

ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 15, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 15, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:34 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Alternate, Cynthia Briggs; Alternate, Jeana DeWitt; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Briggs as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:34 pm to consider a **VARIANCE** requested by **MICHAEL C. KENT** in regard to §147.13.1.2.3 of the Conway Zoning Ordinance **to allow a two-lot subdivision with one lot to be 0.97 of an acre and one lot to be 0.98 of an acre** at 2460 West Side Road, (PID 231-97). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 3, 2010.

Ron Briggs of Briggs Land Surveying appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Briggs reviewed his memo dated August 24, 2010.

Ms. Sherman asked if the subdivision would leave one residential lot and one commercial lot. Mr. Briggs answered in the affirmative. Ms. Sherman asked about the commercial use. Mr. Briggs stated that it is a grandfathered use and the Board granted an Appeal from Administrative Decision regarding the use. Mr. Chalmers asked if the business was operated by the residence of the house. Mr. Briggs answered in the affirmative.

Mr. Briggs stated that the property goes to the center line of the road and the Town has an easement to cross. Mr. Colbath asked if the easement area is not counted in the land calculation. Mr. Briggs answered in the negative and stated it is not typically counted. Mr. Colbath asked if abutters have been approached to see if any land is available to purchase. Mr. Briggs stated that they spoke with the abutters to the North and the West and that is not an option. Mr. Briggs stated that they have not contacted the person on the south side to see if that would be an option.

Mr. Chalmers asked if there were two separate septic systems. Mr. Briggs answered in the affirmative and stated that the garage septic system was installed after permitting was required, but it was not permitted. Mr. Briggs stated they will be submitting a new septic design. Mr. Chalmers stated there is no water to the garage, but there is a septic. Mr. Briggs stated that the water was removed due to non payment, but they will be able to be reconnected.

Ms. Sherman asked for public comment; Clifford Haley, abutter to the north, stated that it might be interesting to the Board to know that the owner has pushed a pile of debris onto his father's land and by requesting a variance they have shown they don't have enough land to do what they want. Mr. Haley stated that this will create more problems.

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Gary Haley, son of Elmer Haley, stated that his father would be willing to sell all of his land to Mr. Kent. Mr. Gary Haley stated this is a problem situation and he does not believe a subdivision would be in the best interest especially since the property is up for sale. Mr. Gary Haley stated that he is asking for a variance for financial gain only.

Phil Murray stated he is an abutter on the south side, the barn has been used for 15 years for commercial use and he doesn't think anything will change. Mr. Murray stated that the trash and debris was left by the previous owner and Mr. Kent has been trying to clean it up.

Bonnie Hayes, Realtor listing the property, stated that she contacted the Haley's to see if they were interested in selling some land and was told the whole lot could be purchased for \$750,000. Ms. Hayes stated that the Haley's have been most uncooperative and they have threatened everyone who was even close to the property line.

Michael Kent, property owner, stated he purchased the property as a favor to the Quint's to keep them out of bankruptcy. Mr. Kent stated that he lost \$40,000 in rent and was finally able to have them removed. Mr. Kent stated that they have renovated the house and cleaned our property, but he won't clean the side with the debris. Mr. Kent stated we were going to create condominiums but Ms. Hayes spoke with Mr. Irving and suggested subdividing the land. Mr. Kent stated that one lot will be residential and one lot will be commercial.

Mr. Irving stated that he spoke with Ms. Hayes and told her that the options for this lot were either a unit subdivision where the land would be owned in common with exclusive use areas or a two lot subdivision. Mr. Irving stated at the time it was represented there was enough land for a two lot subdivision. Mr. Irving stated if subdivided the applicant is proposing to use lot #2 exclusively for residential and only the grandfathered use would be on lot #2. Mr. Briggs agreed.

Mr. Haley stated zoning states that it must be one acre lots. Mr. Haley asked why deviate from our zoning rules that the Town has, other than someone wants to because they don't like zoning or the rules. Mr. Haley stated in regard to the debris, Mr. Quint told him that Mr. Kent's employee pushed it over there. Mr. Haley stated they couldn't keep it on their own land.

Mr. Colbath stated there are provisions under the same zoning that allows for Special Exceptions and Variances and that is why we are here. Mr. Colbath stated that applicant feels they have some hardship. Mr. Colbath stated we need to hear all the facts and then make a decision. Mr. Colbath stated that the debris is not a concern in our decision process as we are looking at the size of the lot and whether a variance should be granted. Mr. Haley stated he is going to have an impact on the neighbors and the neighborhood.

Mary Cissell asked what the hardship is. Ms. Sherman stated we need to determine that. Luigi Bartolomeo stated he is not an abutter, he doesn't know the applicant and he doesn't know the abutters and it appears this boils down to mathematics. Mr. Bartolomeo stated that they are so fractionally close that granting this variance cannot violate the spirit of the ordinance. Mr. Murray stated he has been there for 15 years and the barn has always been commercial and the house has been residential. Mr. Murray stated whoever buys it will probably buy the whole thing.

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Mr. Gary Haley stated the property was surveyed for the first time in 2010, but the deed says it is 2 acres plus or minus. Mr. Gary Haley stated that this piece of property was a mortgaged deed and was taken from Bobby Quint because he didn't pay his bills.

Mr. Kent stated there was a survey of the property done before he purchased it 9 or 10 years ago. Mr. Kent stated that it was recorded as over 2 acres, but we pay taxes on 2.7 acres. Mr. Kent stated that Danny Quint owned 1/3 interest of another lot with the Haley's' which comes out to 0.70 of an acres and think that they added it to this tax bill. Mr. Briggs stated after research it was determined that West Side Road in this area was a four rod right-of-way so the property lines shifted inside the monuments.

Ms. Sherman stated if the grandfathered use changes it would have to come back to this Board. Mr. Kent stated that he understood. Mr. Briggs referenced Note #6 on the plan, which lists the allowed use for that lot.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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 Ms. Briggs, 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 Ms. Briggs, 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 Ms. Briggs, 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 asked if section b should be applied instead. Mr. Irving stated there is nothing specific that makes this land different from other lots. Mr. Hylen stated that he needs clarification of 5.a.i. Mr. Irving stated that the general purpose of the ordinance is to provide for sufficient size lots to facilitate setbacks, open space, septic systems and water supplies.

Mr. Chalmers stated he doesn't think there is an unnecessary hardship. Mr. Chalmers stated that the use has been the same and used this way for a long time. Mr. Chalmers stated that the subdivision may be more convenient for the owner, but the general public is better served with someone living in the house and operating the business; they are less apt to create a nuisance if they have to live with it as well. Mr. Hylen agreed with Mr. Chalmers. **Motion carried with Mr. Chalmers and Mr. Hylen voting in the negative.**

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

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; Ms. Briggs stated it can be used as it is being used now and condominiums could be created. **Motion defeated with Ms. Briggs, Mr. Chalmers and Mr. Hylen voting in the negative.**

Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.1.2.3 of the Town of Conway Zoning Ordinance to allow a two-lot subdivision with one lot to be 0.97 of an acre and one lot to be 0.98 of an acre be granted and that the nonconforming use on proposed lot 2 will be abandoned and be a residential lot and lot 1 would contain the grandfathered use. Motion carried with Mr. Chalmers and Mr. Hylen voting in the negative.

Ms. Sherman reviewed the appeal process. Ms. DeWitt left at this time.

A public hearing was opened at 8:26 pm to consider a **SPECIAL EXCEPTION** requested by **LARUA SCHOEN** in regard to §147.13.8.2.5.3 of the Conway Zoning Ordinance **to allow 6 units on 0.90 of an acre** at 34 North Road, Conway (PID 277-2832). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 3, 2010.

Burr Philips of Civil Solutions, Luigi Bartolomeo, Architect, and Seth Winslow, applicant, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bartolomeo stated this lot is located in the Highway Commercial District, there are six units in the building, there will be two rental apartments, the lot is serviced by municipal water and sewer, the apartments are just less than 1,000 square feet and the architectural elevations have been submitted.

Mr. Colbath asked if there is a single family house on this lot. Mr. Bartolomeo answered in the affirmative and stated that it would be removed. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Briggs, that each structure must contain at least three dwelling units.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Briggs, that all lots must be serviced by municipal water and sewerage.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Briggs, that Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.8.2.5.3 of the Town of Conway Zoning Ordinance to allow 6 units on 0.90 of an acre be granted. Motion unanimously carried.

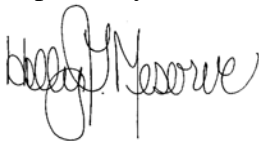
REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of August 11, 2010 as written. Motion carried with Ms. Briggs abstaining from voting.

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of August 18, 2010 as written. Motion carried with Ms. Briggs abstaining from voting.

Meeting adjourned at 8:35 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant