

ZONING BOARD OF ADJUSTMENT

MINUTES

JUNE 19, 2024

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 19, 2024, 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; Jac Cuddy; Town Planner, Ryan O’Connor; and Assistant Planner, Holly Whitelaw. Alternates Steven Steiner, Michael Santuccio, and Christopher Yarworth; and Zoning Officer Nicholas DeVito were in attendance.

Mr. Colbath led the Pledge of Allegiance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 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, and March 20, 2024*

This application has been withdrawn by the applicant.

A public hearing was opened at 7:00 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, and March 20, 2024.*

This application has been withdrawn by the applicant.

A public hearing was opened at 7:01 pm to consider a **VARIANCE** requested by **GLENN COLASSI** [FILE #24-12] in regards to §190-13.B.(3) of the Conway Zoning Ordinance **to allow a conforming lot (1.14 acres) to be subdivided into two non-conforming lots (0.60 of an acre and 0.55 of an acre)** at 134 Allard Farm Circuit, North Conway (PID 231-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2024.

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

Andy Fisher of Ammonoosuc Survey Company and Glenn Colassi appeared before the Board. Mr. Fisher explained the proposal is to subdivide one lot into two. They believed offsite water would allow for the same reduction in lot size as provided by Conway zoning if they had municipal water. This lot was originally two lots that at some point were merged. This request will return the lots to their original size/shape/layout.

Chair asked for Board comment

Mr. Chalmers clarified there is no municipal water or sewer. Mr. Fisher said the water system in Birch Hill is probably the biggest privately run public water system in town.

Mr. Chalmers asked Mr. Fisher to address why the required lot size was changed in 1980. Mr. Fisher said he could not speak to the zoning ordinance and Master Plan. He believes the one-acre minimum requirement presumes a well and septic would fit on the property.

Mr. Cuddy noted two non-conforming lots would be created by this proposal, without a public water system. Mr. Fisher said the Pennichuck Water System is considered a public water system by the state. They can provide septic and wells that conform to state and Town regulations for both properties, if necessary.

Mr. Chalmers said he would have liked more information on the water system. Mr. Fisher noted they provided what is required, but offered to request additional information from Pennichuck.

Mr. Pierce asked about the hardship. Mr. Colassi said there is none; he plans to sell the lots. He said two lots would provide more housing.

Mr. O'Connor noted that most of the lots in Birch Hill are not a full acre, as they were grandfathered.

Mr. Chalmers asked if there is a concern about the sewer, without a municipal water supply. Mr. Fisher said there is not, as they can site a well with a radius.

Chair asked for public comment; there was none. There were no abutters present to speak for or against this proposal.

Mr. O'Connor said the Town regulations are clear regarding the need for municipal water on a lot that is less than an acre. This is to provide safe drinking water and a safe area for septic. He noted the Town has no control over the future of the Pennichuck water system. He added there is nothing legislative addressing private water systems. Density also plays a part in determining lot size.

The Board clarified that an ADU could be placed on either or both of these lots, if the subdivision is granted, which could increase the density in an area with no public water or sewer. Mr. Fisher suggested a deed restriction preventing this could alleviate these concerns.

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. **Cuddy - yes; Chalmers - no: it is in the public interest to maintain the municipal requirement for water and sewer on lots of less than one acre; Hebert - yes; Pierce - no: it is in the public interest to maintain the municipal requirement for water and sewer on lots of less than one acre; Colbath - yes. Motion carried.**

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. **Cuddy - no; Chalmers - no; Hebert - no; Pierce - no; Colbath - no. There is not enough evidence to go against the zoning of 1980; questions were not answered. Motion defeated.**

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. **Cuddy - yes; Chalmers - yes; Hebert - yes; Pierce - yes; Colbath - yes. Motion carried.**

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. **Cuddy - yes; Chalmers - yes; Hebert - yes, based on personal knowledge of the development; Pierce - yes; Colbath - yes. Motion carried.**

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. **Cuddy - no; Chalmers - no; Hebert - no; Pierce - no; Colbath - no. The applicant was clear that there is no hardship. Motion defeated.**

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. **Cuddy - yes; Chalmers - yes; Hebert - yes; Pierce - yes; Colbath - yes. Motion carried.**

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. Mr. Colbath asked for Board comment; there was none. **Cuddy - no; Chalmers - no; Hebert - no; Pierce - no; Colbath - no. The applicant was clear that there is no hardship. Motion defeated.**

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.** Mr. Colbath asked for Board comment; there was none. **Cuddy - no; Chalmers - no; Hebert - no; Pierce - no; Colbath - no. The property can be reasonably used now. Motion defeated.**

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 conforming lot (1.14 acres) to be subdivided into two non-conforming lots (0.60 of an acre and 0.55 of an acre) be granted. Cuddy - no; Chalmers - no; Hebert - no; Pierce - no; Colbath - no. Motion defeated.

Chair Colbath explained the rehearing process.

A public hearing was opened at 7:31 pm to consider a **VARIANCE** requested by **CHARLES D. ESSENHEIMER** [FILE #24-13] in regards to §190-27.E.(2) of the Conway Zoning Ordinance to **allow greater than 25% lot coverage within the Shoreline Protection Overlay District with a 16’x16’ dining room addition** at 389 Mill Street, Center Conway (PID 268-5). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 7, 2024.

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

Mr. O'Connor said the applicant could not attend the meeting. Staff has been working with the applicant to create a stronger application. In light of this, he suggested granting a continuance.

Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the application for Charles D. Essenheimer until July 17, 2024, at 7:00 pm. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert made a motion, seconded by Mr. Chalmers, to approve the Minutes of February 7, 2024, March 20, 2024, and April 17, 2024, as presented. Motion carried unanimously.

ELECTION OF OFFICERS

Mr. Herbert made a motion, seconded by Mr. Cuddy, that the current Chair and Vice Chair [John Colbath as Chair and Andrew Chalmers as Vice Chair] be brought forward and re-elected for the next year. Motion carried unanimously.

New alternate Board members Michael Santuccio and Christopher Yarworth introduced themselves and explained their interest in serving on the Board.

ADJOURNMENT

Mr. Hebert made a motion, seconded by Mr. Chalmers, to adjourn at 7:36 p.m. Motion carried unanimously.

Respectfully submitted,
Beth Hanggeli, Recording Secretary