

ZONING BOARD OF ADJUSTMENT

MINUTES

JUNE 18, 2014

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 18, 2014 at the Conway Town Office in Center Conway, NH, beginning at 7:05 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hylen; Luigi Bartolomeo; Alternate, Martha Tobin; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Peter Malia, Town Attorney, was in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:05 pm in accordance with the Court Order issued March 14, 2014 by Justice Stephen M. Houran on Wednesday June, 18, 2014 at the Conway Town Office in Center Conway, NH to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **DEBORAH DUGGAN** in regards to §147.14 of the Conway Zoning Ordinance to request that the ZBA find that the existing structures are legally existing non-conformities at 361 Transvale Road, Conway (PID 251-51). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 6, 2014.

The Board was given a letter from Derek Durbin of Durbin Law Offices dated June 17, 2014 requesting a continuance. Mr. Malia stated that he would suggest the Board continue the hearing and read page 7 of the court order regarding Mr. Stone. Mr. Malia stated primarily the Judge wanted the Board to take a closer look at what Mr. Stone said and he should be in attendance. **Mr. Colbath made a motion, seconded by Mr. Hylen, to continue the hearing for Deborah Duggan until July 16, 2014 at 7:05 pm. Motion unanimously carried.**

A public hearing was opened at 7:18 pm to consider a **VARIANCE** requested by **ELAINE STOCKBRIDGE** in regards to §147.13.1.4 of the Conway Zoning Ordinance **to allow a carport within the front setback** at 158 Dandiview Road, North Conway (PID 247-70). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 6, 2014.

Elaine Stockbridge appeared before the Board. Mr. Irving stated the building inspector reviewed a building permit and then reviewed the Dandiview Road right-of-way which is 60-feet in this area; the carport would be encroaching by 14' 3" within the front setback. The Board reviewed photos of the home on Ms. Stockbridge's IPAD [photos are in the file]. Ms. Stockbridge stated that it would bring the value of her home up and would bring up the values of the other homes in the area. Ms. Sherman asked if it had to be 28-feet long. Ms. Stockbridge stated that it would include the entrance into the home.

Adopted: July 16, 2014 - As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 18, 2014

Mr. Bartolomeo asked if this was any different from the other properties on the street. Mr. Irving stated that the other homes on the same side are aligned with each other. Ms. Stockbridge stated that she spoke to all of her abutters before she went through this process and they didn't have an issue. Mr. Hylen asked if this property is any different than any other of the properties on the street. Ms. Sherman stated it is 100' x 100'; they are all small lots. Ms. Sherman stated with the setbacks it limits the building area. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated it is exactly due to the setbacks and the fact that all of the houses line up that gives it cohesiveness. Ms. Sherman stated this much encroachment is beyond what would really keep the neighborhood looking the same. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Hylen and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it is not observed. Ms. Sherman stated the setbacks are there to observe the distance from the side, front and back of the property. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Mr. Hylen and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated the whole neighborhood would be detrimentally impacted. **Motion carried with Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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.** Ms. Sherman asked for Board comment; Mr. Hylen stated the purpose of the provision is to make the structure not too close to the road. Mr. Hylen stated the question is why it needs to be so close to the street; is there something that distinguishes this property from the other properties. Mr. Hylen stated many of the lots are bigger than hers; it is smaller than most of her neighbors and some have a garage.

Mr. Hylen stated, however, the lots in line with her are the same size and the ones behind her are bigger. Mr. Hylen stated he is struggling with does it distinguish it from other properties in the area as it could not build like the rest of the neighbors. Mr. Bartolomeo stated it is a fair argument, but knew it was a small lot when she bought it. Ms. Sherman stated there are other lots of similar size. Mr. Chalmers stated a lot of the lots at the beginning of the development do

not have garages. Mr. Chalmers asked is it a hardship to not be able to have a carport or garage. Mr. Chalmers stated when the LGC was here they stated that it does not necessarily create a hardship. Ms. Stockbridge stated there is some hardship as she is preparing to be an older person. Ms. Sherman stated that the Board has a very specific structure that we have to follow by the Courts; it is a hardship for you personally, but not necessarily a hardship to grant a variance. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Mr. Hylen and Ms. Sherman and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Mr. Hylen and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Hylen, that if the criteria is subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the property is being used as a single-family home. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Mr. Hylen and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow a carport within the front setback be granted. Motion unanimously defeated.

A public hearing was opened at 7:50 pm to consider a **VARIANCE** requested by **ROCKHOUSE MOUNTAIN PROPERTY OWNER'S ASSOCIATION** in regards to §147.13.1.4 of the Conway Zoning Ordinance **to allow the construction of a water storage and pumping/treatment building within the southern side setback** at Highlands Drive and Modock Hill Road, Conway (PID 299-103). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 6, 2014.

Ron Briggs of Briggs Land Surveying appeared before the Board. David Weyandt of the Rockhouse Mountain Association was in attendance. Mr. Briggs stated the situation is there is a water shortage in the Rockhouse Mountain development. Mr. Briggs stated that they have established a new well for additional water supply, but there needs to be pipe lines installed to bring water into a lift station, which is this 400 square foot building. Mr. Briggs stated every effort has been made to minimize the footprint of the building and there will be two floors for pumping and treatment; there is just enough room for everything to work.

Adopted: July 16, 2014 - As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 18, 2014

Mr. Briggs stated that this lot was reserved as a utility lot under the original subdivision in 1971. Mr. Briggs stated that it meets the road setbacks, but not the side setbacks. Mr. Briggs stated both abutting lots are lots that have the water shortage problem.

Mr. Briggs stated there are plans to correct a road drainage issues on Highland Drive to control the water runoff that has been a problem in the past. Mr. Briggs stated that this work will be done the same time as the pipeline. Mr. Bartolomeo asked if there is a structure on the lot now. Mr. Briggs answered in the affirmative and stated it is an existing pump house and almost entirely within the setback. Mr. Bartolomeo asked if a variance was needed when constructed. Mr. Briggs answered in the negative and stated that it was constructed in 1971.

Mr. Irving asked how many floors are above grade. Mr. Briggs answered both. Mr. Irving submitted an email to the Board from an abutter Tom White. Mr. Briggs stated to bury the tanks a larger builder would be required and there would be more encroachment.

Ms. Sherman stated there have been considerable drainage issues. Mr. Briggs stated plans have been drawn by a civil engineer and there are plans for a stone lined ditch which would address the drainage problems. Ms. Sherman asked if it has been approved by the Town Engineer, Paul DegliAngeli. Mr. Irving stated not yet, but if you approve the variance this could be a condition.

Mr. Bartolomeo asked if the tanks would be in the basement. Mr. Briggs answered in the affirmative. Mr. Bartolomeo asked if the first level would have the water purification system. Mr. Briggs stated that the second floor may house the treatment system. Mr. Briggs stated that there has been discussion to make the building look like a house. Mr. Irving asked if there is a drawing of the proposed structure. Mr. Briggs answered in the negative.

Mr. Bartolomeo asked how many homes would benefit from this new structure. Mr. Briggs answered over 100 lots. Mr. Weyandt stated there are 103 services. Mr. Bartolomeo asked how many houses could benefit from this. Mr. Weyandt answered 135 total lots; however, they are restricted to five more homes on this system as it is. Mr. Briggs stated the abutters are concerned with property values, but if the project is not completed the property values will diminish. Mr. Briggs stated if you look at the public good versus the interest of one property owner, the property owner will be better off if it is completed.

Mr. Bartolomeo stated this lot is dedicated as a utility lot, but can it go anywhere else. Mr. Briggs answered in the negative and stated it is proposed to be four feet from the property line, but there is a 10-foot utility easement. Mr. Bartolomeo asked if it is four feet from the utility easement. Mr. Briggs answered in the affirmative.

Chris Fournier stated that he shares the same questions that the other abutter has. Mr. Fournier stated that the height of the building concerns him. Mr. Fournier stated that his understanding of the 10-foot buffer is for a vegetated buffer and not for utilities. Mr. Weyandt stated that it includes utilities. Mr. Weyandt stated that they don't want to diminish property values either that is why they are proposing to make it look like a house and not a utility structure. Mr. Weyandt stated that it is more appealing than a bunker; and he owns property there too so he has a vested interest.

Adopted: July 16, 2014 - As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 18, 2014

Ms. Sherman asked if there is any possibility of creating a 20' x 40' single-story building to accommodate the same things, which would alleviate some of the height problems that the two neighbors have. Mr. Bartolomeo stated that might require a variance from another setback. Mr. Briggs stated there are other obstacles he is not sure can be overcome; the lot slopes down toward Modock Hill Road. Ms. Sherman stated that she would like to see it be a single-story building.

Mr. Colbath asked if the lot could be used at all without a variance; or if the existing building could be used. Mr. Briggs answered in the negative and stated that it will be used to distribute the water coming down from Rockhouse Mountain. Mr. Briggs stated that the new well in Madison will be pumped to this building and then pumped to the top for additional treatment. Mr. Colbath asked how big the well lot is and could the treatment portion be housed there. Mr. Weyandt stated that they only have an easement for well not for the treatment. Mr. Briggs stated that this is the site the engineer determined that the water distribution should take place.

Mr. Bartolomeo asked how loud the pumps are. Mr. Weyandt stated you will never hear them. Mr. Irving asked if there would be a backup generator. Mr. Weyandt answered in the affirmative and stated that it would be gasoline. Ms. Sherman stated they are noisy. Mr. Weyandt stated it would only run in an emergency.

Ms. Sherman asked Mr. Fournier if it would be more acceptable as a one-story building. Mr. Fournier answered in the affirmative. Mr. Fournier stated there is a vacant lot on the corner of Brenner Drive and Highlands Drive; could this building go on that lot. Mr. Briggs stated there is existing infrastructure on this lot and all of the pipes come together here. Mr. Briggs stated to move to a different lot would require moving a lot of infrastructure. Mr. Bartolomeo stated that this lot is a dedicated utility lot and this is exactly where it needs to go.

Mr. Irving asked if this site is operating today. Mr. Weyandt answered in the negative. Mr. Irving asked if this site would be receiving water from the standpipe, then treating it and then distributing; or would it be treating the water and then sending it to the standpipe. Mr. Weyandt stated that it would be treated at the site that is not operational today, and then brings it to the top of the mountain. Ms. Sherman asked where the water is being treated now. Mr. Weyandt stated that the existing water is not being treated.

Mr. Irving asked given the investment to get water from the Madison pump, then to the treatment site, then up to the standpipe and then distribute it, have you looked into the water precinct and the other existing infrastructure that is not currently being utilized. Mr. Irving stated the concern being if this is granted you may find your plugging into a system that is obsolete. Mr. Briggs stated that they worked with Novice Engineers and the State of New Hampshire for three years; they are deficient in capacity and are using an emergency fill station. Mr. Briggs stated that the existing wells are part of the system now; there are high uranium levels so water is being pumped up to lower the levels.

Mr. Irving stated that he understands the applicant is under a time crunch, but this has been going on, with the State being involved, since 2010; the Board should not be pressured to make a decision and should make it when you're ready. Mr. Bartolomeo stated that there could be a compromise; redesign the building to be a one story building. Mr. Bartolomeo stated that he understands there is

Adopted: July 16, 2014 - As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 18, 2014

some urgency and things need to happen, but the height of the building has been raised as an issue. Mr. Colbath stated there is concern regarding the 4.1 feet from the property line.

Ms. Sherman stated that the height is definitely a concern and think the hearing should be continued until there are additional proposals for the structure. Mr. Chalmers stated they are not exceeding the height restriction. Mr. Briggs stated Mr. Fournier's lot is higher than the utility lot; they would be looking over the building. Mr. Fournier stated he would prefer to see a one-story building. Mr. Weyandt stated that Mr. Fournier's house faces Highlands Drive.

After a brief recess, Mr. Briggs suggested a 20' x 20' single-story building with a 6:12 roof pitch. Mr. Colbath asked Mr. Fournier if he was ok with this change. Mr. Fournier stated he would have liked to have seen a plan prior to this meeting tonight; he had questions about sound, but that was addressed. Mr. Colbath asked if Mr. Fournier had a desire to have portable water on his property. Mr. Fournier answered in the affirmative.

Mr. Irving asked if it is one story how tall is the first story. Mr. Briggs answered it would be 8-foot walls. Mr. Bartolomeo stated 16-feet from the top of the concrete.

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

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Ms. Sherman stated the only thing to go on is an email from an abutter, Tom White and his concern with his purchase price versus the appraisal price and about his value going down. Mr. Colbath stated that they will have a better water system. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Hylen, that item #5.b was not necessary. Motion unanimously carried.**

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the construction of a water storage and pumping/treatment building within the southern side setback be granted subject to the overall height of the building measured from the first floor is not to exceed 16-feet and precedent to final approval submit a design to remedy the existing drainage situation and approved by the Town Engineer; establish completion date for the proposed remedies; and provide the Town with sufficient surety to guarantee that said improvements will be made by the proposed completion date. Motion unanimously carried.

A public hearing was opened at 9:02 pm to consider a **VARIANCE** requested by **ROCKHOUSE MOUNTAIN PROPERTY OWNER'S ASSOCIATION** in regards to §147.13.1.4 of the Conway Zoning Ordinance **to allow the construction of a water storage and pumping/treatment building within the eastern side setback** at Highlands Drive and Modock Hill Road, Conway (PID 299-103). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 6, 2014.

Ron Briggs of Briggs Land Surveying appeared before the Board. David Weyandt of the Rockhouse Mountain Association was in attendance. The Board agreed that the discussion from the above application would apply to this application.

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

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that item #5.b is not necessary.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

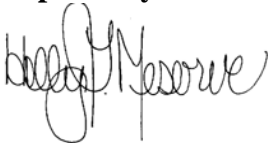
Mr. Bartolomeo made a motion, seconded by Mr. Colbath, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the construction of a water storage and pumping/treatment building within the eastern side setback be granted subject to the overall height of the building measured from the first floor is not to exceed 16-feet and precedent to final approval submit a design to remedy the existing drainage situation and approved by the Town Engineer; establish completion date for the proposed remedies; and provide the Town with sufficient surety to guarantee that said improvements will be made by the proposed completion date. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Hylen, to approve the Minutes of April 16, 2014 as written. Motion unanimously carried.

Meeting adjourned at 9:08 pm.

Respectfully Submitted,



**Holly L. Meserve
Recording Secretary**