

ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 21, 2024

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 21, 2024, at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 p.m. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Jonathan Hebert; Richard Pierce; Jac Cuddy; Town Planner, Ryan O'Connor; and Assistant Planner, Holly Whitelaw. Alternates Steven Steiner and Debra Haynes and Zoning Officer Nicholas DeVito were in attendance.

Mr. Colbath led the Pledge of Allegiance.

PUBLIC HEARINGS

A public hearing was opened at 7:00 p.m. to consider a **VARIANCE** requested by **WILLIAM CARVALHO AND ALICE KALT** [FILE #24-02] in regards to ~~§190-13.B.(3)~~ §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow a third residential dwelling unit on an undersized lot an accessory dwelling unit accessory to a duplex** at 3045 East Main Street, Center Conway (PID 257-16). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Andy Dean of Cooper Cargill Chant and William Carvalho appeared before the Board for a rehearing. Alice Kalt was in attendance. Mr. Dean reviewed the application to use a finished space above a detached garage as a dwelling unit for long-term residency. The home on the property is a duplex. They are requesting increasing the number of bedrooms on a 2.3-acre lot from four to five. The applicant will ensure the septic system is approved by the state.

Mr. Dean reviewed the five criteria.

Chair Colbath asked for Board comment.

Mr. Chalmers clarified that the dwelling is not intended to house a caretaker for the applicant or his family and was told it is not.

Mr. Chalmers asked why the applicant is not applying for a unit subdivision. Mr. Dean explained the property was more suited to applying for a variance. Mr. O'Connor explained they do not have the lot size for the density. He will suggest the applicant go before the Planning Board for the unit subdivision, if the variance is granted. Mr. Dean felt this would incur unnecessary expense for a 468-square foot unit. Mr. Chalmers noted as this would be a multi-family home, it would fall under a different section of the building code and life safety code.

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Mr. O'Connor said the variance request was for the reduction in lot density and not to allow an ADU associated with a duplex, which might require a new application. He explained it could be an option to go forward with this application as written to allow a reduced density, then as a condition, require special exception criteria be met so it could be treated as an ADU.

Chair Colbath asked for public comment.

Benjamin Colbath said this seems like an easy decision, based on the needs of the community. He noted variances and waivers are tools for the Town to use to meet the needs of the community. He hoped the Board would be amenable to this project.

Chair Colbath closed public comment.

Mr. Hebert spoke in favor of this application. It helps the community and is a small change to an existing structure.

Mr. Pierce said the housing crisis would not be solved with one house and it is expressly against the ordinance as it is written. Mr. Chalmers noted this is the reason for a variance.

The Board discussed the intent of the ordinance and how other similar instances were handled. Chair Colbath noted every case is judged based on its individual merits as presented to the Board.

Mr. O'Connor asked if the Board is comfortable switching the section of the ordinance that the variance is requesting relief from density to the ADU criteria. If so, noticing the special exception relief rather than the density relief might be appropriate, so a decision is based on the correct section of the ordinance. Then, they would not have to worry about the unit subdivision. Mr. Dean agreed.

Mr. O'Connor noted the section of the ordinance the applicant is requesting a variance from has changed to §190-13.B.(4)(b).

Mr. Dean reviewed the criteria for an ADU.

Mr. Colbath read item 1. **Mr. Hebert made a motion, seconded by Mr. Chalmers, 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. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Pierce voting in the negative.** Mr. Pierce said the ordinance is very specific.

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion carried 4-1-0, with Mr. Pierce voting in the negative.** Mr. Pierce said it is contrary to the ordinance. Chair Colbath said justice lies with the applicant.

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert 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.** Mr. Colbath asked for Board comment. Mr. Pierce asked for an explanation of the hardship. Mr. Dean explained they were originally using an old standard. He cited a New Hampshire Supreme Court decision that states this should be a balancing process in which property rights must be respected and protected from unreasonable zoning regulations. **Motion carried 4-1-0, with Mr. Pierce voting in the negative.** Mr. Pierce said he did not see the hardship.

Mr. Colbath read item 5.a.ii. **Mr. Hebert made a motion, seconded by Mr. Chalmers, 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. Hebert, 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 4-1-0, with Mr. Pierce voting in the negative.** Mr. Pierce said he did not agree with this.

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

Mr. Chalmers made a motion, seconded by Mr. Hebert, that based on the forgoing findings of fact, the variance from §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance to allow an accessory dwelling unit accessory to a duplex be granted. Motion carried 4-1-0, with Mr. Pierce voting in the negative. Mr. Pierce voted no, for the reasons stated.

