

ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 17, 2023

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 17, 2023 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; Richard Pierce; Jonathan Hebert; Jac Cuddy; Deputy Town Manager/Town Engineer, Paul DegliAngeli; and Planning Assistant, Holly Whitelaw. Alternates Steven Steiner and Debra Haynes were in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:02 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **REBECCA MULKERN** [FILE #23-13] in regards to §23-4, §23-13, §23-15 & §23-16 of the Conway Building Construction Code, §190-5, §190-20 & §190 – Permitted Use Table of the Conway Zoning Ordinance and §110-2 & §110-2.A., B., & E. of the Conway Site Plan Review Regulations **to appeal the Building Inspector’s issuance of a building permit to Conway Poker Room & Casino, LLC** at 234 White Mountain Highway, Conway (PID 265-147). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. This hearing was continued from March 15, 2023; and April 19, 2023.

Mr. Colbath stated they have received a request from Shawn Bergeron of Bergeron Technical Services to continue this public hearing until December 20, 2023. **Mr. Hebert made a motion, seconded by Mr. Colbath, to continue the public hearing for Rebecca Mulhern until December 20, 2023 at 7:00 pm. Motion carried unanimously.**

A public hearing was opened at 7:03 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **E.C. SHOP, LLC** [FILE #23-18] in regards to §190-23.D. of the Conway Zoning Ordinance **to allow an existing office structure to remain within the 30-foot setback** at 60 Service Road, Center Conway (PID 244-2). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, March 31, 2023. This hearing was continued from April 19, 2023.

Roger Garland appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Garland stated when they surveyed the land they found the trailer was too close to the property line; it was that way when he purchased the property in 2001.

Mr. Colbath asked for Board comment; Mr. Hebert asked what is the structure. Mr. Garland stated it is an office trailer. Mr. Hebert asked if it was on a foundation. Mr. Garland answered in the negative and stated it is sided in on the bottom. Mr. Pierce asked if the wheels are off. Mr. Garland answered in the affirmative.

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Mr. Hebert asked if we asked it to be moved, how much of an expense would it be. Mr. Garland stated probably \$8,000 to \$12,000. Mr. Colbath asked what is the value of the trailer. Mr. Garland answered maybe \$1,000. Mr. Chalmers asked how much is the encroachment. Mr. Garland answered 5-feet. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Cuddy, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** 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. Cuddy, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** 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. Cuddy, in lieu of the findings required by the board under subparagraphs 1. and 2. (above), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.** 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. Cuddy, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Cuddy, due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Mr. Colbath asked for Board comment; Mr. Hebert stated he would be voting no based on the value of \$1,000. **Motion carried with Mr. Hebert voting in the negative.**

Mr. Chalmers made a motion, seconded by Mr. Cuddy, that, based on the forgoing findings of fact, the equitable waiver from §190-23.D. of the Town of Conway Zoning Ordinance to allow the existing office structure to remain within the 30-foot setback be granted. Motion carried unanimously.

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A public hearing was opened at 7:17 pm to consider a **SPECIAL EXCEPTION** requested by **FRANK NOTO AND SUSAN STEFANYK** [FILE #23-20] in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 1955 East Conway Road, Center Conway (PID 255-13). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, May 5, 2023.

Frank Noto appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Noto stated he would like to construct a garage with an apartment above it for a long-term lease for income. Mr. Colbath asked the square footage. Mr. Noto stated the apartment would be 648 square feet. Mr. Colbath asked about parking. Mr. Noto stated there is plenty of parking in front of the garage. Mr. Colbath stated there would be no short-term rentals. Mr. Noto stated that is correct.

Mr. Colbath asked for Board comment; Mr. Hebert asked where on the property would this new structure be located. Mr. Noto stated as soon as you pull into the driveway. Mr. Hebert asked if he has found the property lines. Mr. Noto answered in the negative and stated he will need help with that.

Mr. Colbath asked for public comment; Judy Waugh of 1954 East Conway Road stated her home is directly across the street from the protected wetlands Saco River watershed and the applicant's parcel 13. Ms. Waugh stated in the 1990's her parents along with their neighbors successfully blocked a multiple lot subdivision on parcel 13 by the prior owner. Ms. Waugh stated only one single family home is allowed on parcel 13 to protect the wetlands and Saco River watershed.

Ms. Waugh stated the area around their farmhouse is a wildlife sanctuary. Ms. Waugh stated granting a special exception to construct an additional two-story, three-car garage adjacent to and visible from East Conway Road would not be compatible with the architecture of the homes in our neighborhood. Ms. Waugh stated the applicant's proposed two-story garage with rental unit will create a hardship for the residents of 1930 East Conway Road whose farmhouse sits directly across the street from the proposed accessory dwelling.

Ms. Waugh stated views from this home would change drastically from a mostly woodland view to looking directly at the back of a proposed two-story structure. Ms. Waugh stated this will have a detrimental impact on the property's value. Ms. Waugh stated parking vehicles adjacent to Saco River watershed would have an adverse environmental impact should any vehicle leak fluids.

Ms. Waugh reviewed the septic area and stated it is not feasible for the site to accommodate another one-bedroom dwelling due to the parcels proximity to the wetlands Saco River watershed and the existing single-family homes two-bedroom septic system. Ms. Waugh respectfully requests the Board honor the decision in the 1990's to limit this parcel 13 to one single-family home and deny the applicants request for a special exception.

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Carl Vitters of 1930 East Conway Road stated for 30-years he lived within an area of short-term rentals and he would not at all be in favor of approving a short-term rental here. Mr. Vitters stated he would be reluctant with any type of rental space. Mr. Vitters stated he is opposed to the special exception.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that sufficient parking is located on site.** 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. Hebert, 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. Cuddy, 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. Mr. Colbath explained the rehearing process.

A public hearing was opened at 7:46 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC.** [FILE #23-21] in regards to §190-20.E.(2) of the Conway Zoning Ordinance **to allow the construction of 10 residential buildings exceeding the height limitations** at 94 & 130 River Road, North Conway (PID 215-9 & 11). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, May 5, 2023.

Burr Phillips of Civil Solutions and Chris Meier of Cooper Cargill Chant appeared before the Board. Joe Berry, Ace Tarberry and Sheila Duane of River Run Company were in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Meier stated this project has been going on for quite a while starting it 2019; there were 5 special exceptions granted in 2020 and then they were extended in 2022 until 2024. Mr. Meier stated along the way the zoning ordinance was changed to change the structure and building height in this zone. Mr. Meier stated the owner has reduced the height from what was originally proposed, and we are asking for a variance for 4-feet in excess of the allowable height.

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Mr. Meier stated the tops of the buildings will be 11-feet below the embankment. Mr. Meier stated the purpose of the height restriction drop was for view lines and site lines; this will not be seen even if looking at grade. Mr. Meier stated other unique characteristics of this property is it is one of two projects that have done substantial permitting prior to the change in ordinance height. Mr. Meier stated our project cannot be seen from the rest of the district, and the applicant has made efforts to reduce from the original height.

Mr. Colbath asked for public comment; Robin Rocco stated why do you need an extra four-feet. Mr. Meier stated so we don't have to go out; also, there has been four years of planning these buildings and they have received five special exceptions with this design. Ms. Rocco stated they are actually lower than the original proposal, but four-feet over the height restriction. Mr. Meier agreed. Ms. Rocco stated we are going to have more floods, there is a sump pump in the trailer and it runs all the time. Mr. Rocco stated the water table is very close to the original ground, and he worries about accessibility in extreme weather events. Mr. Colbath asked if the thought the additional four feet in height will adversely affect drainage. Mr. Rocco stated probably not.

Anthony Grenon of FB, LLC stated they started their project in 2020, had delays and we were on top of the zoning changes and changed our design for the zoning change. Mr. Grenon stated there are exceptional ceiling heights and they could be reduced by two-feet by changing the roof pitch. Mr. Grenon stated he thinks it could conform if they were to redesign it.

Mr. Grenon stated our lower level will be looking at the back of their roofs. Mr. Grenon stated he thinks the intent of the project is great, but feels the request for the variance fails the criteria. Mr. Grenon stated the town voters reduced the height; it would go against the public interest. Mr. Grenon stated it is a picturesque view of the river that will be obscured and potentially decrease our properties value. Mr. Grenon stated he doesn't think there is a hardship, they can still do what they want to do and meet the ordinance.

Mr. Meier stated we measured from the slab and the elevation is 482'; our buildings will be 11-feet below, and 3-feet below where their floor is. Mr. Meier stated the statement that they would be blocking their view is inaccurate. Mr. Phillips stated he would argue that their view would get better with the removal of the trees.

Linda Teagan of 120 River Road stated her property is completely surrounded by this project. Ms. Teagan stated the last time she was here was three years ago and at that point she mentioned the depiction of her property was completely wrong. Mr. Phillips stated they revisited her property after that and it has been modified. Ms. Teagan stated she doesn't oppose the project, her focus is to shield her house from light, water and noise and because several of the buildings are on the high side and the buildings are on the embankment they will tower over her property. Ms. Teagan stated she would like her property screened, and supports the height reduction.

Scott Gleason stated he is not sure how they are going to control 2-1/2-feet of water; he does not support of the additional height. Barbara Gleason stated she disagrees with the height variance; it starts here and then the next project gets approved and then we no longer live in this magical valley we are in a city. Ms. Gleason stated the embankment goes up and down it is not going to be consistently even; she disagrees with the height.

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Richard Delaney stated he doesn't have an issue with the development, but he is against the height even if it is below the embankment; he worries about his property value.

Mr. Meier stated it is at least 11-feet below the embankment. Mr. Phillips stated it is correct that the embankment goes up and down, but he doesn't believe they will see any of the rooftops.

Jim McQueen stated we voted on getting the height limit in town and the first two people coming before the Board are asking to be above it. Mr. Grenon asked if they could drop the height of the ceiling. Mr. Phillips stated there is a floor thickness that goes into it.

Mr. Pierce asked if there are complete architectural drawings. Mr. Phillips answered in the affirmative. Mr. Pierce stated you can always rework a drawing. Mr. Pierce stated the 30-feet was put into place by the Town and there are a lot of abutters; we are here to serve them as well. Mr. Meier stated he can understand the abutters concerns, but they will not see the height. Mr. Meier stated this site is unique where it is built into the embankment.

Mr. Meier stated this is significantly depressed from the rest of the district; with the large embankment and being depressed you cannot see the buildings from the rest of the highway commercial district. Mr. Meier stated this is not going to block views even if laying down in the basement.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to continue the public hearing for the River Run Company, LLC until June 21, 2023 at 7:00 pm. Mr. Hebert stated the Board is looking for a topographical plan showing how these units are going to affect the top of the embankment that will affect the neighbors of the abutting properties so we can see where the height line is in relation to it. **Motion carried unanimously.**

OTHER BUSINESS

1675 WMH, LLC [File #23-09]/Conway Board of Selectmen (File #23-22) – Motion for Rehearing (PID 235-85): This is a request in regards to §190-20.F.(3) of the Conway Zoning Ordinance to allow the existing “Welcome to North Conway” mural on Building M to remain at 1699 White Mountain Highway, North Conway (PID 235-85).

Mr. Colbath stated it is the Board of Selectmen's position that all the criteria were not met and therefore would be a technical error.

Mr. Chalmers made a motion, seconded by Mr. Cuddy, to rehear the equitable waiver of dimensional requirement granted on April 19, 2023 for the Welcome to North Conway sign due to a technical error. Motion carried unanimously.

1675 WMH, LLC [File #23-09]/Jonathan Hebert (File #23-23) – Motion for Rehearing/Request to Reconsider (PID 235-85): This is request in regards to §190-20.F.(3) of the Conway Zoning Ordinance to allow the existing “Welcome to North Conway” mural on Building M to remain at 1699 White Mountain Highway, North Conway (PID 235-85). Mr. Hebert withdrew his request.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the Minutes of April 19, 2023 as written. Motion carried unanimously.

WORK SESSION

Mr. Hebert requested the Board have a work session to review new procedures.

Meeting adjourned at 8:59 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant