

ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 15, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 15, 2012 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Alternate, Luigi Bartolomeo; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Peter Malia, Town Council, was in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Mr. Bartolomeo as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **MOUNT WASHINGTON VALLEY ECONOMIC COUNCIL** in regards to §147.13.1.11.10 of the Conway Zoning Ordinance **to allow a manufacturing business within a business development park** on Technology Drive, Conway (PID 262-86.2). This hearing was continued from January 18, 2012.

Josh McAllister of H.E. Bergeron Engineers and Jac Cuddy of Mount Washington Valley Economic Council appeared before the Board. Ms. Sherman stated that this hearing was continued to have a meeting at the plant to see what the noise and emissions were. Ms. Sherman stated that we did not have a group meeting, but we individually visited the site. Ms. Sherman stated she just toured the outside of the building and she did not see anything that caused her concern. Mr. Colbath stated that he had a complete tour inside and out and he has no concerns.

Mr. Irving stated he visited the site and went inside. Mr. Irving stated that he was looking at four things; sound, vibration, odor and emissions. Mr. Irving stated that he did have a sound meter and there was no effect on the ambient sound from this facility. Mr. Irving stated when inside, the sound meter did register but it was below the conversation at the time. Mr. Irving stated there is no effect on the adjacent properties; and there are no emissions, odors or vibrations detectable. Mr. Irving stated if you hadn't seen the sign outside you wouldn't know it was there.

Mr. Colbath stated that he found no noise; the loudest was actually the stereo. Mr. Colbath stated that they had a normal conversation with no problems. Mr. Colbath stated there were no odors. Mr. Chalmers stated he had the same experience. Mr. Hysten agreed. Ms. Sherman stated that traffic was an issue with the abutters. Mr. Cuddy stated the owner indicated there is one truck per day for a very long time; and at times it may be one truck per week. Mr. Cuddy stated that the traffic will have no impact on Route 16 or on the abutters as they do not share a road. Ms. Sherman asked if it's mostly van trucks or tractor trailers. Mr. Cuddy stated he would imagine it would be a tractor trailers.

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Mr. Irving stated traffic is covered under the NHDOT driveway permit. Mr. Irving stated with discussions with the owner, he doesn't expect to be any more heavy or extensive than the trash and recycle haulers for an office type facility.

Mr. Colbath stated that the product comes in once a month, depending on need; and are usually shipped out via UPS or FedEx. Ms. Sherman read from page 11 of the covenants in regard to manufacturing. Mr. Irving stated regardless of what is contained in the covenants each use will be coming before the Board.

Ms. Sherman asked for public comment; Bob DiPace asked if it is an existing building. Ms. Sherman answered in the negative. Mr. DiPace asked what it would look like and if there would be any stacks. Mr. Cuddy showed a rendering of the proposed building and stated there would not be any stacks. Mr. DiPace stated that his other concerns were odor and noise and the Board has addressed those concerns.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the subject property has some of its boundary within or contiguous with the boundary of a Commercial 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 Mr. Bartolomeo, that the business development park fronts on and accesses an existing arterial road.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the minimum front, side and rear setback of one hundred (100) feet from all adjacent properties and roads is satisfied.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the parking lots do not exceed 20,000 square feet in gross area.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the applicant has demonstrated that the operations of the business development park, including noise, odors and any other expected hazards associated with the development are consistent with that of a residential neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the applicant has provided a comprehensive report, by an appraiser licensed by the State of New Hampshire, which demonstrates that there will be no negative impact on abutting**

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properties. The Town Assessor has reviewed this report provided comments. Ms. Sherman asked for Board comment; Mr. Irving stated this was submitted under the original application for the development park. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the applicant has provided a traffic study, certified by a qualified engineer licensed by the State of New Hampshire, which clearly indicates the traffic impacts that would result from the project and improvements to the existing transportation infrastructure that would be necessary to ensure appropriate access and level of service. The Town Engineer has reviewed this report provided comments.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that a perimeter buffer area of at least one hundred (100) feet in depth adjacent to all abutting properties and streets to be left in its undisturbed natural state or if disturbed shall be replanted with indigenous species has been satisfied.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 9. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that Applicant has demonstrated that they will construct a passive and active recreation trail system within the project for use by tenants of the business development park and the public. The trail system shall provide links to other existing or future publicly accessible trails adjacent to the property. The rate of trail system construction shall be, at least, consistent with the rate of development of the business development park. The recreation trails may cross the buffer only to connect with existing or future publicly accessible trails on adjacent properties and if they do not impair the effectiveness of the buffer.** Ms. Sherman asked for Board comment; Mr. Colbath asked where the trail is located. Mr. Cuddy answered along the whole property. **Motion unanimously carried.**

Ms. Sherman read item 10. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the requirement that green space shall comprise not less than thirty-five (35) percent of the total lot area, exclusive of wetlands, water bodies, the 100-year floodplain and slopes over 25% has been satisfied.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.11.10 of the Town of Conway Zoning Ordinance to allow a manufacturing business within the business development park be granted. Motion unanimously carried.

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A public hearing was opened at 7:21 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **EUGENE DUGGAN** in regards to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** at 114 E Road, Conway (PID 251-63). Mr. Irving stated this application has been withdrawn by the applicant.

A public hearing was opened at 7:23 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **HUMBARGER MARCH 1994 TRUST** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** at 103 A Road, Conway (PID 251-22).

William Albrecht of Albrecht & Wear appeared before the Board. Mr. Irving submitted a letter from Mr. Albrecht dated February 14, 2012 to the Board. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to continue the request for an Appeal of Administrative Decision for Humbarger March 1994 Trust until April 18, 2012 at 7:00 pm. Motion unanimously carried.**

A public hearing was opened at 7:24 pm to consider a **VARIANCE** requested by **HUMBARGER MARCH 1994 TRUST** in regards to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures in the Floodplain Conservation District** at 103 A Road, Conway (PID 251-22). Mr. Irving stated that the application has withdrawn this applicant.

A public hearing was opened at 7:26 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **HUMBARGER MARCH 1994 TRUST** in regards to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures in the Floodplain Conservation District** at 103 A Road, Conway (PID 251-22).

William Albrecht of Albrecht & Weegar appeared before the Board. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to continue the request for an Equitable Waiver of Dimensional Requirement until April 18, 2012 at 7:05 pm. Motion unanimously carried.**

A public hearing was opened at 7:28 pm to consider a **VARIANCE** requested by **PATRICK FOUCAULT** in regards to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures in the Floodplain Conservation District** at 203 Transvale Road, Conway (PID 251-10).

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Patrick Foucault appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Foucault stated that he constructed the shed 8 or 9 years ago to keep his lawnmower, tools and chairs in. Ms. Sherman asked when the property was purchased. Mr. Foucault answered 1971 and construction of the house was completed in 1973. Ms. Sherman asked if there was a permit for the shed. Mr. Foucault answered in the negative.

Mr. Colbath stated this property is in the floodplain, not the floodway. Mr. Irving agreed. Mr. Colbath asked if FEMA regulates the floodplain and floodway the same way. Mr. Irving answered in the affirmative. Mr. Colbath stated the house was constructed prior to the floodplain ordinance. Mr. Irving stated the only thing the Board is addressing is the shed. Ms. Sherman stated that the reason why they don't want new buildings in the floodplain is that it diminishes the capacity of the floodplain.

Mr. Foucault stated that he could anchor the shed so it does not move; as he would like to keep it. Mr. Malia stated this is not necessarily about anchoring; the major issue is flood insurance. Mr. Malia stated as a result of Irene, the town and FEMA have discovered that there are a lot of structures that should not be there according to our regulations. Mr. Malia stated if we want to stay in the insurance program the Town needs to apply their regulations in that area.

Mr. Malia stated FEMA is making sure we are taking appropriate steps to enforce our regulations. Mr. Malia stated that Mr. Foucault is fortunate as he can prove the main structure is grandfathered, but the shed was constructed 8 or 9 years ago. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment: Mr. Bartolomeo stated that granting the variance would be contrary to the public interest as it could jeopardize the Town's FEMA insurance. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Hylen stated that it goes against the spirit of the ordinance. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated there is a greater justice to the applicant and an unjust to the public. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Mr. Hylen stated there would be diminished property values if they were not able to participate in the Flood Insurance Program. **Motion unanimously defeated.**

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Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo stated there is a fair and substantial relationship. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it is in the floodplain and contrary to the ordinance. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Hylen stated there is nothing that distinguishes this property from other properties in the area. Mr. Chalmers stated that the site can still be used for a residence. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Ms. Sherman asked for Board comment; Mr. Hylen stated the applicant has not demonstrated that there would not be an increase in flood heights. Mr. Hylen stated that there would be additional threats to the emergency personal. **Motion unanimously defeated.**

Ms. Sherman read item 7. Ms. Sherman stated that this does not apply to this application as this property is in the floodplain and not the floodway. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 7 does not apply to this application.** **Motion unanimously carried.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that this applicant is fortunate that he has a camp on the site that he can continue to use. **Motion unanimously defeated.**

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Mr. Colbath made a motion, seconded by Mr. Hylen, that based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow existing structures to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

A public hearing was opened at 7:49 pm to consider a **VARIANCE** requested by **SARA HOWARD (FORMERLY SARA PASCOE)** in regards to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures in the Floodplain Conservation District** at 185 Transvale Road, Conway (PID 251-9).

Sara Howard appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked when the property was purchased. Ms. Howard stated that she inherited the property from her grandfather who passed away in 2005. Ms. Howard stated that he purchased the property in 1998 and the deck was already there.

Ms. Howard stated that this is a seasonal home and it would be a financial hardship to remove it as they would have to do it themselves. Ms. Howard stated that we received minimal damage during the flood.

Ms. Sherman stated according to the assessing records before the adoption of the Floodplain ordinance there was a travel trailer and a shed on the property. Ms. Sherman asked how much has been expanded. Ms. Howard stated it is an 8 x 20 travel trailer. Ms. Sherman stated does it travel. Ms. Howard stated that it is on cinder blocks, but it could move.

Ms. Howard stated that the 10' x 10' room is on a pop up tent frame. Mr. Bartolomeo stated all these things postdate the adoption of the Floodplain Ordinance. Mr. Bartolomeo stated that the original smaller trailer could remain. Mr. Chalmers stated that it was a travel trailer, not a permanent structure. Mr. Irving stated that they must be readily movable and registered; putting them up on blocks is not a travel trailer. Mr. Irving stated the current lot is formed from two lots; so they would be allowed two travel trailers as long as they are registered and movable.

Ms. Sherman asked for public comment; Patrick Foucault stated he is next door and he is okay with the way the property is.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment: Mr. Bartolomeo stated that this jeopardizes the flood insurance program. **Motion unanimously defeated.**

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Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Hylen stated that this goes against the spirit of the ordinance. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated there is a greater justice to the applicant and an unjust to the public. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Mr. Hylen stated that property values could be diminished if the Town could not participate in the Flood Insurance Program. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo stated there is a definite and clear relationship. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Mr. Colbath stated that it is not a reasonable use to have unpermitted structures in the floodplain. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that they are still allowed a travel trailer by having it registered and putting it on wheels. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated

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that the applicant has not demonstrated that there would not be increased flood heights or additional threats to public safety or public expense. **Motion unanimously defeated.**

Ms. Sherman read item 7. Ms. Sherman stated that this does not apply to this application as this property is in the floodplain and not the floodway. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 7 does not apply to this application. Motion unanimously carried.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that they can still use the property without this variance. **Motion unanimously defeated.**

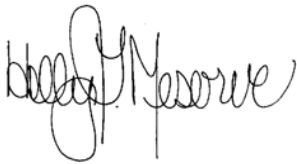
Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow existing structures to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of January 18, 2012 should be amended as follows: page 15, under Stone, paragraph 3, line 3, should read "...requesting a 16' x 26' slab with..."; and page 15, under Stone, paragraph 6, line 2, should read "...grandfather the 16' x 26' concrete slab...". **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of January 18, 2012 as amended. Motion unanimously carried.**

Meeting adjourned at 8:17 pm.

Respectfully Submitted,



Holly L. Meserve
Recording Secretary