A public hearing was opened at 7:41 p.m. to consider a **VARIANCE** requested by **EDWARD SARRO REVOCABLE TRUST [FILE #24-03]** in regards to §190-31, Definition of Accessory Dwelling Unit, of the Conway Zoning Ordinance **to allow an accessory dwelling unit to be greater than 800 square feet** at 876 Eaton Road, Conway (PID 280-77.11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Ed Sarro appeared before the Board. He would like to bring the property into conformity as far as the size and convert the garage unit into an ADU. The footprint of the unit is 1,100 square feet. Chair Colbath asked why the unit is not 800 square feet. Ed Sarro explained it is a finished apartment and has been used as a dwelling unit since 1988. Mr. O'Connor explained the additional dwelling unit was not permitted; this is an effort to bring the property into compliance.

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Ms. Whitelaw explained there are two applications: the variance is to allow an ADU greater than 800 square feet, and the special exception is to allow the ADU. She clarified the Board has dealt with this several times and has granted some in the past.

Chair Colbath asked for Board comment. Ms. Whitelaw clarified these regulations didn't exist in 1987, when the home was built. However, the unit was indicated on a subdivision plan that this was sleeping quarters accessory to the main house and not a separate dwelling unit. They discussed if this could be considered grandfathered.

The Board discussed the applicant's statement in the application that the unit could be modified to meet the 800 square foot requirement and how this makes it difficult for the Board to grant the variance request. Ed Sarro said it would be difficult to remodel this unit.

Mr. O'Connor said the applicant has the acreage to allow the density for a second unit. So, a unit subdivision is also an option, which would allow the unit to be larger than 800 square feet. Mr. Hebert suggested continuing this application to give the applicant an opportunity to speak with Staff regarding this.

Chair Colbath asked for public comment.

Fred Sarro asked if a subdivision would require a separate driveway and was told it would not. Mr. O'Connor noted nothing on the lot would have to change as part of a unit subdivision.

Fran Sarro asked if there would be any setback issues, if the property was subdivided. Mr. O'Connor reiterated a unit subdivision is different than a typical lot subdivision. He noted that it would be difficult to remedy the size of the dwelling unit.

Mr. Hebert made a motion, seconded by Mr. Cuddy, that applications 24-03 and 24-04 be continued to March 20, 2024. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Evan Lucy asked if a variance sets a precedent. Chair Colbath said the ZBA is not a board that can set a precedent; each case is considered on a case by case basis.

A public hearing was opened at 7:41 p.m. to consider a **SPECIAL EXCEPTION** requested by **EDWARD SARRO REVOCABLE TRUST** [FILE #24-04] in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 876 Eaton Road, Conway (PID 280-77.11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

This hearing was continued until March 20, 2024.

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A public hearing was opened at 8:01 p.m. to consider a **VARIANCE** requested by **STATE OF NEW HAMPSHIRE/NH HOUSING FINANCE AUTHORITY** [FILE #24-05] in regards to §190-20.B.(1) of the Conway Zoning Ordinance **to allow the construction of 105 residential dwelling units** at 95 Common Court, North Conway (PID 235-93). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Andy Dean of Cooper Cargill Chant, Ben Frost of NH Housing Finance Authority, and Josh McAllister of HEB Engineers appeared before the Board. Mr. Dean said they are asking for an increase in density. There are two properties owned by the NHDOT; the NH Housing Finance Authority is negotiating with the DOT to purchase the properties. They are interested in developing one and retaining the other as greenspace. The density of the Puddin Hill Road property would be used for Common Court and is designed to be affordable housing.

Chair Colbath asked for Board comment.

Mr. Hebert noted the ZBA does not have the ability to transfer density requirements from one lot to another. Mr. O'Connor said the preservation of the Puddin Hill Road lot and North-South Road viewshed is part of the community benefit that would be gained by allowing this increased density. Mr. Hebert noted concern regarding potential future development of the Puddin Hill Road lot, since the Board has no authority to bind it. Mr. Frost said they would be willing to accept as a condition of approval imposing a restriction on the Puddin Hill Road property so it cannot be developed.

Mr. Frost said it is highly unlikely they will acquire the properties without the variance. Mr. Dean offered to put in a condition that a deed restriction or restrictive covenant for the Puddin Hill Road property must be approved by the Town before they can exercise the variance. Mr. O'Connor said the deed restriction would need to be in place and recorded before final approval of a site plan to build the density as requested.

Mr. Frost noted they have been in contact with the owners of the North Conway Grand Hotel and are prepared to offer as a condition that the Common Court property be used exclusively for long-term residential use, including multi-family.

Chair Colbath asked for public comment.

Eli Leino of Bernstein Shur, representing Bellevue Properties (owner of North Conway Grand Hotel), thanked the applicant for accurately capturing the discussions with their client regarding the residential use.

Benjamin Colbath, Planning Board member, explained the Planning Board has been working on this project and feels it is a win/win situation. He supports the intention to preserve the North-South Road viewshed and provide affordable housing. He hopes the ZBA supports this project.

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Janet Hudson asked where Barsamian's project would be in proximity to this project, and this was explained.

Eliza Grant, Planning Board member, echoed Mr. Colbath's comments. She said the Planning Board is working hard to help solve the housing crisis and preserve greenspace. She noted this development is over the aquifer and is within the Saco watershed. She said this is an extremely unique lot and is a good candidate for a variance, and encouraged the ZBA to approve this.

Ailie Byers, Planning Board member, said these properties were purchased by the DOT through eminent domain with the bypass. She noted a lot of work was done to develop this conceptual idea. She said this property is already partially developed, with impermeable surfaces and infrastructure, so it offers benefits that are worth considering.

Kevin MacMillan said as a contractor, he would not support this project, as there are too many unknowns. He urged the Board not to approve a variance prematurely. He cited personal experience with conditional approval that was not met or enforced. He also stated that the NH Housing Finance Authority foreclosed on his mortgage in the past. He believes the Town's laws are being undermined.

Steve Hartmann said as a former member of the Planning Board, he has never seen a project of this scale come before the Board. He said this is everything the Town has been asking for and urged the ZBA to support this project.

Chair Colbath asked for Board comment.

Mr. Cuddy said the NH Housing Finance Authority is the only organization with the ability and funding to do a project like this and ensure it offers affordable housing. He noted they are protecting the North-South Road viewshed and this is a once-in-a-lifetime opportunity.

Mr. Hebert noted there has not been a formal presentation of the project. He would like to have input from Town counsel. He asked if a continuance would cause problems. Mr. Frost said he cannot speak for the DOT. Mr. O'Connor agreed they need to make sure the single property meets the criteria for the variance.

Mr. Dean reviewed the five criteria. The Board discussed the number of units needed for the project to move forward. Mr. Frost said they have not done a pro forma analysis of development on the property. He noted it is difficult to discuss this project without including the Puddin Hill Road property, as it is being viewed as a common scheme of development. Mr. Dean noted they will not be offsetting costs with market-rate units, as this is 100% affordable housing. So, the margins are much smaller.

Mr. Cuddy asked about the household income. Mr. Frost said this would be a tax credit development. The income levels would be determined by the U.S. Department of Treasury and the investors in the tax credit projects. They are typically set at an affordability focused on 60% of the area median income. Mr. O'Connor said it equates to about \$1,100/month, based on household income.

Mr. O'Connor reviewed the draft conditions of approval.

Steven Steiner, ZBA alternate, asked how many units are in the existing structure and was told 14. He compared this development to the projects in New Jersey and cited the problems that exist in low-income housing. He is not in support of this project. Mr. Frost noted Conway Pines is representative of the type of projects they finance.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert, 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. Hebert, 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. Hebert, 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. Cuddy, 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. Cuddy, 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. Cuddy, that based on i and ii above, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. **Motion carried unanimously.**

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

Mr. Pierce applauded the project and stated this is how the housing crisis should be dealt with.

Mr. Chalmers made a motion, seconded by Mr. Cuddy, that, based on the forgoing findings of fact, the variance from §190-20.B.(1) of the Town of Conway Zoning Ordinance to allow the construction of 105 residential dwelling units be granted, with conditions that the property shall be deed restricted as long-term affordable housing; parcels currently shown as 235-52, 53, 54, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 79 on Conway tax maps shall be

placed in a permanent conservation easement or restrictive covenant which preserves the parcels in a vegetated state and protects the viewshed from the North-South Road. Draft easements or restrictive covenants shall be submitted and revised to the satisfaction of the Town of Conway prior to recording; and the conditions of this variance shall be met prior to any final Planning Board approval which utilizes the density approved with this decision. **Motion carried unanimously.**

The Board took a break.

A public hearing was opened at 9:05 p.m. to consider a **VARIANCE** requested by **SC LOOKOUT, LLC** [FILE #24-06] in regards to §190-20.F.(10)(a) of the Conway Zoning Ordinance **to allow an internally lit digital menu board** at 1498 White Mountain Highway, North Conway (PID 246-20.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Tim Zareb (sp), North Conway Starbucks store manager, appeared before the Board to request a variance for an existing menu board to be backlit. He noted the sign has been in this location since 2019 and was backlit originally; the lights were turned off when they discovered they were out of compliance. He reported orders take longer and the drive-thru line backs up, as the board is hard to read. They are requesting the variance to re-light the menu board.

The applicant partially addressed the five points of law.

Chair Colbath asked for Board comment. The Board asked clarifying questions about the difficulties the long drive-thru line creates.

Mr. DeVito reported he has been working to bring all menu boards in town into conformity. He noted this drive-thru situation is unique, as only two cars can queue without impacting movement around the store. It is not a digital menu board; it is solely backlit. The sign is not visible from the main street; he is addressing this situation to be consistent.

Mr. O'Connor noted they have seen similar applications in the past. He said Staff would work with the applicant to fully complete the five points and make the application stronger.

Mr. Hebert made a motion, seconded by Mr. Chalmers, to continue until March 20, 2024. Motion carried unanimously.

A public hearing was opened at 9:15 p.m. to consider a **VARIANCE** requested by **MCNALLY REVOCABLE LIVING TRUST** [FILE #24-07] in regards to §190-28.B. & C. of the Conway Zoning Ordinance **to allow the construction of a single-family residential dwelling unit within**

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the Wetland and Watershed Protection Overlay District setback and buffer on Thompson Road, North Conway (PID 219-249). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application. He offered to share the applicable section of the ordinance with interested parties.

Andy Dean of Cooper Cargill Chant and Josh McAllister of HEB Engineers appeared before the Board to present a proposal to construct a single-family residence on a wooded lot surrounded by wetlands in the residential district. It will connect to an existing sewer. He said the lot was created prior to zoning and noted the overlay district renders the property unusable, thus creating a hardship.

Mr. Dean reviewed the five points of law.

Chair Colbath asked for Board comment.

The Board discussed whether the Town has the ability to establish zoning ordinances that restrict the use of a property for the greater good. Mr. Dean pointed out if the lot was deemed not buildable, it would be a taking. He noted it has been taxed as a potentially developable lot.

Mr. O'Connor clarified this is a pre-existing, non-conforming lot. The Town has the responsibility to determine if there is a way to feasibly construct on this property and maintain the spirit of the ordinance and also if the applicant has taken sufficient measures to limit the impacts to the wetland. If not, it would be considered a taking.

Mr. McAllister reviewed the details of the proposed structure. He noted the wetland disturbance would solely be related to the driveway access.

Chair Colbath asked for public comment.

Mary Vigeant, abutter, said they do not support the request for a variance. She said the property floods regularly. They asked what the impact of this project would be on the drainage patterns and potentially cause flooding on their property.

Kevin MacMillan said the wetlands clean the Town's water and he believes this development will pollute the stream. He said this property has not been developed, as it could not pass the New Hampshire Water Pollution and Supply Control Commission. Now it can, with the connection to a sewer. He said the soil on the property is primarily wetland soil. He said this property floods and he is concerned about the impact to his property. He urged the Board not to approve this variance.

Chair Colbath closed public comment.

Chair Colbath asked for Board comment. Mr. Pierce said the onus is on the owner to seek relief.

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Mr. O'Connor suggested Mr. McAllister provide an engineering analysis for impacts of development on the wetland so that the Board can make a more informed decision.

Mr. Hebert requested a legal opinion on whether this lot is buildable and if not, if it needs to be taken and what that process would be.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to continue Applications 24-07 and 24-08 until March 20, 2024. Motion carried unanimously.

A public hearing was opened at 9:46 p.m. to consider a **VARIANCE** requested by **MCNALLY REVOCABLE LIVING TRUST** [FILE #24-08] in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow a wetland crossing for a driveway in the Wetland and Watershed Protection Overlay District** on Thompson Road, North Conway (PID 219-249). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Andy Dean of Cooper Cargill Chant and Josh McAllister of HEB Engineers appeared before the Board.

This hearing was continued until March 20, 2024.

A public hearing was opened at 9:47 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **JAMES LIGHTMAN** [FILE #24-09] in regards to §190-8, §190-13, §190-27 and §190-31 of the Conway Zoning Ordinance; Env-Wq 1004.09(b) of the New Hampshire Code of Administrative Rules; and RSA 483-B of the New Hampshire Revised Statutes **to appeal the Building Inspector's issuance of a building permit to Michael and Catherine Hayes** at 432A Brownfield Road, Center Conway (PID 273-21). James Hounsell, Assistant Building Inspector, was in attendance.

Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 9, 2024.

Chair Colbath read the application and the applicable section of the ordinance.

Attorney Mike Lewis of Rath Young Pignatelli and James Lightman, abutting property owner, appeared before the Board. Attorney Eli Leino of Bernstein Shur and Michael Hayes, property owner, were also in attendance. Mr. Leino explained the parties have been litigating this matter, but litigation counsel was unable to attend. He is willing to proceed, although noted that their preference is to wait for litigation counsel to be available. Mr. Leino submitted a letter to the Board dated February 21, 2024, regarding this [in file]. The Board discussed waiting for the litigation counsel to be available. Mr. Lewis noted time pressures and they decided to proceed.

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Mr. Lewis explained both permits rest on a false predicate, that the permitted construction is related to an accessory structure. He said the permitted structure is not an accessory structure. He reviewed the history of this matter, explaining the original permit was for a garage with a storage unit. However, the designs the applicant discussed via email communication with the contractor were different. Mr. Lewis stated this permit was obtained via fraud.

Chair Colbath noted that this proceeding pertains to the appeal from administrative decision regarding the issuance of the building permit in November 2023 and asked Mr. Lewis to focus his presentation on this decision.

Mr. Lewis noted town officers cannot allow a property to be permitted if it violates state regulations, particularly as they pertain to the septic hookup. He shared evidence that the DES is investigating the septic line between the garage and the septic system.

Mr. O'Connor clarified that the 2021 permit was to construct a garage with a second floor for storage. This decision was not appealed. This appeal is for the 2023 permit, which was for the interior completion of the garage and the installation of a bathroom. The focus point is, did the building inspector err in issuing the 2023 permit.

Mr. Lightman explained why this is not an accessory structure and said this appeal brings the question of whether this is an accessory structure back into play. He stressed Mr. Hayes did not have a permit for a connection from the accessory structure into the septic system, which was backed up by a letter from the DES. He said he has filed a complaint with the DES.

Mr. O'Connor verified that a complaint was filed with the DES. He said the letter from the DES stated the complaint is being reviewed; it made no determination for or against. The building inspector checked with the DES to see if a septic permit was required. DES said it was not, as septic loading is based on bedrooms rather than bathrooms. He noted the DES will be making a determination as to the permit for the connection; this is not a decision the ZBA will make.

James Hounsell clarified the November 2023 permit was a renewal to complete the interior finish for the garage and included an amendment to install a bathroom. As this renewal did not include an increase in bedrooms, he determined that no new septic approval is required, as there is no new loading. He said at the final inspection, they will verify that there are no bedrooms or other features that would define this space as an ADU.

Mr. Lewis requested the Board not permit any further construction on this property until it is clear whether what is occurring is compliant with the law.

Chair Colbath asked for public comment.

Mr. Leino said the connection is shown on the 2021 septic plan. The change from graywater to septic does not change the load calculation. He said communication regarding constructing an ADU was only a planning issue; the 2021 permit noted no ADU was allowed. He discussed concerns being raised that are not the ZBA's jurisdiction. He said the application for administrative appeal was noted as being incomplete, and there was nothing legally in front of the Board.

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Chair Colbath reiterated comments should address the November 2023 permit.

Mr. Hayes reviewed the issues the building inspector found when the November 2023 permit was requested and how they were resolved. He reviewed the history regarding the permits for the septic line.

An extended discussion followed regarding the above-cited issues.

Steven Steiner asked if there was an approved septic design and Mr. Leino said there was.

Mr. Lightman said before the permit was issued, he met with Mr. Hounsell and described this issue. He said Mr. Hounsell recommended that Mr. Lightman contact the state. He wrote a letter to the Town asking that they withhold action on the permit until they had an opportunity to review information he was assembling.

Mr. Leino noted the ZBA does not have equitable jurisdiction under New Hampshire law. He then presented an approval for construction of an individual sewage disposal system from the DES on February 2, 2021, and submitted a copy of septic approval eCA2021020815.

Mr. Lightman reiterated these permits do not cover connecting a sewage line from a structure to a septic system.

Chair Colbath conditionally closed public comment and polled the Board as to whether they had enough information to make a decision on this appeal. The Board agreed they did.

Chair Colbath closed public comment.

The Board clarified that a negative vote indicated the permit should be upheld as issued, while a positive vote indicated the permit should be repealed.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to grant the appeal from administrative decision. All voted in the negative. Motion did not carry.

Chair Colbath reviewed the rehearing process.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the Minutes of January 17, 2024, as written. Motion carried, with Mr. Pierce abstaining from voting.

ADJOURNMENT

Meeting was adjourned at 11:04 pm.

Respectfully submitted,
Beth Hanggeli, Recording Secretary