

**ZONING BOARD OF ADJUSTMENT/  
BUILDING CODE BOARD OF APPEALS**

**MINUTES**

**OCTOBER 16, 2019**

A meeting of the Conway Zoning Board of Adjustment and the Building Code Board of Appeals was held on Wednesday, October 16, 2019 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**PUBLIC HEARINGS**

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **SCOTT AND TRISHA DOYLE** in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 252 Ash Street, North Conway (PID 202-234). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Scott Doyle appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Doyle stated the accessory dwelling unit will be 720 square foot and used for one of the kids. Mr. Bartolomeo asked if the garage was being converted, or was he constructing a second floor to the garage. Mr. Doyle stated he is converting the existing one-story garage; he is not going up at all.

Mr. Colbath asked what is the parking for the whole site. Mr. Doyle stated there is enough parking for eight cars. Mr. Colbath asked if it is architecturally compatible with the neighborhood. Mr. Doyle stated it is staying as it exists. Mr. Colbath asked if he understands the rental. Mr. Doyle answered in the affirmative. Mr. Colbath asked who is in the main house. Mr. Doyle stated he and his wife.

Mr. Colbath asked for public comment; Brian Eling, owner of DQ, stated there is a problem in Conway with a shortage of housing and here is a situation where they are trying to provide housing for their kids on premises; this sounds like a good idea.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the accessory dwelling unit is accessory to an owner-occupied single-family dwelling.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the accessory dwelling unit is no less than 300 square feet and no greater than 800 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the accessory dwelling unit is architecturally compatible with the neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that sufficient parking is located on site.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Irving read item 5 that should have been included on the worksheet. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance to allow an accessory dwelling unit be granted. Motion carried unanimously.**

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A public hearing was opened at 7:09 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **MOUNTAIN TOP MUSIC CENTER** in regards to §23-4, §23-14, §23-15 & §23-17 of the Conway Building Construction Code **to appeal the Building Inspector’s issuance of a building permit to Matthew Donarumo** at 46 Main Street, Conway (PID 265-44). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. David Pandora, Building Inspector, was in attendance. Mr. Irving stated the Board is not acting as the ZBA in this case, the Board is actually acting as the Building Code Board of Appeals. Mr. Irving stated the Board of Selectmen have not yet established a Building Code Board of Appeals, but there is a provision that this Board will serve as that Board until such time that it is established.

Mr. Irving stated in this particular case the Board is not reviewing any zoning regulations; the Board is reviewing building regulations. Mr. Colbath read the application and the applicable sections of the code.

Mr. Bergeron stated he is representing Mountain Top Music who is the property owner and abutter immediately to the east of the property owned by Mr. Donarumo. Mr. Bergeron stated this was not an easy decision and they don’t have any issues with our neighbors. Mr. Bergeron stated the issue is a procedural problem with the Town of Conway in that the Town of Conway has taken upon themselves to not perform inspections of one- and two-family construction.

Mr. Bergeron stated for the Town of Conway to not perform inspections and to not provide appropriate information for construction of one- and two-family homes is putting our property, specifically the Majestic Theater, directly at risk.

Mr. Bergeron stated the issuance of this building permit, and the building permit number is 11235 issued in August of this year, without having received information required by Town of Conway codes and New Hampshire State building code is the concern for Mountain Top Music. Mr. Bergeron stated that the Majestic building is less than 6-feet to the east of the home being renovated in this permit.

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Mr. Bergeron stated as history has already shown an emergency in either building will quickly become an emergency in the adjacent building. Mr. Bergeron stated a couple of years ago the Donarumo property caught fire, those buildings are so close to each other that when Mr. Donarumo's building burned Mountain Top Music also caught fire.

Mr. Bergeron stated we were extremely fortunate when that event occurred it happened in the middle of the day, and Conway Village Fire Department was across the street and fully manned at that time. Mr. Bergeron stated if it hadn't been that way, we certainly would have lost the Majestic Theater, and probably all of the Donarumo home. Mr. Bergeron stated the emergency situation we are concerned with has already happened.

Mr. Bergeron stated during the renovation of the Majestic Theater Mountain Top Music exceeded the building code requirement to assure that the Donarumo property was protected. Mr. Bergeron stated we did that by separation walls between Mountain Top Music and the Donarumo property, or one-hour fire rated from interior. Mr. Bergeron stated we also added exterior exposure protection, we put exterior sprinklers all along that side of our building; so, in the event of a structure fire our exterior sprinklers will go off and prevent spread over to the adjacent building.

Mr. Bergeron stated this is a requirement of the building code. Mr. Bergeron stated, unfortunately, the Town of Conway does not enforce the residential code so none of these requirements for the duplex next door are being applied. Mr. Bergeron stated that is a concern to us because that puts our property at risk.

Mr. Bergeron stated we have two levels of concerns; some our procedural and how the building permit application was handled and others are going to be code related. Mr. Bergeron stated some of the procedural items may seem trivial, but in the big picture they become relevant. Mr. Bergeron stated the property address shown on the building permit application is incorrect; it is shown as #44 Main Street, but is actually #46 Main Street.

Mr. Bergeron stated the listed contractor is not indicated as having a Town of Conway registration number, specifically, for whatever reason, Town of Conway Code 23:14 requires all contractors to be registered; this contractor is not. Mr. Bergeron stated the electrical and plumbing installations in this building are required by state law to be performed by licensed State of New Hampshire tradesman; their names and license numbers have not been provided.

Mr. Bergeron stated the Energy Code Conservation recommendation section of the permit application was left completely blank. Mr. Bergeron stated in defense of the applicant there is really no reason to fill out that information because for whatever reason the information that the Town of Conway provides to the property owners on the building permit application doesn't comply with any recognized code. Mr. Bergeron stated the information is probably irrelevant, but should be filled out because it is required.

Mr. Bergeron stated the majority of the required type of construction information has not been filled out; under type of construction it doesn't tell us anything about a foundation system, it doesn't tell us anything about a basement system. Mr. Bergeron stated it does tell us that the exterior walls are wood shingles, which in this case will not be code compliant. Mr. Bergeron stated it doesn't say anything about insulation, or interior finishing.

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Mr. Bergeron stated interestingly it says that there is going to be no heat, that is checked off. Mr. Bergeron stated there are going to be two bathrooms and two kitchens; apparently there is no electrical because there is no information about size. Mr. Bergeron stated this is all required information for a building permit to be issued. Mr. Bergeron stated the building permit fee that was charged is incorrect, it was charged \$40 which is incidental construction; that residence has been fire gutted, it is a full rehab, the fee should be more than \$40. Mr. Bergeron stated those are the procedural items.

Mr. Bergeron stated the specific code items are really the concern, specifically R106.1.1 of the residential code says “sufficient information indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of the State Building Code are required”; no such information has been provided so he has no way to know that this building is going to be appropriately safe.

Mr. Bergeron stated the applicant is to provide information per section R302.1 and per Table R302.1 of the International Building Code to show that the exterior walls and the building projections, typically roof overhangs and window and door trims, are of appropriate fire resistance material, or otherwise show another form of method that will be used to meet fire resistance requirements. Mr. Bergeron stated none of that information has been provided.

Mr. Bergeron stated the applicant is to provide information per section R302.3 of the Building Code to show units within the Donarumo building are fire separated. Mr. Bergeron stated he cares that the units are separated because in the world of fire protection inside any structure what we want to do is prevent the vertical and horizontal movement of a fire should that occur; if that information is not provided then he does not know what is going to happen, and if a fire occurs in that building it is going to move quickly side to side and bottom to top. Mr. Bergeron stated this would put their property at risk.

Mr. Bergeron stated the applicant is to provide information per section R310.1 to show how the required second means of escape are going to be provided. Mr. Bergeron stated the building code, and the fire code, requires that any dwelling unit provide a secondary means of escape or openings. Mr. Bergeron stated if there are bedrooms on the second floor that are immediately adjacent to the Majestic Theater there is no way you can place a ladder for fire department access to the second floor of that building because you simply cannot get ladder angle. Mr. Bergeron stated a ladder cannot fit in that area five-feet away with a fire fighter in turn out gear to perform a rescue operation.

Mr. Bergeron stated there are procedural issues that are somewhat miniscule, and we have building and fire code issues which are very important; it is an unfortunate situation and in a lot of cases Mr. Pandora’s hands are tied as he is directed to not look at one- and two-family dwellings. Mr. Bergeron stated this is a prime example on how that directive, and a decision by the Town of Conway, is a problem.

Mr. Bergeron stated when he wrote to Mr. Pandora back in September they asked that the building permit be revoked, at this point in time they have changed their positions on that, he does not want to see that happen with the reason being since August when that building permit was issued the State building codes changed; the new building code went into effect on September 15th.

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Mr. Bergeron stated if that permit is revoked and they have to go through the application process again there is potential that there is going to be some onerous changes in the code that he does not think would be appropriate; this is not the Donarumo's fault, the building permit should not have been issued.

Mr. Bergeron stated the items that need to be corrected could have been corrected back in August and then it would have been clean, but that did not happen. Mr. Bergeron stated he would like this Board to direct the Code Enforcement official to just issue a stop work order until these items are addressed. Mr. Bergeron stated if the stop work order is issued no work can proceed, corrections can be made and Mr. Donarumo will not be subject to any new code requirements from the 2015 International Building Code.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated he has no issue with the code issues that you have quoted, it is well researched and accurate, but he was there the night either the Selectmen or the Planning Board, but he believes it was the Selectmen, voted not to enforce the residential building code in this Town. Mr. Bartolomeo stated, therefore, all the things you quote the Town is on record as choosing not to enforce it.

Mr. Bergeron asked when that was. Mr. Bartolomeo stated he does not know. Mr. Bergeron stated the Town of Conway, sometime in the mid-1980's and this was previous to the State building code, adopted the BOCA code for administering commercial construction in the Town of Conway. Mr. Bergeron stated they never adopted the CABO one- and two-family dwelling code; it was back then that Conway made the decision to enforce the building code only to commercial construction.

Mr. Bergeron stated then in 2002 the State building code came into effect; Conway already had an enforcement mechanism, back in the 80's they had voted to enforce a building code. Mr. Bergeron stated the BOCA code was gone, the only code that exists now is the State building code. Mr. Bergeron stated the Town of Conway has no choice, although they think they can get away with not enforcing the residential code, the residential code is a component within the State building code.

Mr. Bergeron stated the Town of Conway is supposed to be enforcing the residential code, the Selectmen cannot tell you not to do it; nevertheless, it is the policy to not enforce it. Mr. Bergeron stated that is a policy that they are taking an extreme risk with, and this Board's decision tonight will have an effect on that policy.

Mr. Chalmers stated regardless of whether or not the Town chooses to enforce that code, anyone who is building in the State of New Hampshire as a contractor is required to comply with the code, with the minimum standard of the code. Mr. Bergeron stated that is correct. Mr. Chalmers stated it does not matter if the Town is looking at it or not, the minimum requirement still applies.

Mr. Bergeron stated we are seeing now, we at Bergeron Technical Services, and it is not only Conway, a ridiculous amount of one- and two-family construction that are being done in non-compliant work. Mr. Bartolomeo asked is this in new work. Mr. Bergeron agreed and stated this is new construction.

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Mr. Bartolomeo stated, and this is a matter of record so he is not speaking out of school, there is a subdivision across from Frechette Tire, he believes it is Swift River Valley on Passaconaway Road, where four of the homes applied for building permits where they showed a licensed plumber and a licensed electrician, but were wired by a carpentry contractor; this is what is going on because building inspections are not being done as required. Mr. Bergeron stated Mr. Pandora's hands are tied; this is an opportunity to untie them.

Mr. Bartolomeo stated it sounds like we need a structural change at the top level of the municipal government, whether it requires more staff to do these inspections and make the enforcements. Mr. Bartolomeo stated he is all for safe buildings. Mr. Bergeron stated their concern is if the appropriate fire safety safe guards are not implemented in this case, and we don't know they are implemented, we are putting a few million dollars of new work at risk.

Mr. Bergeron stated what is being asked here is not ridiculous nor is it onerous, just cross the t's and dot the i's. Mr. Bergeron stated the way the system is set up there is no assurance that is going to happen.

Mr. Bartolomeo asked if he is looking for a stop work order until these disclosures, particularly fire separation, are submitted. Mr. Bergeron answered in the affirmative. Mr. Bartolomeo asked if he is aware of any bedrooms facing the Majestic Theater on the second floor. Mr. Bergeron stated that is a problem, he does not know because there were no plans provided. Mr. Bergeron stated if appropriate plans were provided with the building permit application, then anyone who wanted to review this could look and say everything is here or not.

Mr. Bartolomeo stated he is in the business of producing plans, and if they were required and reviewed prior to issuing a permit it is easier to catch something on paper then to go in the field and have them rip out something. Mr. Bartolomeo stated it is easier to review it first. Mr. Bergeron stated it is a procedural thing, but if the appropriate information had been provided on that building permit application we would not be here.

Mr. Bartolomeo asked Mr. Pandora if this is atypical, this lack of information on an application. Mr. Pandora stated there have been a lot of changes since that permit was issued on that particular permit; they were cleaning out a burnt building that needed a permit because he would not let them stay in there without one. Mr. Pandora stated they were carrying out all the burnt stuff and they had to put some structural members in, so it wasn't just a demo permit it would have been a building permit so we issued them a building permit.

Mr. Pandora stated he knew the contractor and he thought he was registered, he wasn't; he was registered immediately afterwards. Mr. Pandora stated Mr. Bergeron came in and went over stuff with him and he told him he was going to get in there and get a look at it; he went over it with the owners and the contractor, all of the things he has mentioned are now on file and going to be addressed. Mr. Pandora stated they have allowed him to go in and inspect it, and he has already been in there about four times.

Mr. Bartolomeo asked Mr. Bergeron if this building was 100-feet away from the theater would these objections take a backseat. Mr. Bergeron stated if it was 100-feet from the theater, he wouldn't care.

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Mr. Pierce asked Mr. Pandora if he was going to do inspections. Mr. Pandora answered in the affirmative and stated they have agreed to let him do inspections as well as the Fire Chief. Mr. Pierce asked if that implies that they are going to meet code. Mr. Pandora answered in the affirmative.

Mr. Bergeron stated we are not asking for this permit to be revoked, we are asking for the permit to be filled out appropriately and, most importantly, the appropriate information regarding fire safety be provided. Mr. Bergeron stated in our world you produce a drawing, you produce the appropriate URL specifications, which is not burdensome or onerous, then we know what we need to do and we all move forward. Mr. Bergeron stated just saying “we are going to meet the standard” doesn’t mean anything.

Mr. Pandora stated it is going to be inspected to make sure it does. Mr. Bergeron stated he is good with that, but you don’t have anything in writing. Mr. Bergeron asked Mr. Pandora if he had plans for the project. Mr. Pandora answered in the negative and stated we don’t require them for residential. Mr. Bartolomeo asked if plans for residential are not required. Mr. Pandora answered in the affirmative.

Mr. Bartolomeo asked where is the future of this, are we talking about making every single or duplex family residence suddenly come up to code. Mr. Bartolomeo asked are you going to inspect every single one of them, where is this going. Mr. Pandora stated this one is more dangerous; Mr. Bergeron is right in that it is an exposure to that new building which they spent a lot of money on and did a real good job.

Mr. Pandora stated he understands where they are coming from, he spoke to the owner and got their permission to do the inspections. Mr. Chalmers stated realistically if we are not inspecting, and there is a pile of new building construction, just because it is a single-family residence, we are putting these people at risk. Mr. Chalmers stated he understands that Mr. Bergeron is trying to protect his client’s investment, but a death is a death. Mr. Steiner stated that the town is not set up right now, he cannot do every inspection as we need to hire people to do that.

Mr. Steiner asked if he is certified to do all those inspections. Mr. Pandora stated on residential there is not enough time. Mr. Steiner stated we are not even close to having the infrastructure in place to inspect every single-family home that is built, or even homes that are being renovated.

Mr. Bergeron stated he knows what Mr. Pandora is up against, he has been up against it himself in the past. Mr. Bergeron stated the way this has been set up in the State of New Hampshire, the Town of Conway, if they chose to implement one- and two-family inspections, can hire third party agencies to do the inspections. Mr. Bergeron stated his company does that for Bartlett, and has done it for Wolfeboro.

Mr. Bergeron stated the structure is already in place, what has not happened is, and he doesn’t say this to point at anybody, the Town of Conway has opted to not take their head out of the sand and we are starting to put people at risk. Mr. Bergeron stated this is an opportunity for this Board to make a decision that is going to have an effect; all the sudden tomorrow Mr. Pandora is not going to start inspecting one- and two-family dwellings, but he thinks it is going to send an important message.

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Mr. Chalmers stated the fee structure that we are collecting for the building permits is to support that. Mr. Bergeron stated the New Hampshire Statutes say you can only charge fees that are directly proportionate to the services that are provided to go along with it. Mr. Bergeron stated the Town of Conway charges some relatively significant fees for the construction of a single-family home and provides no inspection services; and there are people who will tell you that that is an illegal task because you are taking in funds and providing nothing for that.

Mr. Steiner stated he would ask that Mr. Bergeron go back to the Selectmen as there are companies that do those type of inspections. Mr. Steiner stated it is something to look at for consumer protection and safety. Mr. Steiner stated he is going to vote against the stop work order as he believes Mr. Pandora has it under control with this one client.

Mr. Colbath stated as Chairman he is taking his hat off and putting on his Selectmen's hat, it has been addressed, he is not sure where or what the facts were by what Mr. Bartolomeo stated, but if that was the position taken it was long before his time as Selectmen or the current Board of Selectmen. Mr. Bartolomeo stated this was a decade ago.

Mr. Colbath stated he is on record consistently saying we need residential building inspections, he is 100 percent for it, we need to fund it, it needs to be in this year's budget; he does not know if all his fellow Selectmen agree with him or where that will go. Mr. Colbath stated that is an issue separate from this application.

Mr. Pierce stated the Majestic Theater was held to very high standards, and then next door they don't really have any. Mr. Bergeron agreed and stated it was in 1995 or 1996 that the Selectmen voted on that. Mr. Bartolomeo asked if he was the Town's Building Inspector then. Mr. Bergeron stated he was in 1996, and it was hated then. Mr. Bergeron stated when the State building code was coming into effect in 2001 or 2002 at the legislative level the whole live free or die thing was big, but the legislature realized what was going on in New Hampshire and that it was best for people to have a State wide building code.

Mr. Pierce stated presuming they are going to have inspections and it is going to be built to code, stopping work to provide you with that information, what do you do with that information as he is still going to build it to code. Mr. Bergeron stated if we know tonight that that information is going to be provided, he is going to review it. Mr. Pierce stated and then what. Mr. Bergeron stated he is going to review it and if it is accurate and the work is going to be done correctly then we are all done. Mr. Bergeron stated if the information is not accurate then we will have to figure out how to cross that bridge.

Mr. Bergeron stated it is important that we know that those fire safety components are going to be part of the construction, and until there are plans and specifications provided, we don't know, and, frankly, neither does Mr. Pandora.

Mr. Colbath stated a letter was sent to himself and the Zoning Board of Adjustment from Mr. Bergeron on September 10<sup>th</sup> on behalf of the concerns of Mountain Top Music; there was also a letter of September 4<sup>th</sup> addressed to Mr. Pandora with the building permit with concerns about codes and compliances.



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Mr. Colbath asked Mr. Pandora if he is telling the Board that everything in this letter has been addressed. Mr. Pandora answered in the affirmative and stated in writing, all of it. Mr. Colbath asked if that has been shared with Mr. Bergeron. Mr. Pandora answered in the negative.

Mr. Chalmers asked typically would it be. Mr. Pandora stated it is all public knowledge. Mr. Bergeron stated he is not sure how long he has had this information, but if that had been provided to us, we might not be here tonight. Mr. Pandora stated September 10<sup>th</sup>. Mr. Pierce asked Mr. Pandora if he has reviewed it all and it meets the building code standards. Mr. Pandora answered in the affirmative.

Mr. Bartolomeo asked Mr. Bergeron if he was looking for this information to be on a building permit properly filled out, or are you also looking for plans with specifications. Mr. Bergeron stated a good place to start is a building permit properly filled out and then some appropriate information regarding wall sections needs to be provided for that separation wall between the two units; that probably would fulfill all the needs here.

Mr. Colbath asked for public comment for or against this application which is now requesting a stop work order; there was none.

Mr. Chalmers asked if he is still asking for a stop work order. Mr. Bergeron stated he does not think the building permit should be revoked; revocation of that permit is going to open up enough cans. Mr. Chalmers asked Mr. Pandora if he has received the information that makes him feel comfortable with moving forward with not only issuing the permit, but the continued work on that site. Mr. Pandora answered in the affirmative and stated we can send all that information to Mr. Bergeron.

Mr. Pandora stated they hadn't picked the electrician yet and they hadn't picked a plumber yet, which they have now. Mr. Pandora stated in regards to the energy code we talked to them about furring the walls out and using foam, so everything is going to be a full two-layers of 5/8 fire code on the side towards the Majestic Theater. Mr. Pandora stated there is going to be separation between the two apartment floors, there is going to be separation between the stairs, egress windows, and there are no windows on the side by the theater, they took them out.

Mr. Pierce stated he agrees with all of Mr. Bergeron's concerns, but in the same time we are working within the bylaws and ordinances that we have in place. Mr. Pierce stated Mr. Pandora has done that and he believes that Mr. Pandora has addressed the situation and at the end of the day it has to please Mr. Pandora. Mr. Pierce stated if it meets the criteria's then it is his decision, and he thinks stopping work is just not productive.

Mr. Bergeron stated it does not have to please him and it does not have to please Mr. Pandora, it has to comply with the code. Mr. Pierce stated that is Mr. Pandora's job. Mr. Bergeron stated if this information was available and we had communications about this, we wouldn't be here tonight. Mr. Bartolomeo stated whether a stop work order is granted or not he thinks Mr. Bergeron has done the town a big favor in moving this issue along.

Mr. Colbath stated he agrees with Mr. Bartolomeo, but it is an issue that drastically needs to be addressed beyond this hearing. Mr. Colbath stated he would like to see better communication.

**Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant a stop work order for this application and this property.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated when Mr. Pandora disclosed that he had this letter dated September 10<sup>th</sup> with all the outstanding issues and code compliance issues being addressed to his satisfaction that was enough for him. Mr. Bartolomeo stated that is one dedicated, conscientious public servant, and he has a great deal of respect for his judgement. Mr. Steiner agreed with Mr. Bartolomeo. Mr. Colbath stated he would like to see better communication. **Motion defeated unanimously.**

Mr. Pandora left at this time.

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A public hearing was opened at 7:44 pm to consider a **SPECIAL EXCEPTION** requested by **CMR PROPERTIES, LLC** in regards to §190-24.K.(6) of the Conway Zoning Ordinance **to allow the construction of a resort hotel in the Recreational Resort District** at 165 Skimobile Road, North Conway (PID 214-84.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 6, 2019. This hearing was continued from September 18, 2019.

Mr. Irving stated the applicant has withdrawn the application.

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A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **CMR PROPERTIES, LLC** in regards to §190-28.I.(6) of the Conway Zoning Ordinance **to allow pavement within the wetland buffer** at 165 Skimobile Road, North Conway (PID 214-84.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 6, 2019. This hearing was continued from September 18, 2019.

Mr. Irving stated the applicant has withdrawn the application.

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A public hearing was opened at 7:46 pm to consider a **VARIANCE** requested by **MCDONALDS CORP.** in regards to §190-20.F.(10)(d) of the Conway Zoning Ordinance **to allow a digital main menu board and a digital secondary menu board** at 1750 White Mountain Highway, North Conway (PID 235-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Linell Bailey of Sign Permit Expeditors appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Bailey stated the signs are misrepresented as being digital boards, they are digital boards, but they are not like a board you would see in Las Vegas with flashing, and blinking, and advertising. Ms. Bailey stated they can be programmed, they are stationary copy, and they are smaller in square footage then what is there now.

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Mr. Bartolomeo asked what about them is digital. Ms. Bailey answered the components. Mr. Bartolomeo stated he thought they were like a wall street banner going by. Ms. Bailey stated that is what everyone thinks, but they are not like that; they are stationary, they program them for whatever their menu is for the day and they can speed it up, they can slow it down.

Mr. Pierce asked if this is replacing something that is existing. Ms. Bailey answered in the affirmative and stated the existing menu board needs to be replaced because it is obsolete and they don't have the parts to repair them. Ms. Bailey stated they want to take the one board that is anywhere between 41 and 64 square feet and replace it with two that total 30 square feet. Mr. Bartolomeo asked if she is proposing less square footage. Ms. Bailey answered in the affirmative.

Mr. Irving stated it is simply the digital signage that is contrary to the letter of the law. Mr. Colbath asked are there other existing McDonald's that have this that are nearby. Ms. Bailey answered Portland, ME. Mr. Colbath asked from what has been presented is the definition of digital changing. Ms. Bailey stated she thinks these boards are thrown into a category with LED message units, hence that a Walgreens or a CVS would have advertising toilet paper or coke products and they're scrolling; that is not what this is going to be.

Mr. Chalmers stated this is the menu board at the drive up at the rear of the building. Ms. Bailey agreed. Mr. Colbath stated when you say digital, you think it is like the NASDAQ running across. Mr. Colbath stated it is really a programable menu board, and not necessarily digital device as we think of a digital device. Ms. Bailey stated that is correct. Mr. Bartolomeo asked if the existing signs these will replace internally illuminated. Ms. Bailey stated they are illuminated with fluorescent lamps internally.

Mr. Colbath asked for public comment; Brian Eling stated if you are going to go this route he would encourage the town to put in verbiage that although it can be programmed from inside you don't want something that is scrolling and changing, that it is used only for purposes of changing what you have, and it is only a form of visual reading. Mr. Eling stated he can see the advantages of it, but when he first heard digital, he was thinking Las Vegas sign and he thought no way, because it would change what we have here. Mr. Eling stated what is being proposed is not going to have that type of effect, it is not scrolling or constantly changing.

Mark Lucy stated this McDonald's opened in 1972 and it was a great hangout for Kennett High School. Mr. Lucy stated he believes at that time it had a drive-thru and over time he has seen the drive-up mechanisms change periodically, and this is an appropriate change to keep up with the times.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath 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.** Mr. Colbath asked for Board comment; Mr. Chalmers stated hardship is tough here; it can still operate without a variance. **Motion carried unanimously.**

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

**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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary.** **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-20.F.(10)(D) of the Town of Conway Zoning Ordinance to allow a digital main menu board and a digital secondary menu board be granted.** **Motion carried unanimously.**

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A public hearing was opened at 8:07 pm to consider a **VARIANCE** requested by **DEBORAH KELLY** in regards to §190-28.C.(3) of the Conway Zoning Ordinance **to allow the cutting of between five (5) and ten (10) small saplings within the Wetland and Watershed Protection Overlay District** at 32 Lee Lane, Conway (PID 262-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Tyler Phillips of Horizons Engineering appeared before the Board. Deborah Kelly was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Phillips stated the applicant has property and a home along the Saco River which has overtime experienced some bank erosion at the toe of the slope; we have worked since 2014 to fix that using vegetation and we have done a good job.

Mr. Tyler stated, however, the upper portion of the slope is now eroding, and in order to institute a fix we first need to trim some saplings before we regrade the slope and vegetate it.

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Mr. Phillips stated the purpose of this ordinance is largely related to water quality, preventing erosion and that is exactly what we are trying to do. Mr. Phillips stated it may seem counter intuitive to remove a little vegetation first to put more back in, but the lower portion of the repair area we cannot suitably grade the slope and place the material needed without removing some saplings.

Mr. Pierce asked if grade needs to be changed where the saplings are. Mr. Phillips answered in the affirmative. Mr. Bartolomeo asked if the area is really steep. Mr. Phillips answered in the affirmative. Mr. Colbath asked how many saplings need to be removed. Mr. Phillips answered between 5 and 10. Mr. Phillips stated the State has issued a permit for this project.

Mr. Irving stated he has reviewed this project several times with Mr. Phillips and this seems to be the most appropriate remedy. Mr. Irving stated they want to cut the small trees that we specifically prohibit them from cutting to protect the shoreline; they are cutting them to install better protection. Mr. Phillips stated the applicant has planted hundreds of saplings at a lower level already, so they have well more than compensated.

Mr. Colbath asked for public comment; Todd Marshall stated he speaks in support of what they are trying to do to protect her home and her property. Mr. Marshall asked if the grid that is being put down to hold soil on top of the grid and then plant vegetation into that. Mr. Phillips answered in the affirmative and stated they need to smooth the slope out, put the grid on then infilled with top soil, trees are planted through the grid and then grass is seeded in the areas between the trees.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

**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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary. Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-28.C.(3) of the Town of Conway Zoning Ordinance to allow the cutting of between five (5) and ten (10) small saplings within the Wetland and Watershed Protection Overlay District be granted. Motion carried unanimously.**

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A public hearing was opened at 8:23 pm to consider a **SPECIAL EXCEPTION** requested by **DEBORAH KELLY** in regards to §190-26.B.(1)(f) of the Conway Zoning Ordinance **to allow the filling and smoothing of a sloughing slope within the Floodplain Conservation Overlay District** at 32 Lee Lane, Conway (PID 262-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Tyler Phillips of Horizons Engineering appeared before the Board. Deborah Kelly was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Phillips stated this would be the next step after clearing the saplings; smoothing out the side slope and placing the geogrid over the top. Mr. Phillips stated there is no measurable increase in the flood elevations.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Todd Marshall stated he supports the project.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that all fill, new construction, substantial improvements and other development within the floodway shall be prohibited unless the applicant's New Hampshire registered engineer can show the activity would not result in any increase in flood hazard within the Town of Conway.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(f) of the Town of Conway Zoning Ordinance to allow the filling and smoothing of a sloughing slope within the Floodplain Conservation Overlay District be granted. Motion carried unanimously.**

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A public hearing was opened at 8:31 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC** in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance **to allow the increase in permitted residential density from 12 units per acre to 18.2 units per acre** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Mark Lucy of White Mountain Survey and Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Lucy stated per the zoning ordinance the first unit on this parcel requires ½ acre, and in this particular case the first ½ acre will be a commercial unit. Mr. Lucy stated the remainder of the lot, which is 1.1 acres, on which we have proposed 20 full-time rental units in a structure that is three floors in height. Mr. Lucy stated the first two floors will be residential and the upper floor will be work area; the floor plans have been submitted to the Board.

Mr. Lucy read his memo entitled Justification for Variance Request from Conway Chapter 190 Zoning – Article 190 Section 20.B.(5)(c)[2] dated September 24, 2019 [in file].

Mr. Bartolomeo stated at the time this ordinance was enacted jumping to 12 units per acre was huge, if it is in the right zone and if it has municipal water and sewer. Mr. Bartolomeo stated the intent of that was, as it is stated in the ordinance, that 25% of those units could not be condominiums for 20 years, they were to shake loose what is called workforce housing.

Mr. Bartolomeo stated this workforce housing had a minimum and maximum square footage with the intent of keeping them small so that market forces would keep the rents low. Mr. Bartolomeo asked if these are all the same size; or are they luxury apartments. Mr. Bartolomeo asked if Mr. Lucy has addressed the workforce part of this ordinance.

Mr. Lucy answered in the affirmative and stated that the Conway Zoning Ordinance does not address workforce housing. Mr. Lucy stated this section of the ordinance specifically addresses rental properties, long-term. Mr. Irving stated this is a request to change the 12-units to 18.2 units; there is a subsequent application for the special exception where they will demonstrate 25% of the units do meet the size requirements.

Mr. Lucy stated all 20 units fall within the 300 square feet and 1,000 square feet floor area. Mr. Bartolomeo stated the issue for him is the sudden increase in density and if that were to happen everywhere then he thinks rather than granting these things on an application by application basis it needs to become a warrant article. Mr. Bartolomeo stated he seems to be looking for spot zoning, where you're looking for an increase in density right here and no one else is enjoying that right now. Mr. Lucy stated but anyone else could enjoy that if they file a variance request and that variance request is granted.

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Mr. Lucy stated if all other aspects of site plan can be met, why wouldn't the Zoning Board knowing that the Town needs this type of housing, grant the request. Mr. Lucy stated if this proposal didn't meet all of the site plan review regulations, he would have a problem with that. Mr. Lucy stated he is not presenting a plan that will fail at the Planning Board level.

Mr. Steiner asked why not increase the size of the workforce housing rather than proposing a restaurant. Mr. Lucy stated it has to do with the economic matrix of property development. Mr. Colbath stated this property is serviced by municipal sewer and water. Mr. Lucy answered in the affirmative. Mr. Colbath stated it was indicated that the third story was workspace, is that a common space. Mr. Lucy answered in the affirmative and stated it is an area for the renters and their guests.

Mr. Colbath asked for public comment; Tom Eastman of the Conway Daily Sun asked if this was not just for employees at Settlers Green, but open to all. Mr. Lucy answered in the affirmative.

Brian Eling, owner of DQ, stated the Board should consider the project as a whole; the idea of workforce housing is fabulous, every business in Town is struggling with staffing. Mr. Eling stated the idea of increasing the density for housing purposes to facilitate more people is fabulous and he would be on board; they have secured housing in Bartlett and in other areas specifically for workforce housing so we have that to offer to their staff members as an option to retain staff, but they still struggle.

Mr. Eling stated something like this right next door to him opened to the public would be fabulous, but the part of the overall plan he has a problem with is the fast food restaurant; he would be on board if this were all housing. Mr. Eling stated to give them a variance you are only maximizing the developer and maximizing his profit on the property.

Mr. Eling stated he would propose that you do one or the other, either be a commercial property or a housing property. Mr. Eling stated he owns a restaurant right next door and we suffer with staffing just like every other restaurant in town. Mr. Eling stated it would be great if they wanted to add more workforce housing, but why not go back to the drawing board and add more rather than add to the problem up front by immediately needing more workforce housing.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated although he supports what is trying to happen here, he thinks increasing the density should be done on a town wide municipal level and not this way. **Motion carried with Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated this more serves the developer than the public. **Motion carried with Mr. Bartolomeo voting in the negative.**



Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo voting in the negative.**

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

**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.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated they can still have rental units. **Motion carried with Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary.** Motion carried unanimously.

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.B.(5)(c) of the Town of Conway Zoning Ordinance to allow the increase in permitted residential density from 12 units per acre to 18.2 units per acre be granted.** Motion carried with Mr. Bartolomeo voting in the negative.

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A public hearing was opened at 9:07 pm to consider a **SPECIAL EXCEPTION** requested by **LOT 23 WMH, LLC** in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance **to allow 20 residential dwelling units with a granted variance to allow 18.2 units per acre** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Mark Lucy of White Mountain Survey and Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Lucy stated the density is allowed by variance and the use is allowed by special exception. Mr. Lucy stated of the 20-units, 25% will be set aside for long-term rentals for not less than 20-years. Mr. Lucy stated those five units are identified on the first-floor plan as the five units on the north side of the building. Mr. Lucy stated there are two, two-bedroom units, one, one-bedroom unit, and two studio units.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Brian Eling, owner of DQ, stated this seems to be to maximize profit and earnings and not to do a good deed; these don't seem to be affordable.

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

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

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

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-20.M.(2) of the Town of Conway Zoning Ordinance to allow 20 residential dwelling units with a granted variance to allow 18.2 residential units per acre be granted. Motion carried unanimously.**

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A public hearing was opened at 9:19 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC** in regards to §190-20.M.(2) of the Conway Zoning Ordinance **to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property and the Residential Agricultural District** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 4, 2019.

Mark Lucy of White Mountain Survey and Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Lucy stated the closest residential lot, not in the residential zone, is identified as PID 246-32.

Mr. Bartolomeo asked how far away is that from your proposed box. Mr. Lucy answered 300-feet. Mr. Lucy stated we believe that it is residential, it is owned by the Green Granite Hotel, so it might be lodging. Mr. Chalmers asked how far is it going to be from your new apartment building. Mr. Lucy answered less than 100-feet.

Mr. Lucy read his memo entitled Justification for Variance Request from Conway Chapter 190 Zoning – Article 190 Section 20.M.(2) dated September 24, 2019 [in file].

Mr. Bartolomeo asked if there was any technical data on the decibel of the speaker. Mr. Lucy answered in the negative. Mr. Pierce asked if the DQ property next door was required to obtain a variance for their menu-board. Mr. Irving answered in the affirmative. Mr. Colbath asked what will the wall look like. Mr. Lucy stated it would be a solid wall; it will be subject to site plan review and will be what the Planning Board feels appropriate for the setting. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated they nowhere meet the 600-foot distance. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Chalmers stated it is egregiously under the limit. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated those bothered by the proximity of this box are coming out on the short end of the substantial justice. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Colbath 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.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated patrons can still walk in the door. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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

**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.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary.** **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-20.M.(2) of the Town of Conway Zoning Ordinance to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property and the Residential Agricultural District be granted. Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.

**BRIAN FRAM (PID 245-8) – APPEAL FROM ADMINISTRATIVE DECISION  
DISCUSSION**

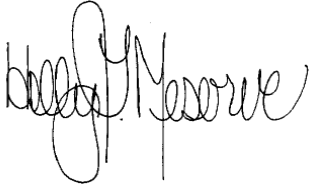
Mr. Bartolomeo asked if the Board could reconsider their decision of August 16, 2019 regarding Brian Fram. After a brief discussion, **Mr. Steiner made a motion, seconded by Mr. Pierce, to reconsider. Motion carried unanimously.** Mr. Irving stated he will check to see if there is a statutory window that has been missed.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the minutes of September 18, 2019 as written. Motion carried with Mr. Steiner abstaining from voting.**

Meeting adjourned at 9:54 pm.

Respectfully Submitted,



Holly L. Meserve  
Planning Assistant