

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 20, 2022

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 20, 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; Jonathan Hebert; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternates Steven Steiner and Jac Cuddy was in attendance. David Pandora, Building Inspector, was in attendance.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath appointed Mr. Steiner as a voting member. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of June 15, 2022 as written. Motion carried unanimously.**

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **JULIE BARKALOW/GAYLE LOCKE/DONALD LAFONTAINE/BRIAN LAFONTAINE** [FILE #22-15] in regards to §190-13.K(13) of the Conway Zoning Ordinance **to allow a mobile home as a residence of an immediate family member** at 1171 Eaton Road, Conway (PID 288-29). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 3, 2022. This hearing was continued from June 15, 2022.

There was no one in attendance to represent the application. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to continue the public hearing for Julie Barkalow/Gayle Locke/Donald LaFontaine/Brian LaFontaine until August 17, 2022 at 7:00 pm. Motion carried unanimously.**

A public hearing was opened at 7:05 pm to consider a **VARIANCE** requested by **STATE OF NEW HAMPSHIRE/DOUG MULLEN** [FILE #22-19] in regards to §190-30.B.(2) of the Conway Zoning Ordinance **to allow an upward vertical expansion of two existing structures within the floodplain conservation overlay district** at 137 Skimobile Road, North Conway (PID 219-107). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 3, 2022. This hearing was continued from June 15, 2022.

Mr. Steiner stepped down at this time. Mr. Colbath appointed Mr. Cuddy as a voting member. Ed Alkalay and Doug Mullen appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Adopted: August 17, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 20, 2022

Mr. Alkalay stated there are two grandfathered structures located in the Floodplain Conservation Overlay District, and they are looking to raise the structures above the base flood elevation levels. Mr. Alkalay reviewed photos of the existing structures. Mr. Alkalay referred to a letter from Dan Lucchetti dated May 24, 2022 [in file]. Mr. Alkalay stated they are seeking to raise these structures two-feet. Mr. Alkalay stated the structures will need to be taken down and reconstructed.

Mr. Alkalay stated this is not against public interest, it is removing a property from an area that is particularly dangerous due to possible flooding. Mr. Alkalay stated the spirit of the ordinance will be observed, as the grandfathered footprint is not being expanded; it is simply being lifted two-feet to get it out of possible flood damage, substantial justice will be done by protecting local property and any people living on the property, the values of the surrounding areas will not be adversely impacted in any way; and may increase the values, and the literal enforcement of the ordinance would result in unnecessary hardship.

Mr. Alkalay stated the special conditions of this property that distinguish it from others in that area are that it is an undersized lot, it is an awkward shape lot, and it is virtually all in wetlands and entirely within the floodplain. Mr. Alkalay stated unlike the abutting properties in the area, those properties are on a higher level.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if the foundation is being raised two-feet higher or the floor two-feet higher. Mr. Mullen answered top of finished floor. Mr. Chalmers asked if these buildings predated zoning. Mr. Pandora answered in the affirmative. Mr. Pandora stated significant improvements require them to come out of the floodplain; a building permit could not be issued if they remained within the floodplain. Mr. Chalmers asked if they were entirely within the floodplain. Mr. Mullen answered in the affirmative.

Mr. Chalmers stated he is having trouble with §190-26.D.(2)(d) and (e). Mr. Colbath stated they are existing, and grandfathered. Mr. Pandora stated we can't take rights away from them, but if they do any improvements, they have to meet all current codes.

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

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; there was none. **Motion carried unanimously.**

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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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; there was none. **Motion carried unanimously.**

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. Bartolomeo, 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. Bartolomeo, that item 5.b. is not necessary for this application. Motion carried unanimously.

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the letter from HEB Engineers indicates that there will be a decrease to the threat. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 7 is not applicable. Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance is necessary, considering the flood hazard, to afford relief.** 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 variance from §190-30.B.(2) of the Town of Conway Zoning Ordinance to allow an upward vertical expansion of two existing structures within the floodplain conservation overlay district be granted. Motion carried unanimously.

A public hearing was opened at 7:21 pm to consider a **VARIANCE** requested by **STATE OF NEW HAMPSHIRE/DOUG MULLEN** [FILE #22-20] in regards to §190-30.B(2) of the Conway Zoning Ordinance **to allow the vertical increase of the 3D footprint of the two structures to permit a garage and two floors above the garage on each structure within the floodplain conservation overlay district** at 137 Skimobile Road, North Conway (PID 219-107).

Adopted: August 17, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 20, 2022

Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 3, 2022. This hearing was continued from June 15, 2022.

Ed Alkalay and Doug Mullen appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Alkalay stated these are two grandfathered structures within the Floodplain Conservation Overlay District. Mr. Alkalay stated they are seeking to decrease the 2D footprint of the structures on the ground and to increase the 3D footprint of the structures vertically. Mr. Alkalay stated the existing structures will be torn down and they will be rebuilding them; in rebuilding they will have a smaller footprint on the ground.

Mr. Alkalay stated he submitted a site sketch at the request of the Board [in file]. Mr. Alkalay reviewed the plans with the Board. Mr. Alkalay stated the existing structures are 20-feet x 88-feet, and they are proposing to move each structure in by 10-feet on each side; that is a total of 800 square feet being removed on the ground. Mr. Alkalay stated both structures will be moved 10-feet away from the road, they will be moved away from Kearsarge Brook and there will be 800 square feet reclaimed to the ground and to the wetlands.

Mr. Alkalay stated there are significant improvements. Mr. Bartolomeo asked if there would be four units' total. Mr. Alkalay answered in the affirmative. Mr. Bartolomeo asked about parking spaces. Mr. Mullen stated with the reduction of the building there is more room for parking. Mr. Alkalay stated they also submitted a Foundation Report and a Wetland Delineation Report [in file].

Mr. Alkalay stated it is not contrary to public interest; it is making more space on the ground, less disturbance of the wetlands and a safer space for parking and emergency vehicles, the spirit of the ordinance is observed; it is creating more space on the ground for the wetlands and having less impact on the stream, less impact on the wetlands and less impact from a safety perspective, substantial justice would be done by lessening the impact of the structures on the environment, creating safer structures and creating more room for parking, the values of surrounding properties will not diminished and will likely slightly increase the value of surrounding properties, and literal enforcement of the ordinance would not result in unnecessary hardship; the public purpose of the ordinance is to promote compliance with the ordinance, and the grandfathered structures as they are currently situated are damaging in numerous ways to the ordinance and to the spirit of the ordinance itself.

Mr. Alkalay stated it is damaging environmentally, it is damaging from a safety perspective, it is damaging from a possible emergency vehicle perspective; it would be an unnecessary hardship to leave the grandfathered structures or to even rebuild on the same footprint of the existing structures because it would defeat the purpose of the ordinance. Mr. Alkalay stated the structures as they currently stand are within the setbacks and only feet away from Kearsarge Brook, and there have been problems with vandalism.

Mr. Colbath stated this is moving in a direction that is less non-conforming. Mr. Colbath stated with the bike path that is being constructed he believes there needs to be a sidewalk on Skimobile Road; he would hope with the space being created at the front of the property that there will be enough room for a sidewalk. Mr. Mullens stated he is open to that.

Adopted: August 17, 2022 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 20, 2022

Mr. Colbath asked how many bedrooms. Mr. Mullen answered three. Mr. Colbath stated the hardship is the wetlands, and this is making it better and improving in the neighborhood.

Mr. Colbath asked for public comment; Kevin Killourie stated he developed Timber Point just up the road from this site, and he has received a lot of compliments. Mr. Killourie stated Mr. Mullen is doing something similar, and he fully supports what he is doing.

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; there was none. **Motion carried unanimously.**

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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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; Mr. Colbath stated surrounding property values would probably be enhanced. **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; there was none. **Motion carried unanimously.**

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. Bartolomeo, 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. Bartolomeo, that item 5.b. is not necessary for this application. **Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 7 is not applicable. Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance is necessary, considering the flood hazard, to afford relief.** 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 variance from §190-30.B.(2) of the Town of Conway Zoning Ordinance to allow the vertical increase of the 3D footprint of the two structures to permit a garage and two floors above the garage on each structure within the floodplain conservation overlay district be granted. Motion carried unanimously.

Mr. Steiner left at this time.

A public hearing was opened at 7:51 pm to consider a **SPECIAL EXCEPTION** requested by **GARG COMPLEX, LLC** [FILE #22-21] in regards to §190-18.B(5)(c) of the Conway Zoning Ordinance **to allow 12 dwelling units per acre [construction of 24 residential dwelling units]** at 15 Washington Street, Conway (PID 265-144). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 8, 2022.

Don Bouchard of Horizons Engineering appeared before the Board. Prince and Neha Garg were in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bouchard stated this is a 2.5-acre site that is proposed to have 24-residential dwelling units, one caretaker’s unit for the manager and one unit for the Echo Group.

Mr. Bouchard stated the applicant has provided the language to be used for recording for the deed restriction, the lot is serviced by municipal water and sewer, and the rental units will be 709 square feet. Mr. Bouchard stated the basement will be used for laundry and storage. Mr. Colbath asked what is the purpose of the other units. Mr. Garg answered they would all be long-term rentals, and there would be a year lease on all of them. There was no public in attendance.

Mr. Colbath read item 1. **Mr. Hebert made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo, 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; there was none. **Motion carried unanimously.**

Adopted: August 17, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 20, 2022

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo, 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. Bartolomeo, 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 §190-18.B.(5)(c) of the Town of Conway Zoning Ordinance to allow up to 12 dwelling units per acre [construction of 24 residential dwelling units] be granted. Motion carried unanimously.

Meeting adjourned at 8:18 p.m.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant