

ZONING BOARD OF ADJUSTMENT

MINUTES

AUGUST 17, 2016

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 17, 2016 at the Conway Town Office in Center Conway, NH, beginning at 7:07 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Dana Hylan; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:07 pm to consider a **VARIANCE** requested by **CARL FRINGS/TADD BURKETT** in regards to §147.15.2 of the Conway Zoning Ordinance **to allow an accessory apartment greater than 800 square feet** at 41 Linden Lane, North Conway (PID 247-68). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 5, 2016.

Jeana DeWitt appeared before the Board. Carl Frings and Tadd Burkett were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. DeWitt stated Mr. Frings has lived on the property since 1998; he inherited the property and did not know it wasn't supposed to be a living unit.

Ms. DeWitt stated in 2015 when listing the house for sale, after Mr. Frings fell behind on his taxes, she visited the Assessing Department, she did not go upstairs to the Building Department, and was given two tax cards; she proceeded to list it as two residential units. Ms. DeWitt stated a prospective buyer interested in the property came to town hall and upon conversation with David Pandora, the Building Inspector, was informed that it was not a legal living unit. Ms. DeWitt stated the buyers were no longer interested and after she spoke with Mr. Pandora she stopped advertising the property as two units.

Ms. DeWitt stated that Tadd and Jen live next door and talked to Mr. Frings about purchasing the property; their loan is only good if it is a legal two-unit property. Ms. DeWitt stated that Mr. Frings will stay in the unit he is currently living in, Tadd and Jen will buy their first home and the Town will be paid the taxes owed.

Ms. DeWitt stated that she was on the committee that helped write the ordinance for the accessory apartment; it was designed for workforce affordable housing, therefore, the reason for 800 square feet maximum. Ms. DeWitt stated that the property already exists and will be affordable housing as Mr. Frings will be able to stay there.

Ms. Sherman stated this is an existing building. Ms. DeWitt stated that it was built in 1978 with a septic system installed in 1979. Ms. DeWitt stated this unit is also handicap accessible. Ms. DeWitt stated the lots in this development are mostly ¼ acre lots, and this lot is almost one acre.

Adopted: September 21, 2016 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 17, 2016

Ms. DeWitt stated this is not outside of what is in the neighborhood; and it is not going to change the values of surrounding properties. Mr. Bartolomeo asked the size of the existing building proposed as the accessory apartment. Ms. DeWitt answered 1,350 square feet.

Mr. Colbath stated that the Assessing Department has it as two living units. Ms. DeWitt stated that it has been taxed as a living unit. Mr. Irving stated that the Tax Assessor taxes what is there; they do not make a determination of what is legal. Mr. Irving stated according to all the permits and approvals it was constructed for storage and a workshop. Ms. DeWitt stated in 1997 a permit was issued to install a full bath; their intention was to make an apartment, however, we believe the builder filled out the application and did not indicate an apartment on the application.

Mr. Colbath asked if it could be downsized to meet the 800 square foot maximum requirement. Ms. DeWitt stated there is a lot of wasted space as it was originally used as a photographer's studio and has a lot of built in cabinets; and it is handicap accessible. Ms. DeWitt stated the two-bedrooms are standard size and it has a tiny kitchen; the living room is good sized, but that is the only area that is oversized by any means.

Ms. Sherman asked for public comment; Sue Burkett of 22 Willow Road stated she has been there for 32 years and it has been fine.

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. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.15.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment greater than 800 square feet be granted. Motion unanimously carried.

A public hearing was opened at 7:24 pm to consider a **SPECIAL EXCEPTION** requested by **CARL FRINGS/TADD BURKETT** in regards to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 41 Linden Lane, North Conway (PID 247-68). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 5, 2016.

Jeana DeWitt appeared before the Board. Carl Frings and Tadd Burkett were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. DeWitt stated the front house will be occupied by the owner of the property; a variance was granted for the square footage; the building was constructed in 1978; and there is definitely more than adequate parking. 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 apartment is accessory to an owner-occupied single family dwelling.** 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 item 2 is not applicable based on the variance [File #16-15] granted.** 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 apartment is architecturally compatible with the neighborhood.** 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 sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, 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.

Adopted: September 21, 2016 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 17, 2016

A public hearing was opened at 7:32 pm to consider a **VARIANCE** requested by **HG PROPERTIES LLC/HARRY GULATI** in regards to §147.13.7.6.1.4 of the Conway Zoning Ordinance to allow a freestanding sign within the side setback at 2759 White Mountain Highway, North Conway (PID 218-57). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 5, 2016.

Harry Gulati appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated this property does front on White Mountain Highway, but it is also subject to right-of-way easements shared by adjacent properties. Ms. Sherman asked how wide is the right-of-way. Mr. Gulati answered 25-feet. Mr. Bartolomeo stated there is no visibility from the street. Mr. Gulati agreed. Mr. Irving stated what is allowed has to be set back 5-feet and looking for a 2.5-foot relief.

Mr. Colbath asked if there is any signage now for the business. Mr. Irving stated there is signage on the Mount Washington Observatory property, but it is not visible from the street. Mr. Colbath asked if patients enter from the Observatory property. Mr. Gulati stated that he has the right to parking on the Observatory property, but the sign is proposed on his right-of-way.

Mr. Colbath stated where you want to put the sign can you enter to access the business. Mr. Gulati answered in the affirmative. Ed Bergeron, President of the Mount Washington Observatory, stated he has a parking easement on the observatory property. Mr. Colbath stated he wants to put the sign on an easement area adjacent to the ski rental property. Mr. Irving stated it is his land; it is his access to a public road. Mr. Irving stated it is a tight spot, but it is the only place for signage on his property. Mr. Gulati stated new clients are always calling the office when they are in the vicinity as they are unable to locate the business.

Ms. Sherman asked for public comment; Joe Berry, owner of the Station House, stated he has a number of concerns and problems; he had a 25-foot right-of-way on his property and he objects to any construction within the right-of-way. Mr. Berry stated he wants to be a good neighbor and he would like to find a location on the property that would function well for what his business needs and not be located in front of their sign. Mr. Berry stated as an abutter he cannot support this request as it is in our right-of-way and think there is a better solution that would still support his business.

Mr. Berry suggested the sign be put on the property line rather than being set 2.5-feet from the property line. Mr. Irving stated if the sign was on the property line, but on the applicant's property, it would minimize the obstruction of the right-of-way. Mr. Berry stated he could support that. Ms. Sherman asked Mr. Berry if he has signage on the southerly side of the building. Mr. Berry answered in the affirmative. Ms. Sherman asked if the placement of the sign could hide the sign on the south side of his building. Mr. Berry answered in the affirmative.

Mr. Irving suggested the applicant work with Mr. Berry to find a suitable location and return with a new location. Mr. Irving asked Mr. Gulati if he would be willing to work with his neighbor to make sure everyone agrees on the size and height. Mr. Gulati answered in the affirmative.

Adopted: September 21, 2016 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – AUGUST 17, 2016

Mr. Irving suggested continuing the public hearing to allow the applicant to re-notice the change I location and dimension of the sign. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to continue the public hearing for HG Properties, LLC/Harry Gulati until September 21, 2016 at 7:00 pm. Motion unanimously carried.**

A public hearing was opened at 8:01 pm to consider a **VARIANCE** requested by **W. CURTIS KENNETT II** in regards to §147.12 of the Conway Zoning Ordinance **to allow the extension of an existing overhead utility system** at 26 Jackson Avenue, Main Street and West Main Street, Conway (PID 277-277, 315 & 316). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 5, 2016.

Ron Briggs of Briggs Land Surveying appeared before the Board. Curtis and Bayard Kennett were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Briggs submitted a revised plan [in file] to the Board. Mr. Briggs stated the reason for the variance is that the only pole on the railroad side of West Main Street they are not able to obtain an easement to.

Mr. Briggs stated after speaking with the Public Works Director, Paul DegliAngeli, crossing West Main Street to access the pole on the other side of the road is not an option. Mr. Briggs stated there are existing poles on Jackson Avenue; the applicant would like to go overhead to a pole to be located on PID 277-315. Mr. Briggs stated the area is wooded and not visible from anywhere except on PID 277-315.

Mr. Briggs stated there would be an easement granted to cross over PID 277-277 to PID 277-315; and there would be no interference with abutting properties with this easement. Mr. Briggs stated what makes this unique is the terrain; from the last pole on Jackson Avenue it is rather steep and there is a pile of debris that has been there for some time as there are 50+ year old trees growing in it. Mr. Briggs stated this makes it not very practical to go underground either.

Mr. Bartolomeo stated there no electrical service to this lot right now. Mr. Briggs agreed and stated the existing poles on Route 16 are on the other side of the road. Mr. Briggs stated the only existing service on the north side is a pole that services the railroad depot; the owner of the railroad depot is willing to give an access easement, but will not commit to an easement for power as they don't know the future plans of the site.

Mr. Colbath stated that he grew up on West Main Street and he agrees that this is the most logical way to get electric to that property. 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 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.**

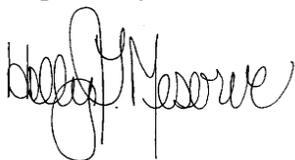
Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Hylan, that item 5.b is not necessary.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Mr. Hylan, that, based on the forgoing findings of fact, the variance from §147.12 of the Town of Conway Zoning Ordinance to allow the extension of an existing overhead utility system be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Bartolomeo to approve the Minutes of July 20, 2016 as written. Motion carried with Mr. Chalmers and Mr. Hylan abstaining from voting.

Meeting adjourned at 8:20 pm.
Respectfully Submitted,



Holly L. Meserve, Recording Secretary