

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**OCTOBER 20, 2010**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 20, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:31 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Sheila Duane; Alternate, Cynthia Briggs; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**APPOINTMENT OF ALTERNATE MEMBER**

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

**PUBLIC HEARINGS**

A public hearing was opened at 7:31 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERTA BELL** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 115 Red Ridge Lane, North Conway (PID 232-61). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010.

There being no one in attendance to represent the application, **Ms. Duane made a motion, seconded by Ms. Briggs, to continue the public hearing for Roberta Bell to later in the evening. Motion unanimously carried.**

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A public hearing was opened at 7:35 pm to consider a **SPECIAL EXCEPTION** requested by **CYNTHIA SCHOONOVER** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance **to allow the installation of underground utilities across a wetland** at 43 Jessica's Way, North Conway (PID 232-61). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010.

Ms. Briggs stated that she works for Crown Ridge Condominiums and she signed for the certified letter for this application as well as the CMR Properties application. Ms. Briggs stated that she did not know what they were. Ms. Briggs stated that she has nothing to gain or lose by acting on this application, but she wanted the Board to know that she does work for an abutter. The Board did not have an issue with Ms. Briggs sitting on this application.

Curt Detzer appeared before the Board. Cynthia Schoonover was in attendance. Ms. Sherman stated there were only four members present and the applicant is allowed to have a five member Board. Ms. Sherman stated that the applicant would need three affirmative votes for the application to be granted. Mr. Detzer agreed to proceed with four members. Ms. Sherman asked if Mr. Detzer had any objections to Ms. Briggs sitting on the application. Mr. Detzer answered in the negative. Mr. Irving clarified that having a four member Board is not grounds for an appeal.

Ms. Sherman read the application and the applicable section of the ordinance.

**Adopted: November 17, 2010 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 20, 2010**

Mr. Detzer stated that the wetland crossing was approved by the State in 2005, but not sure if it ever went to the Zoning Board of Adjustment. Mr. Detzer stated Greg Howard of North Country Soil Services found this to be acceptable. Mr. Detzer stated that the intent is to bring water and electric across the wetland and then put it back as it was. Mr. Detzer stated that a septic design has been approved by the Town and the State.

Ms. Sherman asked if the existing driveway crosses the same wetland. Mr. Detzer answered in the affirmative. Ms. Sherman asked for public comment; there was none.

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. Briggs, 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.**

**Mr. Colbath made a motion, seconded by Ms. Briggs, 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 installation of underground utilities across a wetland be granted. Motion unanimously carried.**

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A public hearing was opened at 7:46 pm to consider a **VARIANCE** requested by **CMR PROPERTIES, LLC** in regard to §147.13.12.7.2 of the Conway Zoning Ordinance **to allow a second freestanding sign** at 239 Skimobile Road, North Conway (PID 214-84). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010.

Ms. Sherman stated there were only four members present and the applicant is allowed to have a five member Board. Ms. Sherman stated that the applicant would need three affirmative votes for the application to be granted. Mr. Wilcox agreed to proceed with four members. Mr. Irving clarified that having a four member Board is not grounds for an appeal.

Ben Wilcox, General Manager, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated this application is for an additional freestanding sign, not a second freestanding sign, as they currently have more than one freestanding sign. Mr. Wilcox stated that this is a new location for the Children's Center and this sign would help direct traffic to the new location.

**Adopted: November 17, 2010 – As Written**  
**CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 20, 2010**

Mr. Wilcox stated that this would improve the traffic flow. Mr. Irving stated that this would guide people through the parking lot rather than onto North Chair Road. Mr. Wilcox stated that is correct. Ms. Duane stated the sign would prevent vehicles from going further up Old Bartlett Road and to Whitaker Lane.

Mr. Colbath stated North Chair Road ends at the same building. Mr. Wilcox agreed, but North Chair Road is not on our land; it is the entrance to the Condominiums. Mr. Colbath asked if they would still have access to North Chair Road. Mr. Wilcox answered in the affirmative and stated they would prefer to keep customers on our land. Mr. Colbath asked if the driveway where the sign is going to be located is going to be upgraded. Mr. Wilcox stated not to the extent of some of the other parking areas, but there will be cones and parking attendants on the busy days.

Mr. Colbath stated this is not a second sign. Mr. Irving stated there are several freestanding signs. Mr. Colbath asked if they were permitted. Mr. Irving agreed and stated they are grandfathered. Mr. Irving stated if you go to that site there will be more than two freestanding signs. Mr. Colbath asked the location of the main sign. Mr. Wilcox stated it is when you go into the property off Skimobile Road.

Ms. Sherman asked the size of the proposed sign. Mr. Wilcox answered 60" x 72", 30 square feet. Mr. Wilcox stated that he thought the sign was important because of the new location for the Children's Center. Mr. Wilcox stated there is a lot of potential to get lost. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, 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. **Mr. Colbath made a motion, seconded by Ms. Duane, 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. **Mr. Colbath made a motion, seconded by Ms. Briggs, that substantial justice is done.** 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. Briggs, 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. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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.**

**Adopted: November 17, 2010 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 20, 2010**

Ms. Sherman read item 5.a. ii. **Mr. Colbath 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. Colbath made a motion, seconded by Ms. Duane, 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. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.12.7.2 of the Town of Conway Zoning Ordinance to allow an additional freestanding sign be granted. Motion unanimously carried.**

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A public hearing was opened at 7:58 pm to consider a **VARIANCE** requested by **CMR PROPERTIES, LLC** in regard to §147.13.12 of the Conway Zoning Ordinance **to increase a 114 square foot wall sign to a 157 square foot wall sign** at 165 Skimobile Road, North Conway (PID 214-84). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010.

Ben Wilcox, General Manager, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Duane asked how much additional signage is proposed. Mr. Irving answered 33 square feet of sign area. Mr. Wilcox stated they are changing the format of the sign. Mr. Wilcox stated they are using letters and naming the building the Artist Falls Lodge. Mr. Wilcox stated that the building will be used for the tubing park and the Mountain Coaster.

Mr. Colbath asked if Mr. Wilcox had an artist rendition of putting the verbiage they wanted within the 114 square feet. Mr. Wilcox stated they did do that and it was really small and would be hard to read. Ms. Briggs stated that the building is setback far from the road.

Mr. Colbath stated that this is what will best fit the building. Mr. Wilcox stated they played with many layouts, they had it smaller, but they just didn't work as you wouldn't be able to read it. Ms. Sherman stated with the size of the building this fits. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, 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. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. **Mr. Colbath made a motion, seconded by Ms. Briggs, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Adopted: November 17, 2010 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 20, 2010

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath 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.**

**Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.12 of the Town of Conway Zoning Ordinance to increase a 114 square foot wall sign to a 157 square foot wall sign be granted. Motion unanimously carried.**

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A public hearing was opened at 8:08 pm to consider a **VARIANCE** requested by **MICHAEL AND JUDITH HIMBERGER** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow a deck 10-feet within the** setback at 200 Woodland Grove Road, Conway (PID 266-73). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010.

Michael Himberger appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there were only four members present and the applicant is allowed to have a five member Board. Ms. Sherman stated that the applicant would need three affirmative votes for the application to be granted. Mr. Himberger agreed to proceed with four members. Mr. Irving clarified that having a four member Board is not grounds for an appeal.

Mr. Himberger stated the only privacy they have on their property is behind the house. Mr. Himberger stated that they are proposing the deck to be five feet from the property line. Ms. Sherman asked what is on the neighboring lot. Mr. Himberger stated it is undeveloped. Ms. Sherman asked if there is access to the back of the property for emergency vehicles. Mr. Himberger answered in the affirmative.

Ms. Duane asked what the size of the adjoining property is. Arthur Foster, owner of the abutting land, stated that it is 1.2 acres. Ms. Duane stated there are plenty of spots to locate a house on that lot where this deck is not going to impede it.

**Adopted: November 17, 2010 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 20, 2010**

Mr. Foster stated he doesn't want to be liable if anyone stumbles off this deck, onto his property and gets hurt. Mr. Colbath asked Mr. Foster is he is opposed to the deck. Mr. Foster answered in the negative and stated that he just wants it to be far enough to be safe. Mr. Irving stated that a segment of stockade fence the length of the deck could be installed. Ms. Duane stated that she would prefer a live hedge.

Ms. Briggs asked how high the deck is. Mr. Himberger stated that it is level to the ground when you walk out of the house and at the end it would be 9-feet off the ground. Ms. Sherman asked for public comment; Leon and Ellie Philip, owners of Spruce Moose Lodge, stated that the Himberger's were guests of theirs until they found this property and they would just like some extra space. Mr. Colbath stated that the liability issue is separate.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Ms. Briggs stated that the setbacks are in place for a reason and this is terribly close to the line. Ms. Briggs stated a reason for the setbacks is to avoid discussions between neighbors and this bothers her. **Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, 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; Ms. Briggs stated that they bought the property knowing the shape and the conditions of the lot and nothing has changed. Ms. Briggs stated that she doesn't like it being that close to the property line. **Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

Adopted: November 17, 2010 – As Written  
CONWAY ZONING BOARD OF ADJUSTMENT – OCTOBER 20, 2010

Mr. Colbath made a motion, seconded by Ms. Duane, 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 carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow a 120 square foot deck 10-feet within the setback be granted. Motion carried with Ms. Duane, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.

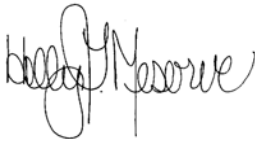
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A public hearing was opened at 8:25 pm to consider a **SPECIAL EXCEPTION** requested by **ROBERTA BELL** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance to allow an **accessory apartment** at 115 Red Ridge Lane, North Conway (PID 232-61). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 8, 2010.

Mr. Colbath made a motion, seconded by Ms. Briggs, to continue the public hearing for Roberta Bell until November 17, 2010 at 7:30 pm. Motion unanimously carried.

Meeting adjourned at 8:35 pm.

Respectfully Submitted,



Holly L. Meserve  
Planning Assistant