

ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 21, 2011

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 21, 2011 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; Dana Hysten; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **EASTERN SLOPE INN VACATION OWNERSHIP TRUST** in regard to §147.13.16.3; §147.13.16.3.1; and §147.13.16.4 of the Conway Zoning Ordinance **to allow a propane tank to remain in the Wetland and Watershed Protection Overlay District buffer and setback** at 107 River Road, North Conway (PID 218-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 9, 2011.

Joe Berry and Sheila Duane of Eastern Slope Inn Vacation Ownership Trust appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Duane submitted a letter from the North Conway Fire Chief regarding the propane tank location. Mr. Chalmers asked if the current installation flood proof. Ms. Duane answered in the negative. Mr. Chalmers asked if it would have been removed anyway even if it was properly anchored. Ms. Duane answered in the affirmative.

Ms. Sherman asked if this is going to be underground. Ms. Duane answered in the affirmative. Mr. Colbath asked if they don't usually go underground because of cost. Ms. Duane stated that it does cost more to bury it. Mr. Berry stated that we always bury the tanks for aesthetics, but we have to move it because it is currently within the Floodplain District. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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. Tobin, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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. Tobin, 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. Tobin, 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; Mr. Hylen asked if there is anywhere else that this can go on the property. Mr. Irving stated that we tried to find other locations so it would not be in the buffer at all so not to provide the straps and anchoring system, but we could not find another location. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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. 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. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.16.3; §147.13.16.3.1; and §147.13.16.4 of the Town of Conway Zoning Ordinance to allow a propane tank to remain in the Wetland and Watershed Protection Overlay District buffer and setback be granted. Motion unanimously carried.

A public hearing was opened at 7:49 pm to consider a **VARIANCE** requested by **EASTERN SLOPE INN VACATION OWNERSHIP TRUST** in regard to §147.13.16.3; §147.13.16.3.1; and §147.13.16.4 of the Conway Zoning Ordinance **to allow patios and connecting walkway to be located within the Wetland and Watershed Protection Overlay District buffer and setback** at 107 River Road, North Conway (PID 218-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 9, 2011.

Joe Berry and Sheila Duane of Eastern Slope Inn Vacation Ownership Trust appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Duane stated that this would create an additional means of egress. Ms. Duane submitted a photo to the Board. Ms. Duane stated that it is 21-feet from the edge of the drip line and 13-feet from the edge of the patio to where the land slopes down to the wetland. Ms. Duane read a letter from Burr Phillips.

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Ms. Tobin asked if the Board had discussed the patios before. Mr. Irving answered in the affirmative and stated that this is a significantly different request. Mr. Irving stated that we revisited the patios and they are actually providing a net benefit. Mr. Irving stated that they provide refuge areas and they are extending them even further than originally requested to provide a clear continuous path of egress.

Mr. Colbath asked what was in the original site plan. Mr. Irving stated that they were approved for 10' x 3' patios. Mr. Chalmers stated it was just the area under the balcony. Mr. Irving stated that the last application extended, but this helps with fire safety.

Mr. Colbath asked if they are self abutters except for across the street. Ms. Duane agreed. Mr. Chalmers stated the letter from Mr. Phillips helps as it is a civil engineer stating that the wetlands will not be negatively affected. Ms. Sherman asked for public comment; there was none.

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

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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. Tobin, 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. Tobin, 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 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. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.16.3; §147.13.16.3.1; and §147.13.16.4 of the Town of Conway Zoning Ordinance to allow patios and connecting walkway to be located within the Wetland and Watershed Protection Overlay District buffer and setback be granted. Motion unanimously carried.

A public hearing was opened at 8:05 pm to consider a **SPECIAL EXCEPTION** requested by **BALSAM RIDGE LODGE** in regard to §147.14.1.2 of the Conway Zoning Ordinance **to change one non-conforming use, a fraternal organization, to another non-conforming use, retail sales**, at 1000 White Mountain Highway, North Conway (PID 251-157). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 9, 2011.

Mark Lucy of White Mountain Survey Company appeared before the Board. Caitlyn and Shawn Baldwin were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Lucy stated they would like to change one non-conforming use to another non-conforming use. Mr. Irving stated this was before the Board to change the existing fraternal organization to a reception hall and they have decided not to go that route.

Mr. Lucy referred to his letter dated September 7, 2011. Ms. Sherman asked do you foresee any impact onto Route 16. Mr. Lucy stated that a NHDOT permit will be required and most likely the throat of the drive will be much narrower and safer than what exists today. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** 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. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** 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. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** 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. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Tobin and Mr. Hylen voting in the negative.**

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Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to noise.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance nighttime lighting.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

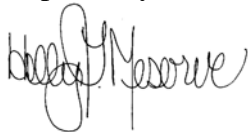
Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.14.1.2 of the Town of Conway Zoning Ordinance to change one non-conforming use, a fraternal organization, to another non-conforming use, retail sales, be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Ms. Tobin, to approve the Minutes of July 20, 2011 as written. Motion unanimously carried.

Meeting adjourned at 8:15 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant