 with NHMA. Chair Colbath said this meeting could be conducted remotely.

Mr. O'Connor said regarding the meeting schedule for 2024, he proposed the current time frame be changed from 21 days to 30 days.

Chair Colbath noted the Board has recently approved three internally lit reader boards. An application for an internally lit reader board was denied earlier and Chair Colbath felt the Board did not treat this business fairly. The Board discussed how to address this issue. Mr. DeVito noted the business is undergoing a major site upgrade, so it is feasible that another application could be presented to move the sign. It could then be heard by the Board.

REVIEW AND ACCEPTANCE OF MINUTES

On page 1, paragraph beginning, "The Board discussed," change "staff found that" to "staff and counsel agreed that."

Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the Minutes of October 18, 2023, as amended. Motion carried unanimously.

ADJOURNMENT

Mr. Hebert made a motion, seconded by Mr. Chalmers, to adjourn at 8:51 p.m. Motion carried unanimously.

Respectfully submitted,
Beth Haggeli
Recording Secretary