

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 17, 2024

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 17, 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; Jac Cuddy; Alternate, Steven Steiner; Town Planner, Ryan O’Connor; and Assistant Planner, Holly Whitelaw. Alternates Michael Santuccio and Christopher Yarworth and Zoning Officer Nicholas DeVito were in attendance.

Mr. Colbath opened the meeting at 7:00 p.m. and led the Pledge of Allegiance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 p.m. 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. This hearing was continued from June 19, 2024.

Mr. O’Conner stated the applicant would not be in attendance due to a medical issue.

Mr. Hebert made a motion, seconded by Mr. Cuddy, to continue the public hearing for Charles D. Essenheimer until August 21, 2024, at 7:00 p.m. Motion carried unanimously.

ALTERNATE MEMBER

Chair Colbath appointed Mr. Steiner as a voting member.

A public hearing was opened at 7:03 p.m. to consider a **VARIANCE** requested by **JACQUELYN BELL AND RYAN POLISSO** [FILE #24-14] in regards to §190-13.B.(1) of the Conway Zoning Ordinance to **allow three residential dwelling units on an undersized lot** at 22 East Side Road, Conway (PID 265-114). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 3, 2024.

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

Jacquelyn Bell and Ryan Polisso appeared before the Board. Ms. Bell explained they are the first residents of what was a commercial structure and are occupying 50% of the livable space. They would like to turn the former office space into another dwelling unit, without changing the exterior

Adopted: August 21, 2024 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 17, 2024

of the building. The property currently houses a single-family dwelling with an ADU. Fire Superintendent Bruno Vallieres said water will not be an issue.

Mr. Hebert asked what qualifies this project as a hardship. Mr. O'Connor explained that a number of properties in the area are multi-family dwellings. This property is close to conforming with the new ADU ordinance, but due to the uniqueness of the structure, it cannot get there. He clarified this is a variance from density. Chair Colbath added there is no land available for purchase to meet the square footage requirement.

Chair Colbath asked for public comment.

Bobby Bell asked for clarification of the hardship requirement. He pointed out the hardship of people looking for homes, but Chair Colbath explained the hardship needs to be inherent in the land.

Chris Yarworth asked if the fact that they bought a commercial building in a residential zone, and that the commercial building is unique to the property and is a weird shape, and cannot be significantly converted to a residence, could be a hardship. Chair Colbath explained this would fall under caveat emptor (buyer beware).

Mr. O'Connor said this was previously a nonconforming use in a nonconforming structure, but has been made more conforming. The property is mostly encumbered by the previous commercial use. It would be difficult to do anything with this property without tearing down the structure, which makes it unique. This project would still be subject to minor site plan review. This density would be allowed through the ADU process, but the uniqueness of the property would make this a difficult threshold. If a typical single-family home was on this property, they could add two ADUs via a special exception. He sees no major concerns with the proposal.

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 unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** 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. Steiner, 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. Steiner, 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. Steiner, 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 carried unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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. Steiner, 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. **Motion carried unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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. **Motion carried unanimously.**

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

Mr. Chalmers made a motion, seconded by Mr. Steiner, that based on the forgoing findings of fact, the variance from §190-13.B.(1) of the Town of Conway Zoning Ordinance to allow three residential dwelling units on an undersized lot be granted. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert made a motion, seconded by Mr. Chalmers, to approve the Minutes of June 19, 2024, as written. A roll call vote was taken: Cuddy - yes, Chalmers - yes, Hebert - yes, Steiner - abstain, Colbath - yes. Motion carried.

ADJOURNMENT

A motion was made and seconded to adjourn at 7:42 p.m.. Motion carried unanimously.

Respectfully submitted,
Beth Hanggeli
Recording Secretary