

ZONING BOARD OF ADJUSTMENT

MINUTES

JANUARY 20, 2016

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, January 20, 2016 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Luigi Bartolomeo; Andrew Chalmers; Alternate, Martha Tobin; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

Ms. Sherman appointed Ms. Tobin and Mr. Steiner as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **MALCOLM AND DEBORAH DOWNING/HUBERT AND LORI DEAN** in regards to §147.13.15.5 of the Conway Zoning Ordinance **to allow the construction of a 3' x 4' platform and steps within the Shoreline Protection Overlay District setback** at 305 West Main Street, Conway (PID 277-209.005). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2016.

Jeff Cohen, representing Malcolm and Deborah Downing, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Cohen stated the door, as it was, was too high and had water coming into the house. Mr. Cohen stated they could only open the door three-quarters of the way as it hit the kitchen cabinets so they moved the doorway to the side and constructed a platform. Mr. Cohen stated that they have received a State Shoreland permit.

Mr. Bartolomeo asked if the landing exists. Mr. Cohen answered in the affirmative. Mr. Chalmers asked if it was caught by the Town. Mr. Irving stated he believes we received a complaint. Mr. Bartolomeo asked if they didn't know they needed a permit. Mr. Cohen stated that is correct; the Association brought it to their attention.

Mr. Chalmers stated he went to the property to take a look; the construction is actually 8' x 6' and they didn't gain much height for the entry versus what they had. Mr. Chalmers stated he thinks they made it more difficult to get into the building. Mr. Chalmers stated his other concern is the stairs were not constructed to the current building codes. Mr. Irving stated it would be nice and they are required to do so, but with the absence of residential building inspections it ties the building inspector's hands.

Mr. Chalmers submitted photos of the site to the Board. Mr. Bartolomeo stated the support posts were put on concrete blocks, not concrete posts as indicated on the application. Mr. Chalmers stated he would support the application if the construction was compliant, but they have created a

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hazard. Mr. Bartolomeo stated what they are asking for is reasonable; but what concerns him is all this has been done without permits. Mr. Bartolomeo stated it is unfortunate they went through this without following the proper procedures.

Mr. Steiner asked if there are penalties for doing work without a permit. Mr. Irving stated there is a small fine, but it has never been assessed. Mr. Bartolomeo stated the door was so high before there was water coming in. Mr. Cohen agreed. Mr. Chalmers stated the photo of the former location of the door is a fair representation of the grade to the existing house. Ms. Tobin asked if it is larger than what is represented on the application. Mr. Chalmers answered in the affirmative. Mr. Bartolomeo stated the application states a 3'x 4' platform with steps. Mr. Chalmers acknowledged that it does then meet what was represented on the application.

Mr. Bartolomeo asked if the platform was just big enough for the door; and is it an out swinging door. Mr. Cohen answered in the affirmative and stated there is a storm door. Mr. Bartolomeo asked if the Town had any input. Mr. Irving stated they are not making a substantial change, and he doesn't have any comments in regard to hardship; however, the site did have the original configuration for many years without affecting the use of the property, but with that being said, the new location is not contrary to public interest and doesn't diminish surrounding property values.

Mr. Chalmers asked if the Association owns the outside of the buildings. Mr. Cohen stated the owners own wall to wall, but he believes there is a provision that allows for steps and requires us to maintain them. Ms. Sherman asked if this site is usually just used in the summer. Mr. Cohen answered in the affirmative. Ms. Sherman asked for public comment; there was none. Ms. Sherman asked for further Board comment; there was none.

Ms. Sherman read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, 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. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Chalmers stated the intent of the ordinance is to provide a setback from all high-water elevations; and moving the stairs into that setback does not meet the spirit of the ordinance. **Motion defeated with Mr. Bartolomeo, Ms. Tobin and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

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

Ms. Sherman read item 4. **Mr. Steiner made a motion, seconded by Ms. Tobin, 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. Chalmers made a motion, seconded by Mr. Steiner, 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. Chalmers stated that he does not find anything that distinguishes this property from any other properties in the area or any other development within the Association. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

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

Mr. Chalmers made a motion, seconded by Mr. Steiner, 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. Sherman stated there is no unnecessary hardship based upon reasons from a above. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

Ms. Sherman read 5.b. **Mr. Chalmers made a motion, seconded by Ms. Tobin, that if the criteria in 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 they were using the property fine with the prior location of the door. **Motion unanimously defeated.**

Mr. Chalmers made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.4.4 of the Town of Conway Zoning Ordinance to allow the construction of a 3' x 4' platform and steps within the Shoreline Protection Overlay District setback be granted. Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.

Ms. Sherman stated that the section number in the motion on the worksheet was incorrect. **Mr. Chalmers made a motion, seconded by Ms. Tobin, to amend the last motion to read §147.13.15.5. Motion unanimously carried.**

Ms. Sherman stated that the variance was not granted. Ms. Sherman stated the applicant has 30-days to request a rehearing before this Board, if the rehearing is not granted the applicant has the right to take it to Court. Ms. Sherman stated that a rehearing can only be granted if there is a technical error or information that becomes available that was not available for this hearing.

PUBLIC HEARINGS CONTINUED

A public hearing was opened at 7:26 pm to consider a **VARIANCE** requested by **RYAN BURKE** in regards to §147.13.4.4 of the Conway Zoning Ordinance **to allow the construction of an addition and two-story garage within the side setback** at 171 Kearsarge Road, North Conway (PID 219-54). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, November 25, 2015. This hearing was continued from December 16, 2015.

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Mr. Steiner stepped away from the meeting at this time. Shawn Bergeron of Bergeron Technical appeared before the Board. Ryan Burke was in attendance. Mr. Bergeron stated this application was before the Board on December 16, 2015. Mr. Bergeron stated that he started working with Mr. Burke this past week and would like to request a continuance to the next meeting to allow him time to prepare. **Ms. Tobin made a motion, seconded by Mr. Chalmers, to continue the application for Ryan Burke until February 17, 2016 at 7:00 pm. Motion unanimously carried.**

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **RYAN BURKE** in regards to §147.13.4.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 171 Kearsarge Road, North Conway (PID 219-54). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, November 25, 2015. This hearing was continued from December 16, 2015.

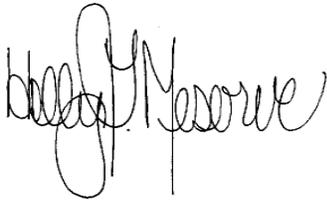
Shawn Bergeron of Bergeron Technical appeared before the Board. Ryan Burke was in attendance. **Ms. Tobin made a motion, seconded by Mr. Chalmers, to continue the application for Ryan Burke until February 17, 2016 at 7:00 pm. Motion unanimously carried.**

REVIEW AND APPROVAL OF MINUTES

Ms. Tobin made a motion, seconded by Mr. Chalmers, to approve the Minutes of December 16, 2015 as written. Motion unanimously carried.

Meeting adjourned at 7:31 pm.

Respectfully Submitted,



Holly L. Meserve
Recording Secretary