

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 21, 2010

The Zoning Board of Adjustment convened at the Conway Town Office on Wednesday, July 21, 2010 at 6:30 pm and due to the weather did not hold the demonstration with wooden bats and rubber base/softballs relative to the application by North Conway Amusements, LLC.

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 21, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Dana Hylen; Alternate, Cynthia Briggs; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Briggs and Ms. Tobin as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **NORTH CONWAY AMUSEMENTS, LLC** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change one non-conforming use, a waterslide, to another non-conforming use, batting cages**, at 2129 White Mountain Highway, North Conway (PID 230-107). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 4, 2010. This hearing was continued from June 16, 2010.

Peter Gagne of North Conway Amusements, LLC appeared before the Board. Ms. Sherman stated there was supposed to be a wooden bat and rubber baseball/softball demonstration, but the weather didn't allow that to happen this evening.

Ms. Briggs made a motion, seconded by Ms. Tobin, to continue the wooden bat rubber ball demonstration until August 11, 2010 at 5:30 pm at the Conway Recreation Center. Motion unanimously carried.

Ms. Briggs made a motion, seconded by Ms. Tobin, to continue the public hearing for North Conway Amusements until August 18, 2010 at 7:30 pm. Motion unanimously carried.

A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERTA SEAVEY AND LOUISE INKELL** in regard to §147.13.14.3.6 of the Conway Zoning Ordinance **to deposit fill in the floodplain** at 236 Quint Street, Conway (PID 276-248). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 9, 2010.

Ron Briggs of Briggs Land Surveying appeared before the Board. Louise Inkell and Andrew Seavey were in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Briggs stated the applicant would like to place 194 cubic yards of fill within the floodplain. Mr. Briggs stated that they were able to come up with 12.6 cubic yards of material above the floodplain. Mr. Briggs stated that this lot is not in the floodway and it is serviced by municipal water and sewer.

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Mr. Briggs stated that they are removing an existing mobile home and replacing it with a home on a concrete foundation. Ms. Sherman asked if the new home would be on a slab. Andrew Seavey stated that it would be a frost wall with a slab. Ms. Sherman asked the elevation of the new home. Mr. Briggs stated that the first floor of the house would be at 464.7-feet and the garage floor would be at 464.2 feet. Mr. Irving stated they are in compliance with NFIP requirements of 464.1.

Ms. Briggs asked if this pond has a dam. Mr. Irving answered in the affirmative. Ms. Briggs asked if the gates were lowered would that effect the flood elevation. Mr. Irving answered in the negative and stated in the event of a 100-year storm the flood gates would not make a difference. Mr. Irving suggested taking out fill to have the least overall impact on the floodplain. Mr. Irving stated that he doesn't want to raise the floodplain level more than necessary. Mr. Irving stated that they have done everything they can do in regard to mitigation.

Mr. Irving asked the first floor elevation of the mobile home and asked if the mobile home was in the floodplain. Mr. Seavey answered the first floor of the mobile home is 30" above the ground. Mr. Briggs stated that the mobile home is within the floodplain. Ms. Briggs stated if you put anything in it puts the other properties at risk and asked how much can we do on this lake before we significantly impact the 100-year floodplain.

Mr. Irving stated you would divide 181 cubic yards by the area of the floodplain. Mr. Irving stated we would have to do it thousands of times for it to make a difference. Mr. Briggs stated it is more critical if it were in the floodway; that accumulation would actually raise the flood level. Mr. Briggs stated that this is not in the floodway. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman stated that item 2 was not applicable to this application.

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Briggs made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.6 of the Town of Conway Zoning Ordinance to deposit fill in the floodplain be granted. Motion unanimously carried.

A public hearing was opened at 7:56 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERTA SEAVEY AND LOUISE INKELL** in regard to §147.13.14.3.11 of the Conway Zoning Ordinance **to replace the existing home with new structures between the 100-year and 10-year flood level** at 236 Quint Street, Conway (PID 276-248). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 9, 2010.

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Ron Briggs of Briggs Land Surveying appeared before the Board. Louise Inkell and Andrew Seavey were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman stated that item 2 was not applicable to this application.

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.11 of the Town of Conway Zoning Ordinance to replace the existing home with new structures between the 100-year and 10-year flood level be granted. Motion unanimously carried.

A public hearing was opened at 8:00 pm to consider a **VARIANCE** requested by **ROBERTA SEAVEY AND LOUISE INKELL** in regard to §147.13.15.7 of the Conway Zoning Ordinance to **construct a deck and a ramp within the 50-foot Shoreline Protection Overlay District** at 236 Quint Street, Conway (PID 276-248). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 9, 2010.

Ron Briggs of Briggs Land Surveying appeared before the Board. Louise Inkell and Andrew Seavey were in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Briggs stated that a 223 square foot deck does exist. Mr. Briggs stated by moving the house footprint further away from the pond the area of the deck is reduced to 172 square feet. Ms. Sherman stated that this is making a non conforming use less non-conforming. Mr. Briggs agreed. Mr. Chalmers asked if the deck would be the same size. Mr. Briggs answered in the affirmative and stated that the stairs would be replaced with a ramp.

Mr. Briggs stated there are also a number of out buildings being removed. Mr. Briggs stated that the outbuildings currently total 1,407 square feet and 421 square feet will be retained. Ms. Sherman asked for public comment; there was none.

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

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

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

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

Ms. Sherman read item 5.a.i. **Ms. Tobin made a motion, seconded by Mr. Hylen, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Chalmers made a motion, seconded by Ms. Tobin, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.15.7 of the Town of Conway Zoning Ordinance to construct a deck and a ramp within the 50-foot Shoreline Protection Overlay District be granted. Motion unanimously carried.

A public hearing was opened at 8:10 pm to consider a **VARIANCE** requested by **ROBERTA SEAVEY AND LOUISE INKELL** in regard to §147.13.15.5 of the Conway Zoning Ordinance to **allow the reconstruction of an existing structure within the 100-foot shoreline setback** at 236 Quint Street, Conway (PID 276-248). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 9, 2010.

Ron Briggs of Briggs Land Surveying appeared before the Board. Louise Inkell and Andrew Seavey were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none

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

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

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

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

Ms. Sherman read item 5.a.i. **Ms. Tobin made a motion, seconded by Mr. Hylen, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Tobin made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Hylen made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.15.5 of the Town of Conway Zoning Ordinance to allow the reconstruction of an existing structure within the 100-foot shoreline setback be granted. Motion unanimously carried.

A public hearing was opened at 8:13 pm to consider a **VARIANCE** requested by **ROBERTA SEAVEY AND LOUISE INKELL** in regard to §147.13.3.4 of the Conway Zoning Ordinance to **allow the construction of a portion of a structure within the 25-foot front setback** at 236 Quint Street, Conway (PID 276-248). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 9, 2010.

Ron Briggs of Briggs Land Surveying appeared before the Board. Louise Inkell and Andrew Seavey were in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman asked how much is encroaching into the front setback. Mr. Briggs stated that the 122 square feet of the existing front deck and stairs encroach within the front setback. Mr. Briggs stated that 44 square feet of the proposed front deck and stairs will encroach. Mr. Briggs stated that the areas are more conforming as well as the overall distance is further than what exists now. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none.

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

Ms. Sherman read item 2. **Ms. Briggs made a motion, seconded by Ms. Tobin, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Ms. Sherman read item 5.a.i. **Ms. Briggs made a motion, seconded by Mr. Hylen, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

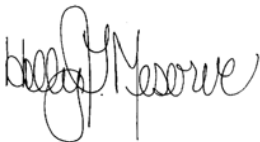
Ms. Sherman read item 5.a. ii. **Mr. Hylen made a motion, seconded by Ms. Briggs, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Hylen made a motion, seconded by Ms. Briggs, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Briggs made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.3.4 of the Town of Conway Zoning Ordinance to allow a portion of a structure to be constructed within the 25-foot front setback be granted. **Motion unanimously carried.**

Meeting adjourned at 8:20 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant