

ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 20, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 20, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Sheila Duane; Alternate, Cynthia Briggs; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Briggs as a voting member.

OTHER BUSINESS

Saco River's Edge Lot Owners Association/Barry Packard (PID 254-70/File #09-04) – Motion for Rehearing (File #09-13): David Maihos and Barry Packard were in attendance. Mr. Maihos stated that he spoke with James Briggs, who is the original owner and was the one who authored the covenants and restrictions, and he did not receive notice of the meeting. Mr. Maihos stated that he is definitely against it. Mr. Irving stated that we have tracking confirmation that it was received and signed by Jeff Briggs.

Mr. Maihos stated that we are in legal procedures with the Packard's. Mr. Maihos stated that the abutter is not in agreement and he wrote the covenants. Ms. Briggs stated that covenants do not involve the Town. Ms. Briggs stated that she was not a part of the application, but assumes that the Board went by the Town's regulations. Ms. Briggs stated it is up to the people who enacted the covenants to enforce them.

Mr. Maihos asked the mailing address where the notice was sent to Mr. Briggs. Mr. Irving answered Narragansett, Rhode Island. Mr. Maihos stated that Mr. Briggs is in Florida and did not receive notice. Ms. Sherman stated as far as the Town is concerned they are obligated to send to the address the Town has on record. Ms. Duane stated that it is not the town's fault. Ms. Duane stated whoever Mr. Briggs had picking up his mail, did not forward the letter to him. Mr. Maihos stated that his son does not own the property.

Ms. Duane made a motion, seconded by Mr. Colbath, to grant the Motion for Rehearing to Saco River's Edge Lot Owners Association in regard to Barry Packard. Motion unanimously defeated.

PUBLIC HEARINGS

A public hearing was opened at 7:41 pm to consider a **SPECIAL EXCEPTION** requested by **LEWIS L. WHITMAN** in regard to §147.13.16.10.7 Conway Zoning Ordinance to allow the

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construction of a driveway across a wetland and to consider a **VARIANCE** requested by **LEWIS L. WHITMAN** in regard to §147.13.16.3.1 Conway Zoning Ordinance to allow the construction of a residential dwelling within the Wetland and Watershed Protection Overlay District on Cranmore Circle, North Conway (PID 219-118). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, April 6, 2009. This was continued from April 15, 2009.

Randall Cooper of Cooper Cargill Chant appeared before the Board. Mr. Cooper reviewed a revised plan. Mr. Cooper stated that the turn-around was eliminated and the Board would just be permitting the driveway. Mr. Colbath asked if the house was still 1,084 square foot building. Mr. Cooper answered in the affirmative. Mr. Cooper stated when this property was deeded to his client there was no zoning ordinance and now, due to the constraints, this is the only reasonable use of the land given the neighborhood.

Ms. Briggs stated that this puts about one-third of the house within the 75-foot setback. Mr. Irving stated that two-thirds of the building is conforming. Mr. Chalmers asked if Mr. Whitman was going to building on this lot. Mr. Cooper stated Mr. Whitman is an older gentleman that lives in Florida, so he is probably going to sell the property. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. Duane made a motion, seconded by Mr. Colbath, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; Ms. Briggs stated that setbacks are in place to protect the water and this does not protect the water. **Motion carried with Ms. Briggs voting in the negative**

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Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; Ms. Briggs stated the ordinance is to protect the water and this does not protect the water. **Motion carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to allow the construction of a residential dwelling within the Wetland and Watershed Protection Overlay District be granted as proposed. Motion carried with Ms. Briggs voting in the negative.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that a site plan review approval is not required since it is a single family dwelling.** Ms. Sherman asked for Board comment; Mr. Chalmers asked who is going to inspect this property to make sure it is located in the correct spot. Mr. Irving stated that David Pandora, the building inspector, has been inspecting foundation locations. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction of a driveway across a wetland be granted. Motion unanimously carried.

A public hearing was opened at 7:55 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **ROBERT SCHOR AND MARNI MADNICK REGARDING PETER RATTATY REVOCABLE TRUST OF 2001** in regard to §147.14 of the Conway Zoning Ordinance that the Stonehurst Manor's February 13, 2009 Site Plan constitute a permissible expansion of a nonconforming use at 3351 White Mountain Highway, North

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Conway (PID 202-182 & 186). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 8, 2009.

Mr. Colbath and Ms. Briggs stepped down at this time. Ms. Sherman appointed Ms. Tobin as a voting member. Peter Malia, Town Attorney; Peter Rattay, owner of the Stonehurst Manor; and Robert S. Carey of Orr & Reno Professional Association, Attorney for Peter Rattay, were in attendance. Mr. Carey submitted an *Objection to Appeal to Administrative Decision, a Defendant's Bench Memorandum*, photographs and an 11x14 copy of the Stonehurst Manor site plan. Mr. Irving submitted a copy of the Planning Board Notice of Decision, File No. 89-17S, a copy of building permit #501, a copy of the May 4, 1989 Planning Board Minutes and a plan entitled "Stonehurst Manor" with a revision date of July 23, 1981.

Ms. Sherman asked for public comment; Peter Malia, Town Counsel, stated that he did find out until about 4:30 this afternoon that there would only be a four member Board and Attorney Miller definitely wanted a five-member Board. Mr. Malia stated that Attorney Miller asked if he needed to make the 2.5 hour trip. Mr. Malia stated that he did try to contact Attorney Carey without success.

Mr. Chalmers made a motion, seconded by Ms. Duane, to continue the hearing requested by Robert Schor and Marni Madnick until June 17, 2009 at 7:30 pm. Motion unanimous carried.

A public hearing was opened at 8:08 pm to consider a **VARIANCE** requested by **MARK GUERRINGUE** in regard to §147.13.1.4 of the Conway Zoning Ordinance to allow the construction of a 280 square foot addition within the front setback at 61 Morrill Lane, Conway (PID 267-26). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 8, 2009.

Mr. Irving stated that the applicant had a scheduling conflict and has requested the hearing be continued until June 17, 2009. **Mr. Colbath made a motion, seconded by Ms. Duane, to continue the application for Mark Guerringue until June 17, 2009 at 7:45 pm. Motion unanimously carried.**

A public hearing was opened at 8:10 pm to consider a **VARIANCE** requested by **MICHAEL VALLADARES** in regard to §147.12 of the Conway Zoning Ordinance to extend the existing overhead utility system across Green Hill Road at 1277 Green Hill Road, Conway (PID 207-14). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 8, 2009.

Mia Gannon of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving asked if one line would be going across East Conway Road and then goes underground at the property. Ms. Gannon answered in the affirmative. Mr. Chalmers asked if there were other properties on this road being serviced by underground. Mr. Irving stated probably, but would be for the newer subdivisions. Mr. Chalmers stated that this is a good situation for a variance.

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Ms. Sherman asked for public comment; Emily Fernald asked if this is an additional line. Ms. Gannon answered in the affirmative. Mr. Irving stated that it is an extension as they are taking an existing line on the west side and going east across the road. Mr. Irving stated that they are extending the system by putting a new line over East Conway Road. Ms. Briggs asked if it is from an existing pole. Mr. Irving stated it is from an existing pole to another pole and then underground from there.

Mr. Colbath asked Ms. Fernald if her property was being dug up for underground utilities if that would be a greater hardship. Ms. Fernald answered absolutely.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on the findings of a, b, and c above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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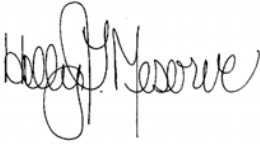
Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.12 of the Town of Conway Zoning Ordinance to extend the existing overhead utility system across Green Hill Road be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Ms. Duane, to approve the Minutes of April 15, 2009 as written. Motion carried with Ms. Tobin and Ms. Sherman abstaining from voting.

Meeting adjourned at 8:30 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant