

**ZONING BOARD OF ADJUSTMENT/
BUILDING CODE BOARD OF APPEALS**

MINUTES

JANUARY 15, 2020

A meeting of the Conway Zoning Board of Adjustment and the Building Code Board of Appeals was held on Wednesday, January 15, 2020 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **LYDIA T. AND CHESTER B. LUCY FAMILY TRUST** in regard to §190-11 of the Conway Zoning Ordinance **to allow overhead utilities** at 3730 West Side Road, North Conway (PID 201-3 & 4). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 3, 2020.

Wes Smith of Thorne Surveys appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Smith stated they have been before the Planning Board for a boundary line adjustment and one of the conditions was a NHDOT permit. Mr. Smith stated the town of Conway requires all utilities to be underground, but District 1 will not allow us to construct in the right-of-way.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked why District 1 will not allow the construction in the right-of-way. Mr. Smith stated District 1 would not allow it unless the infrastructure was owned by the utility provider, and the NHEC did not want to own it; so, it was necessary to apply for a variance. Mr. Irving stated this right-of-way is under NHDOT and they have a say in any construction work within their rights-of-ways. Mr. Irving stated they are not permitting this work unless it is the utility companies work, and this is not going to be the utility companies work. Mr. Irving stated the only way to get power to this property is through the variance mechanism.

Mr. Colbath asked for public comment; Nat Lucy stated all the land is under a conservation easement, there is no intention of putting in a driveway or utilities. Mr. Lucy stated this is just a formality, and in this instance, they are asking for a variance, but they don't intend to do the work unless required to.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; Mr. Bartolomeo stated underground utilities is good for aesthetics and eliminating sky clutter. **Motion carried Mr. Bartolomeo voting in the negative.**

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. Colbath 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. Chalmers made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-11 of the Town of Conway Zoning Ordinance to allow overhead utilities be granted. **Motion carried unanimously.**

A public hearing was opened at 7:17 pm to consider a **VARIANCE** requested by **STEVE AND OLGA MORRILL/BRADFORD AND MARGARET MORRILL/BRUCE MORRILL/GARY AND CAROLINE FOLLMER/GSSG NEW HAMPSHIRE, LLC** in regards to §190-13 and §190, Permitted Use Table, of the Conway Zoning Ordinance **to develop a commercial scale solar collection system** on East Main Street and Stritch Road, Center Conway (PID 260-58). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 3, 2020.

Clay Mitchell of Tenday, LLC, Michael DiGregorio, and Michael Redding of New England Solar Garden appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Mitchell stated they are proposing a one-megawatt array that are no longer on single-access trackers.

Mr. Mitchell stated there were components of this parcel that seemed reasonable for a one-megawatt array in the shadow of a wireless communication facility. Mr. Mitchell reviewed his memo addressing the five criteria to grant a variance with the Board. Mr. Mitchell stated given the size this is a reasonable use in this particular location on a parcel this size. Mr. Redding stated they are limited to one-megawatt size.

Mr. Irving asked how wide the buffer will be to the land owned by Upper Saco Valley Land Trust. Mr. Mitchell answered 50-feet; the plan does not show 50-feet, but it will be 50-feet. Mr. Irving stated that a special exception was granted for a wetland crossing for the driveway to the wireless communication facility. Mr. Irving asked the board if the additional traffic to the solar array would necessitate that special exception being revisited for this project.

Mr. Bartolomeo stated the solar array does not require a lot of maintenance. Mr. DiGregorio stated maybe twice a year to mow the lawn; the owners of the cell tower will visit the site more than we will for the solar array. The Board agreed that the special exception granted for the wetland crossing did not need to be revisited.

Mr. Colbath asked for public comment; there was no comment.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; Mr. Steiner stated this is a residential lot and it should be used for that. Mr. Steiner stated he made an exception for the cell tower because it was for public safety. **Motion carried with Mr. Steiner voting in the negative.**

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. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary. Motion carried unanimously.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-13 and §190, Permitted Use Table, of the Town of Conway Zoning Ordinance to develop a commercial scale solar collection system be granted. Motion carried unanimously.

A public hearing was opened at 7:40 pm to consider a **VARIANCE** requested by **KIRK ROBERTS AND LEONARD GRAZIANO** in regards to §190-17.C.(4) of the Conway Zoning Ordinance **to allow two residential units on an undersized lot** at 1506 East Main Street, Center Conway (PID 260-91). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 3, 2020.

Kirk Roberts and Lenny Graziano appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Roberts stated they are proposing two, one-bedroom apartments. Mr. Colbath asked how big the lot is. Mr. Roberts answered a quarter of an acre.

Mr. Colbath asked if this was a single-family home before. Mr. Roberts stated it was a three-bedroom house, and they are looking to construct two, one-bedroom units. Mr. Bartolomeo stated in this area without municipal water and sewer one-acre is need per unit. Mr. Bartolomeo stated they are requesting two-units on a quarter of acre; this is a very substandard lot. Mr. Bartolomeo stated they could have two units if one of the units is owner-occupied.

Mr. Colbath asked for public comment; Carol Hanson stated her daughter, Monica Hanson, owns the property next door to this property and they share a well; the well was for two, single-family homes, not three. Ms. Hanson stated that her daughter’s yard is 10-feet lower than this property and she is concerned with her septic. Ms. Hanson stated this is an easement, and she has already had to do maintenance on the well; she is concerned with how this would affect her.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Chalmers stated there is a minimum lot size for a reason, and that is to protect the public. Mr. Bartolomeo stated minimum lot sizes controls density, and here the density is way out of whack. Mr. Colbath stated the lot is too substandard. **Motion defeated 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; Mr. Chalmers stated the ordinance is to prevent this type of use. Mr. Bartolomeo stated he would have gone for the accessory dwelling unit special exception but cannot support the way this application stands. **Motion defeated 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; Mr. Bartolomeo stated the benefit would be for the owners and not to the public. **Motion defeated 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 with Mr. Chalmers voting in the negative.**

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; Mr. Chalmers stated there is no hardship inherent in this property. **Motion defeated 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; Mr. Bartolomeo stated they are trying to shoehorn two units on a tiny lot. **Motion defeated 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 defeated unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the property can be used for a single-family unit; it has possibilities. **Motion defeated unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-17.C.(4) of the Town of Conway Zoning Ordinance to allow two residential units on an undersized lot be granted. Motion defeated unanimously.

Mr. Colbath reviewed the motion for rehearing process.

OTHER BUSINESS

CMR Properties, LLC (PID 214-84.2) – File #19-32 & #19-33 – To determine if the applicant has satisfied the conditions precedent to final approval: Chris Meier of Cooper Cargill Chant and Jason Plourde of VHB appeared before the Board. Mr. Chalmers stepped down at this time and stated that he was not part of the initial meeting. Mr. Colbath stated that only four members were present. Mr. Meier agreed to proceed with four-members.

Mr. Plourde reviewed the traffic study with the Board. Mr. Irving read a memo dated January 14, 2020 from Town Engineer, Paul DegliAngeli. Mr. Steiner stated this is going to have an impact. Mr. Colbath asked for public comment specifically to the traffic study; there was none.

Mr. Bartolomeo made a motion, seconded by Mr. Pierce, that the following conditions, 1) that the applicant must submit a revised traffic study report that demonstrates compliance with items 3.c.iii, iv, and v. on the Special Exception Worksheet relative to §190-24.K.(5)(a)[2] of the Conway Zoning Ordinance; and 2) that the applicant must satisfy item 3.j. on the Special Exception Worksheet relative to §190-24.K.(6)(c) of the Conway Zoning Ordinance have been satisfied.

Mr. Colbath asked for Board comment; Mr. Steiner stated the traffic study does not include the restaurant that he knows is going to be in there. **Motion carried with Mr. Steiner voting in the negative.**

Mr. Bartolomeo made a motion, seconded by Mr. Pierce, that the condition precedent to final approval for File #19-33 has been satisfied. Motion carried unanimously.

Mr. Bartolomeo made a motion, seconded by Mr. Pierce, that the special exception relative to §190-24.K.(6) is granted with a subsequent to final approval condition that a site plan review approval be acquired by the Planning Board. Motion carried unanimously.

Mr. Bartolomeo made a motion, seconded by Mr. Pierce, that the special exception relative to §190-28.I.(6) is granted with a subsequent to final approval condition that a site plan review approval be acquired by the Planning Board. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

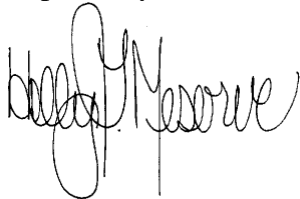
Mr. Chalmers rejoined the Board at this time.

Mr. Chalmers made a motion, seconded by Mr. Steiner, to approve the Building Code Board of Appeal minutes of December 5, 2019 as written. Motion carried unanimously.

Mr. Chalmers made a motion, seconded by Mr. Steiner, to approve the minutes of December 18, 2019 as written. Motion carried unanimously.

Meeting adjourned at 8:35 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant