

## ZONING BOARD OF ADJUSTMENT

### MINUTES

MAY 19, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 19, 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; Richard Pierce; Steven Steiner; Planning Director, Thomas Irving; and Planning Assistant, Holly Whitelaw. Alternate, Jonathan Hebert was in attendance.

### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **ANDREW ROBINSON** [FILE #21-13] in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 22 East Side Road, Conway (PID 265-114). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Kate Richardson of Bergeron Technical Services appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Richardson stated most recently the property was occupied by MWV Screen Printing, and has an existing apartment that was a caretaker's unit. Ms. Richardson stated they would like to convert the commercial space to a conforming use of a single-family residence.

Mr. Irving stated they are looking to convert the caretaker's unit to an accessory dwelling unit. Mr. Irving stated this section of the Zoning Ordinance was amended at town meeting, so there is no requirement that either unit be owner occupied.

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 accessory dwelling unit is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; Mr. Colbath asked the size of the accessory dwelling. Ms. Richardson answered 509 square feet. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a 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 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that sufficient parking is located on site.** Mr. Colbath asked for Board comment; Mr. Colbath asked if there is sufficient parking. Ms. Richardson stated the commercial parking lot has more than enough area for four parking spaces. **Motion carried unanimously.**

Mr. Colbath read item 4. **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; Ms. Richardson stated this is understood. **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.**

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A public hearing was opened at 7:10 pm to consider a **VARIANCE** requested by **MIAH AND SHERRY NIELSEN** [FILE #21-14] in regards to §190-13.B. of the Conway Zoning Ordinance to permit **nine (9) dwelling units on a 1.65-acre lot** at 22 Puddin Pond Drive, North Conway (PID 235-81). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Miah Nielsen appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Nielsen stated he purchased the property with an existing foundation and constructed three, two-bedroom units that are on municipal water and a septic system. Mr. Nielsen stated he would like to construct six additional units, but he does not meet the density.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated nine units would require 2.34 acres; looking to increase the density above and beyond what is allowed. Mr. Nielsen stated the lot allows for six units with municipal water and municipal sewer; he’s looking for an additional three units.

Mr. Irving submitted a memo from Jason Gagnon, Superintendent of the North Conway Water Precinct, that indicates that all nine units should be connected to municipal sewer. Mr. Irving asked if the applicant would be connecting all units to municipal sewer. Mr. Nielsen answered in the affirmative.

Mr. Colbath asked if these would be long-term rentals. Mr. Nielsen answered in the affirmative. Mr. Bartolomeo stated he is leery, this creeping increasing density.

Mr. Colbath asked for public comment; Nanci Neenan, who abuts the property, stated Mr. Nielsen is doing a fabulous job, and considering what is around us this is a great use for the property. Ms. Neenan stated she wishes the Board approves this as it would be an asset.

Mr. Chalmers asked how many parking spaces. Mr. Nielsen stated the minimum requirement is 18 and he is proposing 21. Ms. Neenan stated she is the only residential neighbor the rest is commercial property; she thinks this would be a wonderful thing.

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 with Mr. Bartolomeo voting in the negative.**

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 with 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 with Mr. Bartolomeo voting in the negative.**

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 with Mr. Bartolomeo voting in the negative.**

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. Motion carried with Mr. Bartolomeo voting in the negative.**

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

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-13.B. of the Town of Conway Zoning Ordinance to permit nine (9) dwelling units on a 1.65-acre lot be granted with the condition that all nine units are to be connected to municipal sewer. Motion carried with Mr. Bartolomeo voting in the negative.**

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A public hearing was opened at 7:22 pm to consider a **SPECIAL EXCEPTION** requested by **CONTINUUM AT NORTH CONWAY, LLC** [FILE #21-15] in regards to §190-28.I.~~(1)~~ & ~~(5)~~ of the Conway Zoning Ordinance **to allow the construction of a water storage/impoundment with protective riprap** at 948 Eastman Road, North Conway (PID 246-1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

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Shawn Bergeron of Bergeron Technical Services, Bayard Kennett of the Kennett Company and Ian McKinnon of Jones & Beach Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Irving stated §190-28.I.(1) is not necessary; this is for §190-28.I.(5) only.

Mr. Bergeron gave an overview of the project. Mr. Bergeron stated the areas effected with the two water impoundments are buffer impact areas #1 and #3; majority of the run off will be taken care of by the wetland that already exists, but the water impoundment areas address situations like a 50-year storm. Mr. McKinnon stated we don't expect it to be needed except for a 50-year and 100-year storm. Mr. Bergeron stated these are essentially retention ponds where the water will be captured and filtrated into the soil.

Mr. Colbath asked the applicant to review the 404 jurisdictional wetlands. Mr. Bergeron stated the work is not in the wetland it is in the buffer adjacent to the wetland. Mr. Colbath asked are there 404 wetlands. Mr. Bergeron answered in the affirmative and stated the impoundment is out of the wetland, but in the wetland buffer. Mr. Irving stated in order to make no better feasible alternative they have taken it out of the wetland all together.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if this is designed for a 100-year type flood. Mr. McKinnon stated the state alteration of terrain permit requires a design for a 50-year storm, it is his general practice to take a look at a 100-year storm. Mr. McKinnon stated larger ponds are affected by the larger storms more, so he looked to make sure they work in the 100-year storm, but for the permits we only report the 50-year.

Mr. Colbath asked for public comment; Thomas Daly of 928 Eastman Road stated he has no objections, but he is concerned with downstream and/or storm run-off. Mr. Daly stated he is concerned with the discharge; concerned for those who are on their own wells and septic's. Mr. Daly stated hopefully they will be able to maintain that if there are any water level changes.

Mr. Daly stated he has certain multiple use protection on his lot after demolishing the existing buildings, and when he decides to redevelop, he's concerned with any impact if he is not able to connect to municipal water and sewer.

Mr. McKinnon stated in regard to percolation and the effect on wells or septic nearby, the benefit we have is the impoundment shown on D24 and the large wetland area, it is a 20-to-30-acre wetland, collects approximately 120 acres. Mr. McKinnon stated there is a large drop, in some places in excess of 20-feet, from their site down the bank into the Cold Brook so there is a large hydraulic break; the soils there have a natural gradient wetland down to Cold Brook. Mr. McKinnon stated they have designed everything to meet the alteration of terrain permit.

Caroline Brown asked if the ridge being referred to is behind her home. Mr. McKinnon stated the ridge he's referring to is at the water tower. Mr. McKinnon stated between us and Ms. Brown is the brook, which serves as a break. Bayard Kennett stated we as owners have never seen or experienced any flooding east of this wetland, the wetland has captured the water that comes off the hill; it has never flooded beyond its existing boundaries, it is flat and permeable soil.

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Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that there is no 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; Mr. Bartolomeo stated it is not in the wetland. **Motion carried unanimously.**

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that based on the foregoing findings of fact, the special exception pursuant to §190-28.I.(5) of the Town of Conway Zoning Ordinance to allow the construction of a water storage/impoundment with protective riprap be granted with the condition that all required state and federal permits are obtained**  
**Motion carried unanimously.**

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A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **KENNETT COMPANY** [FILE #21-16] in regards to §190-28.I.(1) of the Conway Zoning Ordinance **to allow the placement of protective riprap** on Eastman Road, North Conway (PID 252-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Shawn Bergeron of Bergeron Technical Services, Bayard Kennett of the Kennett Company and Ian McKinnon of Jones & Beach Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bergeron withdrew the application.

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A public hearing was opened at 7:46 pm to consider a **SPECIAL EXCEPTION** requested by **KENNETT COMPANY** [FILE #21-17] in regards to §190-28.I.(5) of the Conway Zoning Ordinance **to allow the construction of a water storage/impoundment** on Eastman Road, North Conway (PID 252-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Shawn Bergeron of Bergeron Technical Services, Bayard Kennett of the Kennett Company and Ian McKinnon of Jones & Beach Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Bergeron referred to buffer area #1 on sheet C3-3; the impoundment area labeled gravel wetland area #2 that is within the buffer, but not within the wetland. Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Mr. Bergeron reviewed the plans with Tom Daly and Caroline Brown.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that there is no 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. Chalmers made a motion, seconded by Mr. Steiner, that based on the foregoing findings of fact, the special exception pursuant to §190-28.I.(5) of the Town of Conway Zoning Ordinance to allow the construction of a water storage/impoundment be granted. Motion carried unanimously.**

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A public hearing was opened at 7:56 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **LP GAS EQUIPMENT, INC./EASTERN PROPANE GAS, INC.** [FILE #21-18] in regards to §190-30.A.(1)(a) of the Conway Zoning Ordinance **to appeal the administrative decision that increasing the volume of distillate storage from 40,000 gallons to 120,000 gallons is not accessory to the existing non-conforming use** at 1534 East Main Street, Center Conway (PID 260-93). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Chris Meier of Cooper Cargill Chant, Dan Lucchetti of HEB Engineers and Bob Lefebvre of Eastern Propane appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Meier stated he has submitted the complete plan set to this Board that was approved by the Planning Board. Mr. Meier stated on sheet 3 there is an existing distillate storage structure to remain and there is a proposed distillate structure expansion. Mr. Meier stated the expansion of building has been approved by the Planning Board; we are looking to expand the distillate storage within that already permitted building.

Mr. Meier stated there is 40,000 gallons on the site currently and we are looking to expand to 120,000 gallons. Mr. Meier stated we applied to Town staff to do that, but Town staff determined that it was not subordinate to the existing use on the property; the existing use on the property is the old distillate storage and sales facility. Mr. Meier stated because of the number of gallons of the expansion it was not considered accessory, so they are before the Board asking the Board that the expansion of distillate storage where there is already distillate storage on the site is an accessory use.

Mr. Irving stated the existing non-conformity is the storage of 40,000 gallons of hazardous materials, adding 80,000 gallons to the existing 40,000 gallons exceeds what could be reasonably considered accessory to the existing non-conforming use, storage; not the buildings, not the parking lot, not the sales, but the volume of hazardous materials being stored. Mr. Irving stated this proposal more than doubles what currently exists, and that is not subordinate to the existing non-conforming use; the rest of the use on the site is completely conforming, it was just the volume of material.

Mr. Meier stated they are before the Board for that one particular piece, the expansion of storage within the already permitted building. Mr. Meier stated the applicant is increasing the storage because their business is growing, and in the normal course of business is to grow; and, they are completely doing away with the Pine Street storage facility. Mr. Meier stated all distillate storage is being removed from that facility.

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Mr. Meier stated this is a better location, it has more acreage and it is on Route 302 where the distillate trucks come in rather than going all the way through Conway and coming up to the Pine Street location they would just be going to this site. Mr. Meier stated they are completely removing any gasoline storage in Conway, so it is a net positive to the Town in getting rid of the Pine Street facility in its entirety. Mr. Meier stated they are completely removing gasoline storage and consolidating on this one lot; it is a net decrease storage between the two facilities.

Mr. Meier stated he agrees with Mr. Irving on how it is interpreted, the ordinance allows for an expansion of an existing non-conforming use, this is storage of a hazardous materials which is the distillate storage; that is a non-conforming use in this zone. Mr. Meier stated an expansion must be accessory to the existing non-conforming use. Mr. Meier read the definition of an accessory use.

Mr. Meier stated they would argue, where there is existing storage, that adding additional gallonage does not make that not subordinate and incidental to that existing use. Mr. Meier stated we have a net benefit to the community in that this storage expansion is consolidated off two sites and is in a better location for this storage. Mr. Meier stated the NH Supreme Court has interpreted expansions of non-conforming use; what they have allowed is the increase of volume of business based upon increase of business and it reflects the natural expansion and growth of trade.

Mr. Meier stated the expansion is entirely within an existing building. Mr. Meier stated they meet the definition under the ordinance and meet the appropriate expansion of a non-conforming use because it is within the same building and is resulted from expansion of their business and trade; we meet the standard of the Supreme Court.

Mr. Colbath asked for Board comment; Mr. Colbath asked if distillate means gas or oil. Mr. Meier stated gasoline would be completely removed. Mr. Lefebvre stated they would store #2 fuel as heating oil, on-road diesel, off-road diesel and kerosene. Mr. Bartolomeo asked if there would be no pressurized gas. Mr. Lefebvre answered in the affirmative. Mr. Bartolomeo asked if there is a containment area. Mr. Lefebvre answered in the affirmative and stated we have to contain 100% of the largest tank; that containment will hold 60,000 gallons of product.

Mr. Bartolomeo stated he sees it as an accessory use to what is already there. Mr. Steiner asked if there are any safety concerns, have there been any major leaks. Mr. Lefebvre answered in the negative and stated the new facility will be state of the art; we will have all electronic valving to conform to new NHDES rules, and we will have full containment and we will have security monitors within the dike. Mr. Lefebvre stated the electronic valve is really our safety net; there is a time limit on the valves, and they will shut off after a certain time if accidentally left open.

Mr. Lefebvre stated we have never had a major spill at any of our facilities and we have 12 facilities. Mr. Steiner asked through the years has there been any water contamination. Mr. Lefebvre answered in the negative. Mr. Colbath stated the building is setup currently for 40,000 gallons, and does it meet the standards. Mr. Lefebvre answered in the affirmative and there will be upgrades to the existing tanks.

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Mr. Pierce asked if we have a vehicle for increasing the non-conformity. Mr. Irving answered in the affirmative and stated that provision was applied here; the existing non-conforming use can be increased in the normal course of business provided that the increase in the non-conformity is accessory, which by definition is subordinate and incidental to.

Mr. Irving stated the non-conformity was the 40,000 gallons of storage, the proposal is 120,000 gallons. Mr. Irving stated he did not find it reasonable that essentially tripling the amount that is there was subordinate to the non-conformity; there is no question that it is subordinate to the overall site, but he was just interpreting the regulation based on the way it was written.

Mr. Colbath asked for public comment; Peter Mongeau, President of the Robinwood Association, stated one of their justifications is that they need more storage, but seems counterintuitive to getting rid of storage in one place to make more in another place; if they need more storage, they need more storage. Mr. Mongeau asked if there is a quick pro quo going on that zoning in one area is more valuable than zoning in another area.

Mr. Mongeau stated there is a lot to be said that this expansion is within approved existing buildings, the buildings don't exist and the storage was not approved; seems to be a back door way to justify this expansion by virtue of having buildings, which as a matter fact were approved without any agreements to permit that storage.

Mr. Mongeau stated Robinwood Association is an HOA with 20-30 families. Mr. Mongeau stated we were mostly second vacation homes, but we now have a number of families mostly living there full-time. Mr. Mongeau stated there is now an agreed to established right-of-way through the driveway known as Robinwood Road. Mr. Mongeau stated that is agreed to in our documents and it is our only way in and out of the neighborhood.

Mr. Mongeau stated storage is just one part of the picture, it is the increase in trucks and traffic that will occur going in the same way that is our only right-of-way; we have children who wait for the bus. Mr. Mongeau stated it sounds like a fiscal benefit to Eastern, that is why they want to do it. Mr. Mongeau stated it will be at a negative cost to us; our property values and our neighborhood values will be affected.

Mr. Mongeau stated right now it is a river front community, it is a very nice area. Mr. Mongeau stated it is not a fancy road, and they are concerned with the truck traffic; there will be tractor trailers as well, not just delivery trucks. Mr. Mongeau stated it is not a big road; it is not actually a road; it is a driveway. Mr. Mongeau stated he thinks the appeal understates the impact to the neighborhood.

Kevin Croce who lives on Stevewood Road stated he does not see how any reasonable person could see that the tripling of the quantity can be subordinate. Mr. Croce stated he doesn't think you can separate the impact of increased traffic to go along with tripling the quantity. Mr. Croce stated he would ask before making a decision that the Board come down to see Robinwood Road; there are plenty of times when two regular cars cannot pass each other.



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Mr. Croce stated there will now be situations where a car is going to be coming to a much larger truck and would actually have to back up; it is just a bad idea and will destroy the neighborhood. Mr. Croce stated getting out of Robinwood Road onto the main road is extremely hazardous and there is a blind spot.

Mary Waldron of 148 Robinwood Road stated the applicant keeps mentioning an existing building, they do not have an existing building; there is a building with four tanks, but they are looking to triple. Ms. Waldron asked if they can triple their capacity with what is there right now. Mr. Lefebvre answered in the negative. Ms. Waldron stated the existing building is not big enough for what they want to put in.

Ms. Waldron stated during the construction she could not get by a dump truck when she was coming out of the road, and their trucks are about the same size as the dump truck. Ms. Waldron stated her main concern is for the children in the neighborhood who are waiting for the bus. Ms. Waldron asked why are they not coming in off of the main street; why are there two outlets onto Robinwood Road. Ms. Waldron suggested that the Board look at their road. Ms. Waldron stated they are going to pave to the railroad tracks, but that is not going to help as it is not going to be any wider.

Ms. Waldron stated she is concerned with her well; if her well is contaminated her property value goes down. Ms. Waldron stated it is looking like an industrial area. Ms. Waldron asked why is Center Conway better than North Conway; because it is economics, it is a matter of dollars and cents. Ms. Waldron stated we are a community; it is a great place to live. Ms. Waldron stated she needs the Town to pay attention to what is going on, it is a dirt road. Ms. Waldron stated she would plead with the Board to come down to look at what we are talking about.

Chet Waldron stated one thing he has observed the 18-wheelers cannot get into the gate because it is locked, his suggestion would be to move the gate in further so they can get off the road and traffic can flow. Mr. Lefebvre agreed to move the gate.

Jon Hebert stated he did drive down there today, looking at the building he could see the four tanks in there, but there were no visible placards for hazardous material from the gate or from up on the road. Mr. Hebert stated he couldn't see how he was going to get 120,000 gallons into that building, it didn't make sense to him; they are building a second building to then expand.

Mr. Hebert stated he agrees with the Town's position on the denial, they have taken 40,000 gallons and going up to 120,000 gallons and building a second building to add more hazardous material; it was logical and he agrees with it.

Joseph Fernald stated he agrees with Ms. Waldron and he wishes the Board would go there to take a look; they are tripling the hazardous materials. Mr. Fernald stated there is a house behind this property and their well is no more than 100-feet. Mr. Fernald stated there are wetlands before the railroad tracks and all that water leaches down through our subdivision into the Saco River. Mr. Fernald stated not only will our wells be contaminated, but so will the river.

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Mr. Fernald stated the access onto our small dirt road is now 50-feet wide, and they have opened that whole area up with the removal of the buffer. Mr. Fernald stated it is going to take value away from our homes as it looks like you're driving through an industrial park now. Mr. Fernald stated in the winter time it is going to be impossible for them to get out; they should access from Route 302 turnaround in their lot and go back out onto Route 302. Mr. Pierce stated it is not subordinate to the non-conformity.

**Mr. Chalmers made a motion, seconded by Mr. Steiner, to grant the appeal of the administrative decision. Motion defeated with Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the negative and Mr. Steiner and Mr. Bartolomeo voting in the affirmative.**

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A public hearing was opened at 8:41 pm to consider a **VARIANCE** requested by **LP GAS EQUIPMENT, INC./EASTERN PROPANE GAS, INC.** [FILE #21-19] in regards to §190-30.A.(1)(a) of the Conway Zoning Ordinance **to increase the distillate storage from 40,000 gallons to 120,000 gallons** at 1534 East Main Street, Center Conway (PID 260-93). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Chris Meier of Cooper Cargill Chant, Dan Lucchetti of HEB Engineers and Bob Lefebvre of Eastern Propane appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Irving stated we have made changes to our zoning ordinance to disallow service stations within the Village Commercial Districts; one reason for that is the North Conway Water Precinct aquifer is all in that area where the current facility that they want to decommission is located and move it to this area. Mr. Irving stated that would take all of that threat to the North Conway Water Precinct and the Saco aquifer away. Mr. Irving stated from a planning perspective relocating it is a good idea.

Mr. Meier stated this is the same project, the request is the same; looking to add 80,000 gallons to the existing 40,000 gallons entirely within the approved building. Mr. Meier stated he recognizes the comments of the abutters; this was done second, but we have to come to this Board either before or after the Planning Board. Mr. Meier stated the proposed expansion was always part of the plan.

Mr. Meier stated this is a natural expansion of their business and a consolidation of storage on the property. Mr. Meier stated the general reason for a variance is to comply with the spirit of the ordinance; that is exactly what we are doing here. Mr. Meier stated we are reducing the overall non-conformity in the Town, and removing the storage out of the aquifer. Mr. Meier stated we are moving toward general conformity.

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Mr. Meier stated this does consolidate storage in one place rather than the other, but it consolidates it and it reduces overall traffic to the Town of Conway and does not exponentially increase traffic to Robinwood. Mr. Meier stated as a benefit to the neighborhood as part of this overall development Eastern has, as a good neighbor, agreed to widen the road, pave the road, and they will be the ones maintaining that portion of the road.

Mr. Meier stated Eastern has granted as a secondary means of egress a route through their property if there was a problem on that road. Mr. Meier stated it is a net positive to the Town, and it gives some benefits to the Robinwood Road.

Mr. Colbath asked for Board comment; Mr. Pierce asked if this is the only access. Mr. Lucchetti reviewed the driveways. Mr. Pierce asked if all traffic is going to be on Robinwood. Mr. Lefebvre stated all commercial traffic will be on Robinwood. Mr. Bartolomeo stated it is great for a business to expand, heating oil is an essential commodity.

Mr. Colbath asked for public comment; Mary Waldron asked for a reconfiguration of the driveways. Mr. Lucchetti stated there are two driveways for the property, one on Route 302 and the second being Robinwood; NHDOT would not permit another driveway onto Route 302.

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 with Mr. Pierce 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 with Mr. Pierce voting in the negative.**

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; Mr. Steiner stated as a realtor property values are gauged on what is going on right now; adding an additional 80,000 gallons of distillate storage is not going to affect property values. **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 with Mr. Pierce voting in the negative.**

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. Motion carried with Mr. Pierce voting in the negative.**

Mr. Colbath read item 5.b. **Mr. Chalmer made a motion, seconded by Mr. Steiner, that item 5.b is not applicable. 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.A.(1)(a) of the Town of Conway Zoning Ordinance to increase the distillate storage from 40,000 gallons to 120,000 gallons be granted. Motion carried with Mr. Pierce voting in the negative.**

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A public hearing was opened at 9:04 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC [FILE #21-21]** in regards to §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to allow a 50 square foot freestanding sign 10-feet from a platted right-of-way** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Keith Wehmeyer of OVP Management appeared before the Board. Mr. Pierce stepped down at this time. Mr. Colbath appointed Mr. Hebert as a voting member. Mr. Colbath read the application and the applicable section of the ordinance. After a lengthy discussion, Mr. Wehmeyer withdrew the application.

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A public hearing was opened at 9:04 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC [FILE #21-20]** in regards to §190-20.F.(2)(a) of the Conway Zoning Ordinance **to allow a 50 square foot freestanding sign** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2021.

Keith Wehmeyer of OVP Management appeared before the Board. Mr. Wehmeyer withdrew the application.

**MOTION FOR REHEARING**

A public meeting was opened 10:00 pm to consider a **MOTION FOR REHEARING** requested by **DAVID WALKER REGARDING STEVEN B. AND ANITA S. CHENEY REVOCABLE TRUSTS** in regard to §190 – Permitted Use Table of the Conway Zoning Ordinance **to allow the construction of a multi-unit storage building** at 77 Old West Side Road, North Conway (PID 216-13). Mr. Pierce rejoined the Board at this time. Mr. Hebert was no longer a voting member. Steven Cheney was in attendance.

**Adopted: June 16, 2021 – As Written**

**CONWAY ZONING BOARD OF ADJUSTMENT – MAY 19, 2021**

Mr. Bartolomeo stated there were items in the variance worksheet that did not carry and yet the variance was granted anyway. Mr. Colbath asked if that is a technical error in itself. Mr. Bartolomeo stated no one is accusing us of it. Mr. Chalmers stated the request does not bring up a technical error. Mr. Irving stated there is nothing to preclude the Board itself to reconsider the vote. After a brief discussion, no one on the prevailing side made a motion to appeal.

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. Steiner, to grant the Motion for Rehearing requested by David Walker. Motion defeated with Mr. Steiner, Mr. Chalmers and Mr. Bartolomeo voting in the negative and Mr. Pierce and Mr. Colbath voting in the affirmative.**

#### **MOTION FOR REHEARING**

A public meeting was opened 10:10 pm to consider a **MOTION FOR REHEARING** requested by **JUDITH DUPLISEA REGARDING STEVEN B. AND ANITA S. CHENEY REVOCABLE TRUSTS** in regard to §190 – Permitted Use Table of the Conway Zoning Ordinance **to allow the construction of a multi-unit storage building** at 77 Old West Side Road, North Conway (PID 216-13). Steven Cheney was in attendance.

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. Steiner, to grant the Motion for Rehearing requested by Judith Duplisea. Motion defeated with Mr. Steiner, Mr. Chalmers and Mr. Bartolomeo voting in the negative and Mr. Pierce and Mr. Colbath voting in the affirmative.**

#### **REVIEW AND ACCEPTION OF MINUTES**

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the Minutes of April 21, 2021 as written. Motion carried unanimously.**  
Meeting adjourned at 10:30 p.m.

Respectfully Submitted,

Holly L. Whitelaw  
Planning Assistant