

ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 25, 2022

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 25, 2022 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; Richard Pierce; Jonathan Hebert; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternate Steven Steiner was in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **STANLEY ANTHONY AND LYNN PARKHURST** [FILE #22-05] in regards to §190-28.B.(1) of the Conway Zoning Ordinance **to allow the construction of a 12-foot addition to the rear of the building within the Wetland and Watershed Protection Overlay District** at 45 Main Street, Conway (PID 276-279). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 8, 2022. This hearing was continued from April 20, 2022; and May 18, 2022.

Mr. Torres stated that the applicant has requested to be continued until the June 15, 2022 meeting. **Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue the hearing for Stanley Anthony and Lynn Parkhurst until June 15, 2022 at 7:00 pm. Motion carried unanimously.**

A public hearing was opened at 7:05 pm to consider a **SPECIAL EXCEPTION** requested by **SMITH FAMILY REVOCABLE TRUST OF 2016** [FILE #22-09] in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow three (3) wetland crossings for a driveway to access a building site** on Green Hill Road, East Conway (PID 223-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Ron Briggs of Briggs Land Surveying appeared before the Board. Ronald and Sheila Smith were in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Briggs reviewed the crossings, and stated that they have received NHDES wetland approval. Mr. Colbath asked for Board comment; Mr. Hebert stated there are two crossings to get to the building site, but asked what is the third crossing for. Mr. Smith answered to access the 12-acres behind the house. Mr. Chalmers asked if the crossings were designed with the least amount of impact on the wetlands. Mr. Briggs answered in the affirmative.

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

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the use is essential to the productive use of land not in the district.** 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 use is so located and constructed as to minimize the detrimental impact upon the wetlands.** 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 here is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** 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 a site plan review approval shall be required prior to construction.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-28.(I)(4) of the Town of Conway Zoning Ordinance to allow three (3) wetland crossings for a driveway to access a building site be granted. Motion carried unanimously.

A public hearing was opened at 7:14 pm to consider a **VARIANCE** requested by **SMITH FAMILY REVOCABLE TRUST OF 2016** [FILE #22-10] in regards to §190-28.B.(1) of the Conway Zoning Ordinance **to allow a structure within 75-feet of a wetland** on Green Hill Road, East Conway (PID 223-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Ron Briggs of Briggs Land Surveying appeared before the Board. Ronald and Sheila Smith were in attendance. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Briggs stated the structure would be outside of the buffer but within the setback. Mr. Briggs stated the structure is a single-story home with an attached garage; they want to keep everything on one floor as this is their retirement home. Mr. Briggs stated a portion of the structure is within 51-feet of the wetland. Mr. Pierce asked if NHDES is ok with this. Mr. Briggs stated they don't have setbacks for structures, only for septic systems. Mr. Hebert asked if the residence could be reduced to meet the setback. Mr. Briggs stated if it were multi-story, but this is their retirement home and they want single-floor living.

Mr. Briggs read the five criteria to grant a variance with reasonings [in file]. Mr. Chalmers asked are the upward soils outside of the wetland. Mr. Briggs answered in the affirmative. Mr. Chalmers asked if they could cross the third crossing and build on the dry land. Mr. Briggs stated this is the first sizable area of dry land; and the construction of the driveway and the electric would cost more.

Mr. Colbath asked for public comment; there was none. After reviewing the plans, it was determined that the area over the third crossing is smaller than the area they are looking to build.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Pierce stated this would be contrary; it is setting an example. Mr. Hebert stated it is unique amongst itself, and we don't set precedent. Mr. Pierce stated it is perceived. **Motion carried with Mr. Hebert, Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce voting in the negative.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Pierce stated he does not see how the ordinance is being observed; it is a direct violation. **Motion carried with Mr. Hebert, Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce voting in the negative.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert, 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. Hebert, 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 the applicants hired a professional to minimize the impact; this is within the setback not in the wetland. Mr. Pierce stated he doesn't see how following the rules is a hardship. **Motion carried with Mr. Hebert, Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce voting in the negative.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Hebert, Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce voting in the negative.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, 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 with Mr. Hebert, Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce voting in the negative.**

Mr. Chalmers made a motion, seconded by Mr. Hebert, that item 5.b. is not necessary for this application. **Motion carried unanimously.**

Mr. Colbath made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the variance from §190-28.B.(1) of the Town of Conway Zoning Ordinance to allow a structure within 75-feet of a wetland be granted. Motion carried with Mr. Hebert, Mr. Chalmers, Mr. Bartolomeo and Mr. Colbath voting in the affirmative and Mr. Pierce voting in the negative.

A public hearing was opened at 7:50 pm to consider a **VARIANCE** requested by **SMITH FAMILY REVOCABLE TRUST OF 2016** [FILE #22-11] in regards to §190-28.B.(2)(a) of the Conway Zoning Ordinance **to allow the construction of a leach field within 100-feet of a wetland soil** on Green Hill Road, East Conway (PID 223-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Ron Briggs of Briggs Land Surveying appeared before the Board. Ronald and Sheila Smith were in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Briggs stated it has been staggered to minimize the impact; it is 96-feet and supposed to be 100-feet.

Mr. Bartolomeo asked how are the soils. Mr. Briggs stated the seasonal high water is at 36-inches, and it is an Adams soil. Mr. Pierce asked if this has received NHDES approval. Mr. Briggs answered in the affirmative. Mr. Colbath asked if there is any other feasible place to put it. Mr. Briggs answered in the negative.

Mr. Colbath asked for public comment; Steven Steiner stated the State has approved a septic design and the Board should approve it too.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert, 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. Hebert, 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. Hebert, 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. Hebert, 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. Hebert, 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. Hebert, 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. Hebert, that item 5.b. is not necessary for this application. Motion carried unanimously.

Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the variance from §190-28.B.(2)(a) of the Town of Conway Zoning Ordinance to allow the construction of a leach field within 100-feet of a wetland soil be granted. Motion carried unanimously.

A public hearing was opened at 7:56 pm to consider a **VARIANCE** requested by **CHRIS AND ANNE DUDUCH** [FILE #22-12] in regards to §190-13.D of the Conway Zoning Ordinance to **allow the construction of a garage 10-feet within the front setback** at 196 Rebecca Lane, Center Conway (PID 259-58). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Chris Duduch appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Duduch explained the slope of the property, and showed pictures of the property to the Board. Mr. Hebert asked if the garage could be moved to the other side and meet the setback. Mr. Duduch stated there is a drainage gully, 15-feet on the edge.

After a brief discussion regarding other options, the applicant requested to continue the hearing so he can review all his options. **Mr. Hebert made a motion, seconded by Mr. Bartolomeo, to continue the public hearing for Chris and Anne Duduch until June 15, 2022 at 7:05 pm. Motion carried unanimously.**

A public hearing was opened at 8:11 pm to consider a **SPECIAL EXCEPTION** requested by **THE RESIDENCES AT SACO RIVER, LLC** [FILE #22-13] in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance to **allow 12 dwelling units per acre [construction of 100 residential dwelling units]** at 1552 White Mountain Highway, North Conway (PID 246-23). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Rob Barsamian, principal at The Residences at Saco River, LLC, appeared before the Board. Mr. Barsamian withdrew the application.

Adopted: June 15, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – MAY 25, 2022

A public hearing was opened at 8:13 pm to consider a **SPECIAL EXCEPTION** requested by **BARNES DEVELOPMENT, LLC** [FILE #22-14] in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance **to allow 12 dwelling units per acre [construction of 32 residential dwelling units]** at 110 Barnes Road, North Conway (PID 235-82). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Rob Barsamian, principal at The Residences at Saco River, LLC, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Barsamian reviewed the project.

Mr. Colbath asked for Board comment; Mr. Colbath asked if Planning Board approval is required. Mr. Torres answered in the affirmative. Mr. Bartolomeo asked if they were attached units. Mr. Barsamian answered in the affirmative. Mr. Bartolomeo asked if the land slopes up to North-South Road. Mr. Barsamian answered in the affirmative. Mr. Colbath asked how many dwellings are in each structure. Mr. Barsamian stated there is at least three, 25% will be rental apartments, the site is serviced by municipal water and sewer, and all units are within 300 to 1,000 square feet.

Mr. Hebert asked about architectural plans as they seem to be conceptual. Mr. Barsamian stated they will stay within the guidelines; this is an example of what we are thinking. Mr. Bartolomeo stated they are asking us to look at a concept. Mr. Colbath asked for public comment; Steven Steiner asked the Board to support this.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that each structure must contain at least three dwelling units.** 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 not less than 25% of all dwelling units shall be designated as full-time rental apartments. At the time of Planning Board approval, the units designated as full-time rental apartments must be shown on the plan with a condition that they are leased for twenty years from the date of Planning Board approval by the developer and a deed restriction shall be recorded in the Registry of Deeds as evidence of the same.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the town should reevaluate the 20-year sunset clause; it should be longer. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that all lots must be serviced by municipal water and sewerage.** 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 Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** 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. Hebert, that architectural design plans must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the zoning regulations.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-20.B.(5)(c) of the Town of Conway Zoning Ordinance to allow up to 12 dwelling units [construction of 32 residential dwelling units] be granted. Motion carried unanimously.

Notice is hereby given that a public hearing will be opened at 8:28 pm on Wednesday, May 18, 2022 at the Conway Town Office in Conway, NH to consider a **REQUEST FOR 2-YEAR EXTENSION PURSUANT TO NH RSA 674:33 IV.(b)** requested by the **RIVER RUN COMPANY, INC.** for **SPECIAL EXCEPTIONS** granted May 20, 2020 under Case No. 20-10 in regard to §190-20.B.(5)(c), Case No. 20-11 in regard to §190-26.B.(1)(d), Case No. 20-12 in regard to §190-26.B.(1)(m), Case No. 20-13 in regard to §190-26.B.(1)(a), and Case No. 20-14 in regard §190-26.B.(1)(f) of the Conway Zoning Ordinance at 94 & 130 River Road, North Conway (PID 215-9 & 11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2022. This hearing was continued from May 18, 2022.

Burr Phillips of Civil Solutions appeared before the Board. Joe Berry, Sheila Duane and Renee Fornier of River Run Company were in attendance. Mr. Phillips reviewed the project. Mr. Colbath asked for Board comment; Mr. Hebert asked if there have been any changes to the regulations. Mr. Phillips answered in the negative. Mr. Colbath asked if the intent is to move forward with the project. Mr. Phillips answered in the affirmative.

Mr. Colbath asked for public comment; Steven Steiner stated he remembers this, and he supports the extension.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to grant a two-year extension for Case No. 20-10, Case No. 20-11, Case No. 20-12, Case No. 20-13 and Case No. 20-14 until May 15, 2024. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of April 20, 2022 as written. Motion carried unanimously.

Meeting adjourned at 8:37 p.m.

Respectfully Submitted,

Holly L. Whitelaw, Planning Assistant