

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

JUNE 27, 2007

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 27, 2007 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Alternate Cynthia Briggs; Alternate, Sheila Duane; 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 **ROBERT AND LORRAINE DAVIS** in regard to §147.13.1.4 of the Conway Zoning Ordinance to construct a one-car garage within the side setback at 38 Bald Hill Road, Conway (PID 277-237). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters Tuesday, June 19, 2007.

Ron Briggs of Briggs Land Surveying appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Briggs stated there are some wetlands on the property. Mr. Briggs stated that the applicant is proposing a 32 square foot breezeway and a 16x22 foot garage with 220 square feet in the setback. Ms. Duane joined the Board at this time.

Mr. Briggs stated there are several special conditions on this site. Mr. Briggs reviewed the house floor plan and stated that there is no access at the other side of the house as that is where the bedrooms are located. Mr. Briggs stated on the other side of the house the applicant would not be able to meet the wetland setbacks, plus there would be no access from the street for a garage. Mr. Briggs stated when the house was constructed it was designed for one vehicle, but both owner's work and both owner's have vehicles.

Mr. Briggs stated that the solution to being able to construct a garage is a variance. Mr. Briggs stated that the only abutter directly affected is Sharon Cook and she has submitted a letter that she does not have an issue with the construction of the garage. Mr. Briggs stated that a Boundary Line Adjustment was not an option as the boundary line would be five feet from the driveway and devalue the property.

Ms. Briggs stated one plan shows the septic, but not the house and asked if the house is on the septic system. Mr. Briggs answered in the negative and stated one plan is the first subdivision

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approval indicating an area acceptable for the septic system, however, the septic location changed to another acceptable area.

Mr. Chalmers asked if the garage could be moved to the back of the house. Mr. Briggs stated it wouldn't work with the floor plan, it would require a vast amount of fill to achieve and that would cause an unreasonable financial burden. Mr. Bartolomeo stated it looks as though the house was built first and then the property line decided. Mr. Briggs stated that there might be a walk out basement in the back. Mr. Chalmers asked if the driveway could go along the property line. Mr. Irving answered in the affirmative.

Mr. Bartolomeo stated that the two properties might be able to share a driveway, but think there are other options as well. Mr. Bartolomeo stated that the garage could be reduced to 12-feet, which would reduce the amount of encroachment. Mr. Briggs stated that it is cumbersome to get two cars in the driveway with the way it is currently situated. Mr. Briggs stated there are pets in the back yard and there is an elevation difference from the front of the house to the back of the house. Ms. Sherman stated from the plans submitted there only appears to be a five foot difference. Ms. Sherman asked why not put the garage on the back of the house. Mr. Briggs stated there might be an access issue. Mr. Bartolomeo suggested a 12-foot wide garage and pushes it further back. Ms. Sherman stated there would still be a grade problem.

Ms. Sherman stated if the applicant does as Mr. Bartolomeo has suggested, why not swing it 90-degrees, put it on the back of the house and remove it completely from the setback. Mr. Briggs stated it would be a problem negotiating the turn. Mr. Briggs stated what is being presented to the Board is what the owner and the builder determined would work.

Mr. Colbath stated that he is concerned with granting an area variance on a lot with 1.5 acres. Mr. Colbath stated that there should be enough area to construct a garage without encroaching into the setback. Mr. Colbath stated that it might not be what the applicant wants, but the house is not located in a good area. Mr. Briggs stated part of the reason the house is sited where it is, is because it was necessary to meet the setbacks from the septic system as well as the wetland. Mr. Briggs stated to put the garage somewhere else on the lot would require an additional curb cut and possibly be within the wetland buffer.

Mr. Bartolomeo stated its too bad the house was in a different location. Mr. Briggs stated they are the third owners and did not situate the home. Mr. Chalmers stated the applicant knew the location of the property line when they purchased the home. Mr. Briggs stated that is not a justification for not seeking a variance.

Ms. Sherman asked for public comment; Shawn Stewart stated that what is being proposed is the best location. Mr. Stewart stated that the lot does slope down and there is a row of trees between the neighbor on the left and the driveway. Mr. Stewart stated that he does not see it as a problem and for the applicant just to get to the front door there is a ramp.

Ms. Sherman asked if the tree line is the property line. Mr. Briggs stated that the tree line is close to the property line. Ms. Sherman stated that there is a distance that needs to be

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between buildings for fire access. Mr. Briggs stated that a fire truck couldn't get in there now due to the grade. Mr. Stewart stated the best way to get to the back of the property in the case of a fire would be to go through his property. Mr. Stewart stated that this is the best layout to make it work as the back of the land just drops off. Ms. Sherman stated the area could be filled.

Mr. Briggs stated that the neighbor is fine with the variance, but is afraid a boundary line adjustment would devalue the property. Mr. Chalmers asked if the tree line would be removed. Mr. Briggs stated some of the trees on their property could be removed. Mr. Bartolomeo suggested removing the breezeway, which eliminates eight feet, and push the garage back.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that the applicant could use the property as intended with or without a garage. Mr. Colbath stated that there should be an area on the lot to construct a garage. Mr. Colbath stated that it may not be what the applicant wants, but it could be done. Mr. Bartolomeo stated that a garage is not a necessity. Ms. Briggs stated that a garage is not an appropriate reason to encroach within the setbacks. **Motion unanimously defeated.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that there are other alternatives to achieve what the applicant wants. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; Mr. Chalmers stated encroaching in the setback cannot help the situation. Mr. Colbath stated there would be a diminution of value to surrounding properties because the encroachment within the setback cannot help but to devalue surrounding properties. Ms. Briggs stated that an abutter might not feel it is a problem, but it does create a problem. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Briggs voting in the negative and Mr. Bartolomeo and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if the use is the garage or the encroachment. Ms. Sherman answered

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the encroachment. Mr. Chalmers stated that the proposal is contrary to the public interest as setbacks are in place for a reason. Mr. Colbath stated that it is too much of an encroachment. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; Mr. Colbath stated that it is contrary to the public interest and the setback regulations are in place to protect the public. Mr. Colbath stated that the next owner of the abutting property might not be as comfortable with it. Mr. Bartolomeo stated that the applicant wants to expand things too close together. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the justice is greater for the property owner than to the public. Mr. Bartolomeo stated that the applicant did not make a strong enough case. **Motion unanimously carried.**

Mr. Colbath 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 construct a one-car garage within the side setback be granted. Motion unanimously defeated.

A public hearing was opened 8:17 pm to consider a **SPECIAL EXCEPTION** requested by **H. CAROL LYNCH** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow the existing driveway to remain in the wetland buffer at 539 Intervale Crossroad, North Conway (PID 214-42.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters Tuesday, June 19, 2007.

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Smith stated that the applicant would like to subdivide the lot into two lots and use the existing driveway, which is within the wetland buffer. Mr. Irving stated there is a driveway that serves a home and the applicant would like to subdivide the lot for another lot and for the existing driveway to remain and be maintained, but in order to subdivide the new lot needs to have frontage on a town road. Mr. Irving stated that the applicant would have to request a waiver from the Planning Board to not construct to town road standards. Mr. Irving stated that the right-of-way would serve the existing home, the new lot and another lot that has an easement to access this driveway.

Ms. Duane asked if the driveway would be for residential use. Mr. Smith answered in the affirmative. Mr. Irving stated that the applicant is simply asking to use that driveway as it is and allow access for an additional lot. Mr. Smith agreed. Ms. Sherman stated that the applicant is merely asking to maintain the existing driveway in the wetland buffer with no further extension. Mr. Smith answered in the affirmative. Ms. Briggs asked if the driveway would service three lots. Mr. Smith answered in the affirmative. Ms. Duane stated it is a

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wide gravel driveway now. Ms. Duane asked what is the existing width. Mr. Smith answered 16-feet.

Mr. Irving stated that the applicant would have to come back if they were to modify the existing driveway. Mr. Colbath asked how long has the driveway been in place. Michael Lynch, who was in the audience, stated 50 years. Mr. Colbath asked the quality of the road. Mr. Lynch answered it is in good shape. Mr. Colbath asked if it has ever been wet. Mr. Lynch stated not the full length of it. Ms Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the existing driveway should be allowed to remain in the wetland buffer and he supports another lot having access from it. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Mr. Colbath 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 there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the existing driveway to remain in the wetland buffer and to service one additional lot be granted. Motion unanimously carried.

A public hearing was opened at 8:40 pm to consider a **VARIANCE** requested by **JACQUELYN GAGNE** in regard to §147.14.4.1 of the Conway Zoning Ordinance to allow an existing, non-conforming lot to remain a separate lot of record on Arlberg Drive, Conway (PID 299-125. Notice was published in the Conway Daily Sun and certified notices were mailed to abutters Tuesday, June 19, 2007.

Mia Gannon of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Gannon stated that a boundary line adjustment was presented to the Planning Board, but returned since adjoining undersized lots in the same ownership shall be combined. Ms. Gannon stated that the lots are part of a subdivision approval from 1971 with all the lots being approximately ½ acre. Ms. Gannon stated that the Town of Conway allows for ½ acre lots if serviced by municipal water and sewer and these lots have a community water system.

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Ms. Gannon referred to NH RSA 674:42 and 674:35. Ms. Gannon stated that the lots in this approved subdivision are adequately sized. Ms. Gannon stated that the deeds show and list two separate parcels and refer to the subdivision plan. Ms. Gannon stated that there was a septic design approved and showed on one lot. Mr. Bartolomeo stated that the deed is inaccurate since it appears the house is over the property line.

Mr. Irving asked if when the house was constructed were both lots owned by the same person. Ms. Gannon stated she did not know. Ms. Sherman stated if the house was constructed in 1988 over the property line and both lots were in different ownership then there would have been a problem.

Mr. Irving stated that it is his understanding the same person owned the lots when the house was constructed. Mr. Irving stated that it is his understanding that both lots and the home were bought from one person. Mr. Irving stated that the situation the applicant is in is that they have inadvertently bought into something that was not disclosed to them when they purchased the properties. Ms. Gagne stated when the applicant put both lots on the market the real estate agent asked them to verify the property line and that is when they discovered this situation. Mr. Irving stated if this particular regulation did not exist they could apply for a boundary line adjustment to swap land without changing the size.

Ms. Gagne stated that they bought the house from the bank in a foreclosure and they have received two tax bills. Ms. Gagne stated that they did not know of this situation until they decided four months ago to put the properties on the market. Mr. Bartolomeo stated that it appears to be the intent of the builder to combine the lots. Mr. Briggs asked if it would sell better being two lots. Ms. Gagne stated financially it is a better option.

Margie MacDonald stated back then the bank sold it is where is and the rules and regulations are different now. Ms. MacDonald stated that the owner did construct on the line and had to purchase the lot next to it. Mr. Irving stated if it had come to our attention under the previous owner the town would have merged the lots a while ago. Mr. Chalmers asked if it is more marketable as two lots. Ms. MacDonald stated that it is more valuable to the applicant if sold as two lots.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property

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owner seeking it. 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 there would not be a diminution in value of surrounding properties as a result of granting this variance.** 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 the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** 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 granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that this cleans up a real mess. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.14.4.1 of the Town of Conway Zoning Ordinance to allow an existing, non-conforming lot to remain a separate lot of record be granted with the condition that the driveway be moved to be on the lot with the house. Motion unanimously carried.

Ms. Gagne stated that there is a garage under the house and there is a drainage swale in front of the house making it difficult to move the driveway. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to remove the condition to move the driveway to be on the lot with the house. Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of May 23, 2007 as written. Motion carried with Ms. Sherman abstaining from voting.

Meeting adjourned at 9:15pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant