

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 17, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 17, 2021 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Alternate, Jac Cuddy; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Alternate, Jonathan Hebert was in attendance.

ALTERNATE MEMBER

Mr. Colbath appointed Mr. Cuddy as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **KATHLEEN KIESMAN/TIMOTHY KIESMAN** [FILE #21-03] in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 77 Heath Road, Center Conway (PID 260-65). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021. This hearing was continued from February 17, 2021.

Timothy Kiesman appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath asked for Board comments; Mr. Colbath asked if this was a residential neighborhood. Mr. Kiesman answered in the affirmative. Mr. Colbath asked if this was accessory to a single-family home. Mr. Kiesman answered in the affirmative.

Mr. Colbath asked if this was not going to be used for short-term rentals. Mr. Kiesman stated it was not, it is for his daughter. Mr. Kiesman asked if it would be a problem if it were a short-term rental. Mr. Bartolomeo stated it needs to be a long-term lease. Mr. Irving stated if it were to be used as a short-term rental it would violate the Special Exception; there is no opportunity for this to be used as a short-term rental. Mr. Kiesman stated he understood.

Mr. Steiner asked what the square footage is. Mr. Kiesman answered 790 square feet. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the accessory dwelling unit is accessory to an owner-occupied single-family dwelling.** 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 accessory dwelling unit is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made motion, seconded by Mr. Steiner, that the accessory dwelling unit is architecturally compatible with the neighborhood.** 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 sufficient parking is located on site.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the picture submitted shows plenty of parking. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** 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 Special Exception pursuant to §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory dwelling unit be granted. Motion carried unanimously.

MOTION FOR REHEARING

A public meeting was opened 7:10 pm to consider a **MOTION FOR REHEARING** requested by **KEVIN MACMILLAN AND JENNIFER MACMILLAN REGARDING BEAR HILL DEVELOPMENT, LLC/VERTEX TOWERS, LLC** in regard to §190-13.E.(3) and §190-13.K.(12) of the Conway Zoning Ordinance **to allow the installation of a 166-foot-tall wireless communication facility and to allow the wireless communication tower to exceed 55-feet in height** on Artist Falls Road, North Conway (PID 219-243.1).

Kevin MacMillan was in attendance. Mr. Colbath read the Motion for Rehearing request submitted by Kevin MacMillan and Jennifer MacMillan.

Mr. Colbath stated the material presented that night certainly addressed the height and a balloon test was done. Mr. Steiner stated during the hearing we had pictures of the area with the balloon up and he doesn't recall seeing the balloon; it is also 300 yards from Artist Falls Road. Mr. Colbath stated it is located on a 36-acre lot and sits in the middle of it. Mr. Colbath stated there was testimony in the minutes that stated the balloon was higher than the facility and there really was no visibility.

Mr. Bartolomeo stated one of the points is a multiple site analysis. Mr. Colbath stated although it was not in the minutes, it was presented in the packet of material. Mr. Bartolomeo stated it was obvious how complete and thorough Mr. Parisi's presentation was. Mr. Bartolomeo stated Mr. Parisi does this a lot and he cannot imagine he missed one of the points of requirements.

Mr. Irving read §190-13.A.(12)(b) on page 4 of the *Application for Special Exception/Project Narrative Introduction* [in file]. Mr. Bartolomeo stated he is satisfied that the applicant did indeed address, it just might not have appeared in the minutes.

Adopted: April 21, 2021 – As Written

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Mr. Colbath read objection #4. Mr. Irving stated he believes the Board had access to detailed plans. The Board agreed. Mr. Irving stated he also believes the Board had a copy of the plans in their packets. The Board agreed. Mr. Colbath asked if this project requires site plan review. Mr. Irving stated they have subsequently gone to site plan review and have received a conditional approval with one of the conditions that the applicant prevail in this case.

The Board determined that there was neither a technical error nor new information available that was not available at the time of the first hearing. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant the Motion for Rehearing requested by Kevin MacMillan and Jennifer MacMillan. Motion unanimously defeated.**

Mr. Irving stated the next step if the petitioner wishes to take further action would be to file with the Superior Court, and if there are any others who wish to participate in that they should contact the petitioner to arrange to become a party to it and/or intervener.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Cuddy stepped down at this time. Mr. Colbath appointed Mr. Hebert as a voting member. **Mr. Chalmers made a motion, seconded by Mr. Steiner, to approve the Minutes of February 17, 2021 as written. Motion carried unanimously.**

Meeting adjourned at 8:13 p.m.

Respectfully Submitted,



Holly L. Whitelaw
Planning Assistant