

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**MARCH 20, 2024**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 20, 2024, at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:10 p.m. Those present were: Acting Vice Chair, Andrew Chalmers; Jonathan Hebert; Jac Cuddy; Alternate, Steven Steiner; Town Planner, Ryan O’Connor; and Assistant Planner, Holly Whitelaw. Zoning Officer Nicholas DeVito was in attendance.

Chair Chalmers led the Pledge of Allegiance.

**APPOINTMENT OF ALTERNATE MEMBER**

Chair Chalmers appointed Mr. Steiner as a voting member.

**PUBLIC HEARINGS**

A public hearing was opened at 7:10 pm to consider a **VARIANCE** requested by **EDWARD SARRO REVOCABLE TRUST** [FILE #24-03] in regards to §190-31, Definition of Accessory Dwelling Unit, of the Conway Zoning Ordinance **to allow an accessory dwelling unit to be greater than 800 square feet** at 876 Eaton Road, Conway (PID 280-77.11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

This application has been withdrawn.

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A public hearing was opened at 7:10 pm to consider a **SPECIAL EXCEPTION** requested by **EDWARD SARRO REVOCABLE TRUST** [FILE #24-04] in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 876 Eaton Road, Conway (PID 280-77.11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

This application has been withdrawn.

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A public hearing was opened at 7:10 pm to consider a **VARIANCE** requested by **SC LOOKOUT, LLC** [FILE #24-06] in regards to §190-20.F.(10)(a) of the Conway Zoning Ordinance **to allow an internally lit digital menu board** at 1498 White Mountain Highway, North Conway (PID 246-20.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024. This hearing was continued from February 21, 2024.

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

Chair Chalmers stated that the applicant is entitled to a five-member board and only four members are present. Chair Chalmers asked if he would like to continue the hearing or proceed with the hearing. Mr. Zareb stated he would proceed with the hearing.

Tim Zareb (sp) appeared before the Board to present his application. He addressed the five points of law.

Chair Chalmers asked for Board comment.

Mr. Hebert asked if the sign could be lit other than internally backlit. Mr. Zareb said this was not possible and still maintain the integrity of the sign. He said the company was not aware the sign was not compliant when it was installed. If they install a digital sign in the future, they will still need to request a variance. Mr. Hebert verified the sign is not visible from the road.

Chair Chalmers asked for Town input. Mr. O'Connor said this request is consistent with other approvals the Board has recently reviewed.

Chair Chalmers asked for public comment; there was none.

Chair Chalmers closed public comment.

Chair Chalmers read item 1. **Mr. Hebert made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

Chair Chalmers read item 2. **Mr. Hebert made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

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

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

Chair Chalmers read item 5.a.i. **Mr. Hebert made a motion, seconded by Mr. Cuddy, 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.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

Chair Chalmers read item 5.a.ii. **Mr. Hebert made a motion, seconded by Mr. Cuddy, that the proposed use is a reasonable use.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Hebert made a motion, seconded by Mr. Cuddy, that based on i and ii above, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

**Chair Chalmers read item 5.b. Mr. Hebert made a motion, seconded by Mr. Steiner, that item 5.b is not necessary.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Hebert made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(10)(a) of the Town of Conway Zoning Ordinance to allow an internally lit digital menu board be granted.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

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A public hearing was opened at 7:20 pm to consider a **VARIANCE** requested by **MCNALLY REVOCABLE LIVING TRUST** [FILE #24-07] in regards to §190-28.B. & C. of the Conway Zoning Ordinance **to allow the construction of a single-family residential dwelling unit within the Wetland and Watershed Protection Overlay District setback and buffer** on Thompson Road, North Conway (PID 219-249). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024. This hearing was continued from February 21, 2024.

**Mr. Cuddy made a motion, seconded by Mr. Hebert, to continue the public hearing for McNally Revocable Living Trust until June 19, 2024, at 7:00 pm.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

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A public hearing was opened at 7:20 pm to consider a **VARIANCE** requested by **MCNALLY REVOCABLE LIVING TRUST** [FILE #24-08] in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow a wetland crossing for a driveway in the Wetland and Watershed Protection Overlay District** on Thompson Road, North Conway (PID 219-249). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024. This hearing was continued from February 21, 2024.

**Mr. Cuddy made a motion, seconded by Mr. Hebert, to continue the public hearing for McNally Revocable Living Trust until June 19, 2024, at 7:00 pm.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

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A public hearing was opened at 7:21 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY** [FILE #24-10] in regard to §190-13.C. & §190-15.C. of the Conway Zoning Ordinance to allow a 2-lot subdivision with one lot having zero 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, March 8, 2024.

Chair Chalmers read the application and the applicable section of the ordinance. He stated that the applicant is entitled to a five-member board and only four members are present. Chair Chalmers asked if he would like to continue the hearing or proceed with the hearing. Mr. Furtado stated he would proceed with the hearing.

Mr. Hebert brought a point of order. He noted this application has already been heard and a decision made. He asked for a vote, after the case is presented, whether or not sufficient criteria is met that would warrant granting a rehearing of the matter. Mr. O'Connor said it is up to the Board if they want to hear the presentation first before making this decision. The Board agreed to allow the applicant to explain why this application is materially different than the earlier one.

Tad Furtado of the Conway Area Humane Society appeared before the Board. He explained they presented four requests a year earlier, three of which were withdrawn and one denied. The denial was for a request for a variance from the lot size in the Conway Village residential district so that they could stay contiguous with the rural agricultural zoning district; the property spans both districts. He noted this request is not part of the current application.

Chair Chalmers asked for Board comment. Mr. Hebert noted the Board requested additional property be obtained so that the parcel would be brought into compliance; this was not done. Mr. O'Connor said the applicant has reached out to the abutter (Eversource) to see if they could purchase adjoining land; however, they were not able to do so. He noted an application could be considered materially different if any missing information originally noted was provided in the re-application. He said the discussion with the abutter constitutes information missing from the prior application.

Mr. Cuddy asked if there was another way to achieve the same result. Mr. O'Connor said the earlier application focused on the applicant pursuing other property. However, they did not pursue all feasible means to make this happen in a way that fits the ordinance. The Board needs to consider if the conversation with Eversource is sufficient to consider this a materially different application.

Mr. Furtado said the answer from Eversource is that it is not possible in an actionable timeline, due to state easements on the property.

Mr. Cuddy said he hopes the Board's decision could be of benefit to the applicant in that they could present it to Eversource as evidence of their need for this property.

Mr. O'Connor asked the Board to consider if there is any information the applicant could bring forward where they would consider this a new application.

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Mr. Furtado noted that if the application is approved by the ZBA and Planning Board, the application should be considered in terms of how it will affect the property on which the single-family house sits. From that lot's perspective, the hardship is that the property cannot reasonably be used in strict conformance with the ordinance.

Mr. O'Connor noted there is an option to deny without prejudice. That way, if any information that is materially different comes forward in the future, the applicant could return to the Board with that information.

Chair Chalmers asked for public comment.

Evan Lucy said without documentation from Eversource that tells the Board their intent, aside from emails, Mr. Furtado's claim is hearsay. He said there are ordinances for a reason and that the Planning Board could take care of some of this.

Chair Chalmers closed public comment.

Mr. O'Connor noted this is a new application, although it is the same ask as the previous one; the Board is not rehearing the original application.

**Mr. Hebert made a motion, seconded by Mr. Steiner, to deny the applicant without prejudice based on sufficient information not being provided, which creates a materially different application than previously submitted.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

#### **REVIEW AND ACCEPTANCE OF MINUTES**

Mr. Hebert noted during last month's meeting, Attorney Lewis asked Mr. Herbert and Chair Colbath if they had seen a particular document in his case. Mr. Hebert said neither he nor Chair Colbath had seen it. He realized after the hearing that he had not been accurate. The document had been provided to him in the course of the staff assembling information regarding the case; he had missed seeing this particular document. He clarified that it was provided to him, but he did not read it.

**Mr. Hebert made a motion, seconded by Mr. Cuddy, to approve the Minutes of February 21, 2024, as written.** Chair Chalmers asked for Board comment; there was none. **Motion carried unanimously.**

#### **ADJOURNMENT**

**The meeting was adjourned at 7:51 p.m.**

Respectfully submitted,  
Beth Hanggeli  
Recording Secretary