

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 16, 2022

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 16, 2022 at the Conway Town Office, 23 Main Street, in 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, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternates Phyllis Sherman and Jon Hebert were in attendance.

PUBLIC HEARINGS

A public hearing was opened at 7:03 pm to consider a **SPECIAL EXCEPTION** requested by **EDWARD E. MINYARD RECOVABLE TRUST OF 2012/SUNNY SKYE REVOCABLE TRUST** [FILE #22-02] in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance **to allow up to seven residential dwelling units** at 3465 White Mountain Highway, North Conway (PID 202-181). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 3, 2022.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Joy Tarbell and Edward Minyard were in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bergeron stated the site was previously approved as a restaurant and lounge with a caretaker's unit and four motel rooms.

Mr. Bergeron stated this site allows for 9 units, but they are asking for seven. Mr. Bergeron stated we will be deed restricting 25% of the units, and we have municipal water and sewer approval. Mr. Bergeron submitted a photo of the building [in file].

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if the only changes were adding dormers to the second floor. Mr. Bergeron answered in the affirmative. Mr. Bartolomeo asked if the second-floor units would have access to the roof deck. Mr. Bergeron stated all the units will have access to the roof deck.

Mr. Colbath asked for public comment; Kate Richardson of Bergeron Technical read a letter the Town received from The Intervale Neighbors Group [in file].

Tim Davis of 25 Neighbor's Row, an abutter, asked if the building as it exists would remain the same with no changes to the basic building. Mr. Colbath answered other than the dormers. Mr. Davis asked if the second-floor deck was remaining a flat deck. Mr. Colbath answered in the affirmative. Mr. Davis asked how many of these units will be short-term rentals. Mr. Bergeron stated none of the units would be used for short-term rentals. Mr. Bartolomeo asked if all the units are rentals. Mr. Bartolomeo answered in the affirmative.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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. Steiner, 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; Mr. Bartolomeo asked which units are dedicated as full-time rental apartments. Ms. Tarbell answered unit #2 and unit #7. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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. Steiner, that the 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. Steiner, 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. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-20.B.(5)(c) of the Town of Conway Zoning Ordinance to allow up to 7 dwelling units be granted. Motion carried unanimously.

A public hearing was opened at 7:15 pm to consider a **VARIANCE** requested by **THE RESIDENCES AT SACO RIVER, LLC** [FILE #22-03] in regards to §190-20.B.(1) of the Conway Zoning Ordinance **to permit 102 residential dwelling units on a 16.15-acre lot** at 1552 White Mountain Highway, North Conway (PID 246-23). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 3, 2022.

Mark Lucy of White Mountain Survey, a division of Horizons Engineering, and Rob Barsamian, principal at The Residences at Saco River, LLC, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Lucy stated they are looking for a 55% increase in the allowed density. Mr. Lucy stated this property is the former drive-in site. Mr. Lucy stated the density they are looking for is 102

Adopted: April 20, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 16, 2022

residential units on 15.6 acres; this equates to approximately 6.5 units per acre. Mr. Lucy stated he submitted a five-point variance request justification [in file].

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if the 66 units allowed by §190-20.B.(1) is that an expanded density because of the commitment to work force housing. Mr. Lucy answered in the negative and stated that is allowed by right. Mr. Bartolomeo stated it is a big jump from 66 to 102. Mr. Lucy stated it is a big jump, but there is also a housing crisis; and they are looking to fill that void. Mr. Bartolomeo stated he does not think it is proper to hide behind the housing shortage to go beyond density limits voted on by the voters. Mr. Lucy stated we are not hiding behind it; we are right out front with it. Mr. Lucy stated one of the reasons variances are allowed is to meet unusual demands and needs.

Mr. Barsamian stated they want to be in the affordable price point for housing, obviously we have a crisis in the Valley, and we have for a long time for housing. Mr. Barsamian stated the way to get there is by density, and we can't there with 66 units. Mr. Barsamian stated the infrastructure alone is between 4 and 5 million on the site. Mr. Barsamian stated they don't want to go to market rate condominiums on this project, there is a need that we think needs to be filled. Mr. Barsamian stated the biggest problem with the valley, with workers, is that there is very little housing. Mr. Barsamian stated they are trying to fill a need; we are not residential developers, but they feel that at some point someone has to jump in.

Mr. Barsamian stated residential developments are hard to do in the affordable price point unless you get subsidized or ask for funds, and there are a lot of strings attached to those funds. Mr. Barsamian stated we are using our own money, our own investments, and we believe we can bring in a project that fits in the criteria for affordable housing; we want to do the whole project as affordable. Mr. Barsamian stated the way we do that is by increasing the density, and we cannot do it with 60 units.

Mr. Barsamian stated they are not in the rental business; they don't want to rent homes. Mr. Barsamian stated they believe they can create neighborhoods that are affordable for people; that is the need they are trying to fill. Mr. Barsamian stated they need to increase the density so they can make the economic side of it work. Mr. Barsamian stated with the need for housing, and to make it work for them due to the infrastructure cost they need more density. Mr. Barsamian stated they are excited to do this, but they need a little help to get there. Mr. Barsamian stated this is not just an opportunity for us, but for the community as well.

Mr. Bartolomeo asked if this is 102 freestanding, individual small homes. Mr. Barsamian answered in the affirmative. Mr. Bartolomeo asked if the plan is to use manufactured homes which helps with the price point. Mr. Barsamian answered in the affirmative. Mr. Colbath asked if they have looked into any partnerships such as New Hampshire Housing Finance Authority. Mr. Barsamian stated the general manager has met with them, but it is usually for a rental project; that is a whole different business that they are not ready to take on. Mr. Barsamian stated they are looking to take on a more traditional development role where we know we can bring this to the market with no strings attached.

Adopted: April 20, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 16, 2022

Mr. Pierce stated there are remedies for their density problem under §195, and asked if they have considered any of that. Mr. Barsamian stated they have looked at it, but some of that has to be rental, and that is not what we want to do. Mr. Chalmers asked what percentage of this is going to be affordable. Mr. Barsamian answered the whole thing; going to use the median income and we are in the \$269,000 price range.

Mr. Bartolomeo stated what they are asking for comes out to about 6.5 units per acre, and this is about half of what is allowed on a lot serviced by municipal sewer and water with the increased density with the rentals set aside. Mr. Pierce stated anything over 66 is radically high, this Board represents what the Town came up with and to address issues like this; this project is precisely why they came up with §195. Mr. Pierce stated there is a remedy in front of you, it's not exactly your model, but it does solve the problem. Mr. Barsamian stated we don't want to be in the rental market.

Mr. Torres stated the Town is very supportive of more housing; all different models, affordable, market rate, work force or whatever it may be. Mr. Torres stated through the special exception this property could have 193 units at 12 units per acres, and through the Affordable Housing ordinance this property could have 139 units. Mr. Torres stated not sure why a variance is needed for the desired about of units. Mr. Bartolomeo stated he does not want to rent them. Mr. Torres stated through the Affordable Housing ordinance you don't need to rent them; it is ownership or rental. Mr. Torres stated under the special exception 25% has to be rentals it does not say anything about the other 75%.

Mr. Colbath asked for public comment; Mr. Colbath read a letter from Eliza Grant [in file]. Andrew Hoffman with Adventure and Entertainment Properties and Manager of Saco River Camping area asked if this would give us many neighbors, and asked if they would be selling the lots and the houses, so they would go from one neighbor to multiple neighbors. Mr. Barsamian answered in the affirmative. Mr. Hoffman stated they are all for housing, and they are keenly aware that we need housing in the area; their fear would be if their change would have any restrictions or change their zoning in any way in terms of what they are allowed to do in the future. Mr. Torres stated the zoning would stay the same.

Mr. Colbath asked Phyllis Sherman if she saw anything that would affect their property. Ms. Sherman stated what she sees which would probably be for the Planning Board would be the roadway that services both properties and where it dumps out onto Route 16.

Shawn Bergeron of Bergeron Technical Services representing abutter JGF Property Management, the owner of Dairy Queen, stated overall his client is supportive of the development of housing in Conway, we need it desperately. Mr. Bergeron stated it does say on the application that this is in the Highway Commercial District, it is also in the Floodplain Conservation Overlay District. Mr. Bergeron stated if you look at the effect of the Floodplain Conservation Overlay District much of the parcel that is depicted to be developed is either in floodplain or floodway.

Mr. Bergeron stated in regards to zoning, his calculations are slightly different than Mr. Lucy's and he believes with the standard zoning calculation you could get 69 units on this parcel, not 66. Mr. Bergeron stated 102 units is 48% greater than what is allowed by standard calculation.

Adopted: April 20, 2022 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 16, 2022

Mr. Bergeron stated if the special exception that allows up to 12 units per acre were applied to this lot there could be 193 units; so increased density is available by other mechanisms and means already in our ordinance. Mr. Bergeron stated §195 can be applied without a special exception. Mr. Torres stated that is correct. Mr. Bergeron stated under §195 for 16.15 acres would require a quarter of an acre for the first unit and 5,000 square feet for each unit thereafter, that's 138 units.

Mr. Bergeron stated the beauty of §195 is it does not have the 25% rental restriction; that does not apply. Mr. Bergeron stated nor does the three units per building apply. Mr. Bergeron read §195-8; he doesn't have to have rental units, just if he does have rental units they have to comply with this particular section. Mr. Bergeron stated he does not think a variance is necessary, and he thinks the Board is powerless to grant this variance.

Steve Porter stated he thinks the idea as presented is a great idea; everyone is focused on rental units. Mr. Porter stated he doesn't need a variance as it meets the scope that the town already has in place. Mr. Porter stated we need housing, and we need housing for people who can afford to buy housing in his area so they can plant their roots. Mr. Porter stated he commends Mr. Barsamian for undertaking this project, as unique as it is; we need people to move into the valley, without that we have no foundation and your workforce is the foundation for your growth, and right now we have no foundation.

Roy Tilsley of Berstein Shur representing Bellevue Properties, owner and operator of North Conway Grand Hotel at 72 Common Court, stated we have concerns with traffic, overcrowding, intensity of use; we are fine with residential use, they have the same issue with employees. Mr. Tilsley stated we think the allowed densities would makes sense here, there are mechanisms here for them to have a greater density than a variance; the 25% special exception rental or the workforce housing which does not require any rentals, they can sell every single unit they just have to commit 25% of workforce housing prices.

Mr. Tilsley stated if the Board approves this as a density variance there is no way to enforce that there will be the type of workforce housing that they describe. Mr. Tilsley stated there are ways to do this under the ordinance; this is not what variances are supposed to do. Mr. Tilsley stated the variance procedure is the constitutional relief valve in the zoning ordinance; when a property is uniquely situated and the zoning ordinance leaves it with no real practical use, the variance procedure, if you meet the five criteria on the property, allows this Board to grant relief to avoid an unconstitutional taking.

Mr. Tilsley stated the variance procedure looks at the property, what is unique about the property; unnecessary hardship starts with special conditions of the property that are unique in its environment. Mr. Tilsley stated none of that is set out here. Mr. Tilsley stated their position is a public policy issue; the valley needs housing, we can provide housing, give us a variance. Mr. Tilsley stated that is not a variance; there is nothing unique about the property, and nothing about this property would justify a variance.

Mr. Tilsley stated if the Town's zoning ordinance provides a density that is too low to meet the Town's housing needs then the ordinance should be amended, that is the legal way this is supposed to work. Mr. Tilsley stated the zoning ordinance is created by the voters; they make the policy

decisions as to what the requirements should be. Mr. Tilsley stated this Board grants variances when the property is uniquely situated and treated unfairly. Mr. Tilsley stated you don't make, at this board level, public policy; that is not this board's job, and would be unlawful to grant this variance. Mr. Tilsley stated there are ways to do this project, and it requires making the binding commitment to some kind of workforce housing or the 25% rental.

Mr. Tilsley stated if this Board is going to grant that increased density, you should get that commitment from them. Mr. Tilsley stated his client's concern is if you give a variance for public policy reasons there are a lot of other parcels in the highway commercial district that are going to line up and ask for the same thing. Mr. Tilsley stated if you don't base your variances on unique circumstances of the property you are not going to be able stop that ship from sailing. Mr. Tilsley stated you shouldn't let them circumvent the ordinance by granting the variance for public policy purposes.

Mr. Colbath closed public comment at 8:03 pm. After a brief discussion, the applicant requested the hearing to be continued. **Mr. Chalmer made a motion, seconded by Mr. Steiner, to continue the public hearing until April 20, 2022 at 7:00 pm. Motion unanimously carried.**

A public hearing was opened at 8:20 pm to consider a **VARIANCE** requested by **BARNES DEVELOPMENT, LLC** [FILE #22-04] in regards to §190-20.B.(1) of the Conway Zoning Ordinance to permit **32 residential dwelling units on a 3.5-acre lot** at 110 Barnes Road, North Conway (PID 235-82). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, March 3, 2022.

Mark Lucy of White Mountain Survey, a division of Horizons Engineering, and Rob Barsamian, principal at The Residences at Saco River, LLC, appeared before the Board. The applicant requested the hearing be continued.

Mr. Chalmer made a motion, seconded by Mr. Steiner, to continue the public hearing until April 20, 2022 at 7:05 pm. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Steiner, to approve the Minutes of January 19, 2022 as written. Motion carried with Mr. Colbath abstaining from voting.

Meeting adjourned at 8:27 p.m.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant