

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 15, 2020

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 15, 2020 at the Conway Recreation and Parks Department, 176 Main Street, in Conway, NH, beginning at 7:04 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

ALTERNATE MEMBER

Mr. Colbath appointed Ms. Sherman as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:04 pm to consider a **VARIANCE** requested by **DALE BLANTON AND LINDA SULLIVAN** in regards to §190-13.D. of the Conway Zoning Ordinance **to allow a lean-to shed to encroach into the side setback** at 405 Passaconaway Road, Conway (PID 263-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 1, 2020.

Mr. Colbath read the application and the applicable section of the ordinance. Dale Blanton appeared before the Board. Mr. Blanton stated there is no property marker to go by, but he has a basic idea; he figured it would be beyond the setback. Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if this is a trade-off between the non-conforming shed for the new one. Mr. Blanton answered in the negative. Mr. Bartolomeo stated it seems it could be moved over 5-feet and meet the setback requirement. Mr. Steiner joined the Board at this time

Mr. Blanton stated if he moves five-feet it will block any emergency apparatus to go into the back yard, and the septic system is there. Mr. Chalmers asked if the sheds could be moved towards the south end of the lot while maintaining the access for fire and rescue and be in compliance. Mr. Blanton stated the shed would be over the well.

Mr. Irving stated the layout is relative to the tax maps; the applicant's concern is if it is moved further to the south it will be more difficult in the winter to get to the wood supply, and to the east more difficult to get to the back yard to service the well. Mr. Colbath asked if it is a public road to the west. Mr. Irving answered in the negative.

Mr. Bartolomeo stated he would be more sympathetic if you didn't already have a shed in the setback. Mr. Irving stated the abutting lot is a deep lot with a narrow access and then goes to five acres. Mr. Irving stated there is no opportunity to build any structures on the narrow access on adjacent lot without a variance. Mr. Bartolomeo stated it is 6-feet wide, will you put a vehicle in here. Mr. Blanton answered in the negative and stated it is just for his wood; a lean-to to cover wood.

Adopted: August 19, 2020 -As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 15, 2020

Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Ms. Sherman, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Chalmers, Ms. Sherman and Mr. Colbath voting in the affirmative and Mr. Bartolomeo and Mr. Steiner voting in the negative.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated he is not trying to get fire trucks, but personnel in the back yard. Mr. Bartolomeo stated there is plenty of room to move it five-feet to make it a legal building and still sneak between the two buildings. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Mr. Steiner voting in the negative and Ms. Sherman and Mr. Colbath voting in the affirmative.**

Mr. Blanton stated he has 4 to 6 cords of wood on average, if not more. Mr. Blanton stated to get to the wood in the winter time is crazy, and he has to shovel to get to it. Mr. Blanton stated if to goes further toward the house it would have to change a few things. Mr. Chalmers asked if he could have a conforming building if it were narrower and longer. Mr. Chalmers stated a variance is for when there are no other options and it appears there are other options here.

Mr. Blanton stated he does not want to hit the 220 lines coming from the water pump. Mr. Bartolomeo stated they should be 7-feet in the ground because of the frost. Mr. Steiner stated the shed can be moved to the east without a problem. Mr. Blanton stated if he builds it longer, he will not have access to his back yard.

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. Bartolomeo, 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. Bartolomeo, 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. Bartolomeo stated he could reconfigure the shape; he has options to have a conforming structure. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Mr. Steiner voting in the negative and Ms. Sherman and Mr. Colbath voting in the affirmative.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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 defeated with Mr. Bartolomeo, Mr. Chalmers, Mr. Steiner and Mr. Colbath voting in the negative and Ms. Sherman voting in the affirmative.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Chalmers stated the property can be used for a single-family home as it is currently being used. Mr. Bartolomeo stated there is no testimony that there is a hardship in the land. Mr. Irving stated each standard for a variance is addressed in his submittal to the Board. **Motion defeated unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-13.D. of the Town of Conway Zoning Ordinance to allow a lean-to shed to encroach into the side setback be granted. Motion defeated unanimously. Mr. Colbath reviewed the rehearing process.

A public hearing was opened at 7:32 pm to consider a **VARIANCE** requested by **GARRY SHERRY** in regards to §190-30.D.(2) of the Conway Zoning Ordinance **to allow a boundary line adjustment to a nonconforming lot** on West Side Road, Conway (PID 262-8). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 1, 2020.

Mr. Colbath read the application and the applicable section of the ordinance. Kate Richardson of Bergeron Technical Services appeared before the Board. Shawn Bergeron of Bergeron Technical Services was in attendance. Ms. Richardson stated there are two abutting properties that the Sherry’s own; PID 263-128 has 13.2 acres and PID 262-8 has 2.8 acres. Ms. Richardson stated the larger parcel is located on Passaconaway Road and has 106 feet of road frontage; the smaller parcel fronts on West Side Road and has 35 feet of road frontage.

Ms. Richardson stated the applicant is requesting permission for a boundary line adjustment to convey approximately 6.8 acres from PID 263-128 to PID 262-8. Ms. Richardson stated both lots require a variance as both are non-conforming due to road frontage.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if the only non-conformity is road frontage. Ms. Richardson answered in the affirmative. Mr. Irving stated a boundary of a non-conforming lot cannot be changed without making it more conforming, and they cannot do that to either lot; this is not making either lot more conforming. Mr. Steiner stated the frontage is not going to change on either lot no matter what they do. Mr. Irving stated both lots are legally existing non-conforming lots.

Mr. Colbath asked the purpose of the cul-de-sac on PID 263-128. Ms. Richardson stated it is access to a storage shed. Mr. Colbath stated the new boundary is sitting on the driveway. Ms. Richardson stated that would be addressed during the planning board process. Mr. Bartolomeo asked if the shed would be within the setback. Ms. Richardson stated the shed would not, but the driveway would be. Mr. Bartolomeo stated if this would be making the shed non-conforming. Ms. Richardson answered in the negative.

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 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. 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 §190-30.D.(2) of the Town of Conway Zoning Ordinance to allow a boundary line adjustment to a nonconforming lot be granted. **Motion carried unanimously.**

Adopted: August 19, 2020 -As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 15, 2020

A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **GARRY SHERRY** in regards to §190-30.D.(2) of the Conway Zoning Ordinance **to allow a boundary line adjustment to a nonconforming lot** at 128 Passaconaway Road, Conway (PID 263-128). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 1, 2020.

Mr. Colbath read the application and the applicable section of the ordinance. Kate Richardson of Bergeron Technical Services appeared before the Board. Shawn Bergeron of Bergeron Technical Services was in attendance. The testimony for the last hearing also applies to this application.

Mr. Colbath asked for Board comment; there was none. 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 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. 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 §190-30.D.(2) of the Town of Conway Zoning Ordinance to allow a boundary line adjustment to a nonconforming lot be granted. Motion carried unanimously.

A public hearing was opened at 7:50 pm to consider a **VARIANCE** requested by **NORTH CONWAY PUBLIC LIBRARY** in regards to §190-19.F.(3) of the Conway Zoning Ordinance **to allow a second wall sign** at 2719 White Mountain Highway, North Conway (PID 218-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 1, 2020.

Mr. Colbath read the application and the applicable section of the ordinance. Christopher Meier of Cooper Cargill Chant appeared before the Board. Ed Bergeron of the North Conway Public Library Building Committee was in attendance. Mr. Meier stated the applicant is looking to have an additional wall sign on Mechanic Street and an additional wall sign on the parking lot side. Mr. Meier stated the North Conway Public Library is not funded by the public it is funded by itself. Mr. Meier stated in addition to the funds, there is an endowment to be continued to be funded into the future.

Mr. Meier stated this is a resource for the community members, and being able to locate the library is important from all aspects. Mr. Meier stated we want to be able to find the library as a community center. Mr. Meier stated they also have a unique lot as you can approach this building from three different directions; Route 16, Mechanic Street, and from the parking lot on the back. Mr. Meier stated it is important to have access and signage, and this is unique as they are located on a corner lot.

Mr. Meier stated the proposed signage is done in a way to be consistent with the Village; to fit in with its surroundings and to be discreet. Mr. Meier stated they are proposing non-lit, black plastic lettering signs.

Mr. Colbath asked for Board comment; Mr. Colbath asked what is the signage on the front of the building. Mr. Meier stated there are two signs [he reviewed a picture of the signs with the Board]. Mr. Steiner stated we've had other similar cases and we wouldn't allow an additional sign on a stone wall. Mr. Steiner stated this puts him in a predicament; not sure there is a building in this town that has three signs. Mr. Steiner stated we have to hear other cases; how do we justify. Mr. Steiner stated he can't vote for this.

Mr. Meier stated the purpose of a variance is to provide relief in unique circumstances; this is a public library that has frontage on the front, side and back and has access from each side. Mr. Bartolomeo stated he could support the sign on Mechanic Street, but he's not sure can get behind the third sign on the back. Mr. Chalmers stated where this is a public building it makes it different from retail or a hotel, public buildings weigh differently. Ms. Sherman asked where is the access on the back by Pine Street. Mr. Meier reviewed plans showing the location of the Pine Street access.

Adopted: August 19, 2020 -As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 15, 2020

Mr. Colbath asked for public comment; Andrea Masters, Executive Director of the North Conway Public Library, stated if you google North Conway Public Library it comes up seven miles away at Settler's Green. Ms. Masters stated if the Board is looking for hardship, it is a very unique situation as it has access from three streets. Ms. Masters stated we really need those signs; our parking lot is on Pine Street and the main entrance is on Pine Street, but people still need to find the building.

Ms. Masters stated we are a public building that is privately funded. Ms. Masters stated we are also changing our name to Pope Memorial Library, which is going to make it harder to find. Ms. Masters stated we are not a business, we just want to be found, and there is a hardship for the people who are trying to find us. Ms. Masters stated we need more of a directional sign; we serve every demographic and every age group in the Mount Washington Valley.

Mr. Colbath stated signage has always been an issue with this Board. Mr. Steiner stated he would be willing to compromise on the back sign. Mr. Chalmers asked about the existing freestanding sign. Mr. Bergeron stated the sign is parallel to Mechanic Street and perpendicular to Route 16. Mr. Bartolomeo stated Mechanic Street is covered by the freestanding sign.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the freestanding sign faces south so the wall sign would be redundant. Ms. Sherman stated the amount of parking on Mechanic Street is limited compared to the rear. **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; Ms. Sherman stated the spirit of the ordinance is to reduce signage. Mr. Colbath stated the spirit of the ordinance is to keep signage down by following specific guidelines. **Motion defeated with Ms. Sherman, Mr. Steiner and Mr. Colbath voting in the negative and Mr. Bartolomeo and Mr. Chalmers voting in the affirmative.**

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 ordinance allows one wall sign; it limits the amount of visual clutter. Mr. Bartolomeo stated the freestanding sign captures Route 16 and Mechanic Street. Mr. Colbath stated in this case having too many signs is an injustice to the Town. **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 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; Mr. Bartolomeo stated having frontage on three streets is unique, but he doesn't see the hardship because of the freestanding sign. Ms. Sherman stated other corner businesses are not allowed two signs. **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; 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 defeated unanimously.**

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. Chalmers stated there is no change of use proposed; it is a library and it is remaining a library and it can still be used as a library without the variance. Mr. Colbath stated there are no special conditions. **Motion defeated unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-19.F.(3) of the Town of Conway Zoning Ordinance to allow a second wall sign be granted. Motion defeated unanimously.

Mr. Colbath explained the rehearing process.

A public hearing was opened at 8:25 pm to consider a **VARIANCE** requested by **NORTH CONWAY PUBLIC LIBRARY** in regards to §190-19.F.(3) of the Conway Zoning Ordinance **to allow a third wall sign** at 2719 White Mountain Highway, North Conway (PID 218-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 1, 2020.

Mr. Colbath read the application and the applicable section of the ordinance. Christopher Meier of Cooper Cargill Chant appeared before the Board. Ed Bergeron of the North Conway Public Library Building Committee was in attendance. The testimony for the last hearing also applies to this application.

Mr. Colbath asked for Board comment; there was none. 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 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.**

Adopted: August 19, 2020 -As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 15, 2020

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. Colbath stated with the parking lot in the rear there is justice to get safely parked and into the library. **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. Chalmers made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary. **Motion carried unanimously.**

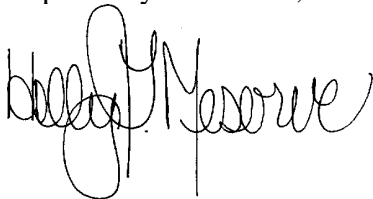
Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-19.F.(3) of the Town of Conway Zoning Ordinance to allow an ~~third~~ additional wall sign be granted. **Motion carried unanimously.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the minutes of May 20, 2020 as written. **Motion carried with Ms. Sherman abstaining from voting.**

Meeting adjourned at 8:42 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant