

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

MAY 25, 2005

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 25, 2005 beginning at 7:30 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Jeanna Hale; Planning Director Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:30 p.m. to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **PAUL AND DEBORAH ANTKOW** in regard to Article 147.13.1.4 of the Conway Zoning Ordinance to allow an existing garage to remain within the front and side setback at 25 A Street Extension, Conway (PID 278-78). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters May 18, 2005.

Deborah Antkow and David Douglass of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Ms. Antkow agreed to proceed with four-members.

Ms. Sherman stated that a building permit had been obtained and indicated the correct setbacks. Ms. Antkow stated that a few days after the permit was issued her husband had a heart attack. Ms. Antkow stated when she got home from Maine Medical the contractor had already constructed the garage. Mr. Colbath asked where is the builder. Ms. Antkow stated that he has left town. Ms. Antkow stated that it was not intentional. Mr. Colbath asked how far is it in the front setback. Mr. Douglass answered 7-feet. Ms. Antkow stated that it has not decreased the surrounding property values and it is a private road. Ms. Antkow stated to tear it down would cost more than it was to build it.

Ms. Sherman asked if there are any plans for the two abutting lots. Ms. Antkow answered not at this time. Ms. Sherman stated that those two lots are undersized. Mr. Irving stated that the two vacant lots are in a different name from the lot with the garage, plus even if the lots were combined it would not resolve the front setback encroachment. Mr. Colbath asked if the two lots across the street were developed. Ms. Antkow answered in the negative.

Mr. Irving asked when the house was constructed. Ms. Antkow stated she believes in 1989 and she purchased the property in 1994. Mr. Chalmers asked if the iron pipes are

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visible. Mr. Douglass answered in the affirmative. Ms. Antkow stated that she was not there at the time the garage was constructed. Mr. Colbath asked how did the Town find out about this situation. Mr. Irving answered the property owner. Ms. Antkow stated that her husband wanted to construct a shed and started to take measurements and realized the garage was in the setback. Ms. Sherman asked for public comment; there was none. Mr. Irving stated there were no other options other than moving the building itself.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been completed. Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation.** Mr. Colbath stated that he believes this was a good faith error as the builder is long gone and the owner brought it to the attention of the town. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that item 3 is not applicable to this application. Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Mr. Colbath stated he does not know the future uses for the abutting property. Ms. Sherman stated as long as the setback is maintained on the abutting property there would be enough area for emergency access. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the forgoing findings of fact, the equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the existing garage to remain within the front and side setbacks be granted. Motion unanimously carried.

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A public hearing was opened at 7:55 pm to consider a **SPECIAL EXCEPTION** requested by **MARK AND GINA HURLEY** in regard to Article 147.13.1.2.4.2 of the Conway Zoning Ordinance to allow an accessory apartment at 135 Beechnut Drive, North Conway (PID 232-126). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters May 18, 2005.

Mark Hurley appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if this is owner-occupied. Mr. Hurley stated that they would be moving at the end of the school year and that they would be living in the apartment and renting the house. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Mr. Hurley agreed to proceed with four members.

Mr. Chalmers asked how many bedrooms. Mr. Hurley answered two in the house and one in the apartment. Ms. Sherman asked how many parking spaces. Mr. Hurley stated there were two driveways. Mr. Hurley submitted photographs of the property to the Board. Ms. Sherman asked if there is sufficient parking for two vehicles. Mr. Hurley answered in the affirmative. Mr. Hurley stated that David Pandora [Town Building Inspector] went through the property with him prior to purchasing and he had suggested changes for emergency egress, which have been done. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **M. Colbath made a motion, seconded by Mr. Chalmers, that the apartment is accessory to an owner-occupied single-family dwelling. Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the apartment is no less than 300 square feet and no greater than 800 square feet and would be 600 square feet. Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the subject property has been issued a permit for construction from the New Hampshire Department of Environmental Services for a sewerage or waste disposal system and is serviced by a community water system.** Ms. Hale asked how do we make sure it is rented as a two-bedroom home. Mr. Irving stated that the Town does not inspect. Ms. Hale stated the Town only gets involved if the septic fails. Mr. Irving answered in the affirmative, or a complaint. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Hale, that the apartment is architecturally compatibility with the neighborhood. Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that sufficient parking is located on site. Motion unanimously carried.**

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Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that an Accessory Apartment Application was submitted for the ZBA review. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

A public hearing was opened at 8:07 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **LAMPLIGHTER MOBILE HOME ASSOCIATION** in regard to Article 147.13.1.2 of the Conway Zoning Ordinance to include the acreage in the road right-of-way in the density calculations off White Mountain Highway, North Conway (PID 262-83). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters May 18, 2005.

Burr Phillips of Civil Solutions, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only four members present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Mr. Phillips agreed to proceed with four-members.

Mr. Phillips submitted a package to the Board. Mr. Phillips stated that the applicant believes it is appropriate in this situation to include the road right-of-ways in the density calculations. Mr. Phillips reviewed the submitted background information. Ms. Sherman asked the reason the road right-of-way was not included in the density. Mr. Irving stated in a conventional subdivision, the road right-of-way is a separate lot of record and not included in the density calculations.

Mr. Irving stated it is not clear in the ordinance how this applies to mobile home parks, but typically in the Town of Conway the road right-of-way is not included in the density calculations. Mr. Irving also stated that the road right-of-way is not to be included in the density calculations in a subdivision for cluster developments where common land is taken into consideration in the density calculations, but that the density can be no greater than in a conventional subdivision.

Ms. Sherman asked if the mobile home park owns everything in a mobile home park. Ms. Sherman stated in a cluster development there is community space that figures into the density calculations, in a mobile home park, you don't have the same. Mr. Phillips stated Lamplighter Mobile Home Park owns everything. Mr. Irving stated mobile homes are owned separately. Mr. Phillips stated in a conventional subdivision the property is being transferred, but in this case everything is owned by Lamplighter Mobile Home Park.

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Ms. Sherman stated that this Board has never dealt with mobile home parks. Ms. Sherman stated that it is a different type of entity. Ms. Hale asked what type of box does this open. Mr. Irving stated another mobile home park could use this.

Mr. Colbath asked if Lamplighter's has the capacity for expansion. Mr. Irving stated there have been a series of applications for this site and there are some grandfathered lots. Mr. Phillips stated if the road right-of-way is not included in the density calculations they could have up to 262 units. Mr. Irving stated if sewer comes along the density would increase. Mr. Phillips stated that they have the wastewater capacity for more than they need.

Mr. Irving stated if the road right-of-way is included, there is a greater number of units that can be provided, as in any mobile home park. Ms. Sherman asked for public comment; Bill Altenburg stated as a planner of a mobile home park, the spacing in the units varies as some are very close and some want to be more residential. Mr. Altenburg stated in the first scenario there is a small right-of-way and in the second scenario there is a more conventional right-of-way. Ms. Sherman stated that the difference between including and excluding the road right-of-way is 30-units. Mr. Phillips answered in the affirmative.

Mr. Chalmers asked if this land could be subdivided into something else. Ms. Sherman stated if subdivided the road right-of-way would not be included. Mr. Chalmers asked if this would be work force housing. Mr. Irving stated that the owner is not contributing any deed restrictions in regard to work force housing at this time; however, the argument is that a mobile home is less expensive than a conventional home.

Mr. Colbath made a motion, seconded by Ms. Hale, that the Appeal from Administrative Decision pursuant to §147.13.1.2 of the Conway Zoning Ordinance to include the acreage and the road right-of-way in the density calculations be granted. Motion unanimously carried.

A public hearing was opened at 8:42 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **LAMPLIGHTER MOBILE HOME ASSOCIATION** in regard to Article 147.14.1.1 of the Conway Zoning Ordinance to allow an expansion of the existing non-conforming mobile home park by 45 additional units off White Mountain Highway, North Conway (PID 262-83). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters May 18, 2005.

Burr Phillips of Civil Solutions, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that this is a non-conforming use because mobile home parks are not permitted in the Residential/Agricultural District. Mr. Phillips stated that the park was developed prior to zoning. Mr. Phillips stated that Mr. Irving has indicated that the new units are not accessory to the use. Mr. Phillips stated that mobile homes are accessory to a mobile home park. Ms. Hale read the definition of accessory use.

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Ms. Sherman asked if the expansion of a business means in dollar or quantity. Mr. Irving read his letter dated May 13, 2003. Mr. Irving referred to Grey Rocks Land Trust v. Town of Hebron from the 2002 Municipal Law Lecture Series by Bernard Waugh, Jr. Esq. Ms. Sherman stated that this is different from retail, manufacturing, etc., as the business is additional sites for mobile homes. Mr. Colbath stated mobile homes are going to come and go, so its really improved areas with pads. Ms. Sherman asked for public comment; there was none.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that the Appeal from Administrative Decision pursuant to §147.14.1.1 of the Conway Zoning Ordinance to allow the expansion of the existing non-conforming mobile home park by 45 additional units be granted. Motion unanimously carried.

OTHER BUSINESS

CMF Development, LLC (PID 235-51.033-.044) – Motion for Rehearing – File #05-23: Mr. Colbath made a motion, seconded by Mr. Chalmers, that the Motion for Rehearing pursuant to §147.13.19.13 of the Conway Zoning Ordinance be denied as there was no technical error nor any new evidence provided. Motion unanimously carried.

Review and Acceptance of Minutes: Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of April 27, 2005 as written. Motion carried with Ms. Hale abstaining from voting.

Meeting adjourned at 9:10 pm.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary