

## ZONING BOARD OF ADJUSTMENT

### MINUTES

JANUARY 19, 2022

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, January 19, 2022 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Planning Director, Jamel Torres; Building Inspector, David Pandora; and Planning Assistant, Holly Whitelaw. Alternates, Jonathan Hebert and Jac Cuddy were in attendance.

#### APPOINTMENT OF ALTERNATE MEMBER

Mr. Chalmers appointed Mr. Hebert as a voting member.

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **LPS HOLDINGS, LLC** [FILE #22-01] in regards to §190-13 of the Conway Zoning Ordinance **to appeal the administrative decision that to allow a second independent residential dwelling unit on a lot requires a unit subdivision** at 2996 East Main Street, Center Conway (PID 257-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 7, 2022.

Shawn Bergeron and Kate Richardson of Bergeron Technical Services appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Pandora submitted to the Board information regarding §190-5 Interpretation and 190 Attachment 2:4 [in file]. Mr. Pandora stated this is what we have been doing since he started here, not allowing a second dwelling unit, a second structure, on any one property without either a unit subdivision, a variance or a special exception.

Mr. Pandora stated to his knowledge it has never been done; there are some in Town that are there prior to 1980 before zoning, and they are considered grandfathered. Mr. Pandora stated this is his interpretation; the table clearly shows a two-family as a duplex. Mr. Pandora stated he has always had the authority to issue a permit for a duplex if the density was satisfied on any lot, but anything beyond his authority ends.

Mr. Bartolomeo asked if there is a duplex on this property now. Mr. Pandora answered in the affirmative and stated they want to relinquish one of the units. Mr. Pandora stated that is where his authority ends, he cannot allow a separate structure without a variance, special exception, or a unit subdivision. Mr. Pandora stated he does not have the authority to issue the permit otherwise. Mr. Pandora stated if the Board decides he does have the authority, where does the number end; is it one unit more, two units more or whatever the lot will support.

**Adopted: March 16, 2022 – As Written**

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Mr. Bergeron stated he is hoping that Board is familiar with the various communications and the chronology of what has taken place. Mr. Bergeron stated the site contains 105 acres of land and contains two living units. Mr. Bergeron stated they want to eliminate one of the units from the existing structure and essentially convert it to another unit further back on the property. Mr. Bergeron submitted to and reviewed a plan with the Board [in file].

Mr. Bartolomeo asked when they say they want to remove one unit, do you mean demolish it. Mr. Bergeron stated there are two units in the existing structure, one unit will be demolished and converted back to a single-family home.

Mr. Bergeron stated he wrote a letter [in file] to Mr. Pandora on October 14, 2021 [read]. Mr. Bergeron stated Mr. Pandora responded in a letter [in file] dated October 21, 2021 [read]. Mr. Bergeron stated he was not comfortable with that response, and responded to Mr. Pandora with an email [in file] dated November 4, 2021 [read]. Mr. Bergeron stated Mr. Pandora responded with a letter [in file] dated November 5, 2021 [read].

Mr. Bergeron stated he is not sure how we went from October 2021 back to an ordinance in 2003. Mr. Bergeron stated in regard to Mr. Pandora stating there are no other places currently in Town, they found one property in particular that demonstrates that it has been allowed for a dwelling unit taken from a structure with a lot where two units exists and placed in another structure. Mr. Bergeron stated the property was approved for the second unit by way of special exception with very specific conditions, then modified and permitted to move to another structure.

Ms. Richardson stated the property in question in 1994 was granted a special exception for a second unit on the lot via the mobile home special exception; the second unit was a mobile home on the property with the condition that a member of the family had to live in the mobile home. Ms. Richardson stated in 2007 a building permit was issued to demolish the mobile home and construct a second single family dwelling on the property.

Ms. Richardson stated that a building permit was issued without site plan or subdivision review. Ms. Richardson stated it is a structure, and not a mobile home. Ms. Richardson stated the special exception granted to the mobile home that allowed it to exist as a second unit on that property was then transferred to a permanent structure.

Mr. Bergeron read the conditions of that special exception under §190-13.K.(13); and the special exception was granted for a mobile home with a family member living in it. Mr. Pandora stated they missed the special exception for an accessory dwelling unit in 2007 that was granted and covers the new structure. Mr. Bergeron asked to see and reviewed the file for the special exception. Mr. Bartolomeo stated the discovery of this disarms the argument about Mr. Pandora's statement being this exists nowhere else in Town.

Mr. Bergeron stated the Board can look at the size of the parcel and see what the effect is of having another unit there. Mr. Bergeron asked what is the benefit of coming back for a unit subdivision; there isn't any. Mr. Bergeron stated if the owner wishes to construct a home back there and then at some point wishes to sell it, and it is not subdivided it is not the Town of Conway's problem, it is their problem.

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Mr. Bergeron stated under the current ordinance, §190, and under the use table it doesn't say "a dwelling unit". Mr. Bergeron stated the preliminary opening to the residential agricultural district says "the RA district is primarily designed to accommodate a compatible mixture of residential and agricultural uses" plural; it doesn't limit it to one use and it doesn't limit it to one unit.

Mr. Bergeron stated there are already two units on this property. Mr. Bergeron stated they want to take one out from there and move it over there; there is nothing unreasonable about this. Mr. Bergeron stated in this particular case he has to show they meet density and they meet density a hundred times over.

Mr. Bartolomeo asked if the existing house with two units is considered a duplex. Mr. Pandora answered in the affirmative. Mr. Bartolomeo asked if duplexes are allowed without a unit subdivision. Mr. Pandora answered in the affirmative and stated because it is under one roof, it is one residential structure. Mr. Bergeron stated in the definition of "residential/dwelling unit" and find where it differentiates between a duplex, two-units in a single-family home or even three-units; it doesn't.

Mr. Chalmers asked for public comment; Mr. Cuddy stated Mr. Pandora has done an excellent job as enforcement officer and is effective in the job that he does, and would find it disrespectful to reverse the administrative decision. Mr. Bergeron stated the Board shouldn't show disrespect to his client. Mr. Bartolomeo stated yet we have all taken an oath up here to uphold the ordinance. Mr. Pierce stated he doesn't disagree with Mr. Pandora; there are remedies, they are just choosing not to use them.

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to uphold the decision of Mr. Pandora to deny this application. Motion carried unanimously.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the Minutes of December 15, 2021 as written. Motion carried with Mr. Hebert abstaining from voting.**

Meeting adjourned at 8:27 p.m.

Respectfully Submitted,

Holly L. Whitelaw  
Planning Assistant