

## ZONING BOARD OF ADJUSTMENT

### MINUTES

APRIL 18, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 18, 2012 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Dana Hysten; Alternate, Jeana DeWitt; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Earl Sires, Town Manager; and Thomas Holmes, Assessor, were in attendance.

#### APPOINTMENT OF ALTERNATE MEMBER

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

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **BRIAN AND MEGAN CROCE** in regards to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 177 Odell Hill Road, Conway (PID 266-17). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 6, 2012.

Brian and Megan Croce appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there are only 4 members present and the applicant is entitled to a five member Board. Ms. Sherman stated if the applicant is denied and wishes to appeal the decision, not having a full Board will not be considered a technical error. Mr. Croce agreed to proceed with four members. Mr. Croce submitted a plot plan and architectural elevations.

Mr. Chalmers asked how large the apartment is. Mr. Croce answered 681 square feet. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Ms. DeWitt made a motion, seconded by Mr. Hysten, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. DeWitt made a motion, seconded by Mr. Chalmers, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. DeWitt made a motion, seconded by Mr. Hysten, that the apartment is architecturally compatible with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

Ms. Sherman read item 4. **Ms. DeWitt made a motion, seconded by Mr. Chalmers that sufficient parking is located on the site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Ms. DeWitt made a motion, seconded by Mr. Hylen, that based on the foregoing finding of facts, the Special Exception pursuant to §147.13.1.2.4.2 of the Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.**

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A public hearing was opened at 7:10 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). This hearing was continued from February 15, 2012.

June and Charlie Deblois appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there are only 4 members present and the applicant is entitled to a five member Board. Ms. Sherman stated if the applicant is denied and wishes to appeal the decision, not having a full Board will not be considered a technical error. Ms. Deblois agreed to proceed with four members.

Ms. Deblois stated that her grandparents purchased the property in 1967 when the area was pristine. Ms. Deblois stated that she had asked her grandmother after one of the floods why she purchased land in the floodplain; she was told it was not disclosed to her and she never tried to sell the property because she didn't think it would be right without disclosing that information.

Ms. Deblois stated the Board needs to look at the ordinances at the time the work was done, not the current ordinances. Ms. Deblois stated that the building was delivered to the property in 1974 and has never left the property. Ms. Deblois referred to the package she submitted to the Board stating exhibit one is a tax assessor's record; exhibit two is a property history summary provided by the Town of Conway; exhibit three is a tax bill dated June 7, 1985; exhibit four is a purchase and sales agreement dated 06/11/74, which included the cost of delivery to the site; and exhibit 5 are seven affidavit's.

Ms. Deblois stated §147.15.56 is the manufactured home definition. Ms. Deblois stated that this structure has been there since 1974; it was never registered for movement and has not moved once since it arrived on the site. Ms. Deblois stated this constitutes as a manufactured home and not a travel trailer. Ms. Deblois stated that exhibit 6 is an application for a building permit dated June 5, 1985 to replace the structure; however, a letter from James Fennessy dated June 10, 1985 indicated that ZBA approval would be required. Ms. Deblois stated that they did not pursue that.

Ms. Deblois stated they were told by the Town that they could repair, not replace, the existing structure and the repairs could not cost more than \$1,500 per year. Ms. Deblois stated that they proceeded with the repairs in 1985 and as of January 1997 the building is at it appears in exhibit 7. Ms. Deblois stated on October 14, 1989, Marjorie Humbarger wrote to the tax assessor to

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

have her taxes lowered due to flooding and vandalism. Ms. Deblois stated the repairs began in 1985, then there was a flood in 1987 and the building received more damage. Ms. Deblois stated in 1991 they decided to continue with the repairs and raise it above the flood levels. Ms. Deblois stated that the tow hitch, wheel base, tongue, bathroom, kitchen cabinets, doors, etc. are original and it is the original water system.

Ms. Deblois stated given that the building has never been moved, contains the structure from 1974 and is a manufactured home by definition in the ordinance, it should be grandfathered. Ms. Deblois stated that exhibit 7 shows what the building has been since January of 1997. Ms. Deblois stated exhibit 9 shows the original frame still exists; exhibit 10 shows that the structure has been raised; and exhibit 11 is the building as it stands today. Ms. Deblois stated that the building sustained minimal damage during Hurricane Irene. Ms. Deblois stated that they feel it should be grandfathered.

Ms. Sherman asked for Board comment; Ms. Sherman asked other than in 1985 were there any other attempts to obtain a building permit. Ms. Deblois answered in the negative and stated that the repairs took place over 15 years and they stayed under the \$1,500 per year. Ms. Sherman asked if the existing footprint is the same as the original footprint. Mr. Deblois stated that the original home was 8' x 30' and the existing is 12' x 32'.

Mr. Chalmers asked if that dimension includes the deck. Mr. Deblois answered in the negative. Mr. Chalmers asked what there is for a septic system. Mr. Deblois stated that it exists and it is a 500 gallon tank with a leach field. Mr. Chalmers asked if it is state approved. Ms. Deblois stated that they have contacted the State and it is pending depending on this hearing.

Ms. Sherman stated that the building has been expanded. Mr. Deblois agreed. Ms. Sherman asked if the deck is an addition. Ms. Deblois answered in the affirmative and stated that the insurance company required access to both doors so we thought it would be easier to connect them with a deck. Ms. Sherman asked if any building permit was sought. Ms. Deblois answered in the negative and stated they thought because it was under \$1,500 a permit was not necessary. Ms. Sherman stated it is a new footprint and the Town needs to check the setbacks.

Ms. Sherman asked for public comment; there was none.

Mr. Irving stated he just wanted to clarify that the applicant has stated that the work took place over a number of years, however, over the years, the ordinances have evolved and changed. Mr. Irving stated the \$1,500 figure is just one part of when a building permit is required; a building permit is also required for an expansion of a footprint or if there are any structural changes. Mr. Irving stated if you were given just that information then you were given erroneous information.

Mr. Irving stated exhibit 1 shows a property assessment record and he would like to bring attention to the years 1989-1990 where you will see the building value dropped from \$2,800 to \$500. Mr. Irving stated pursuant to that, as the applicant has indicated, their mother, Marjorie Humbarger, sent a letter to James Fennessy; Mr. Irving read the letter to Mr. Fennessy.

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

Mr. Irving stated the tax assessment card indicates an abatement or value was dropped in subsequent years. Mr. Irving stated since that time, work has been done and the value as increased. Mr. Irving read an email from Jennifer Gilbert Floodplain Management Program Coordinator for the National Flood Insurance Program out of the Office of State Planning.

Mr. Irving stated in regard to grandfathering claims we have to make a determination whether or not a structure legally existed at the time the ordinance was adopted or amended. Mr. Irving stated that the question here is whether or not this legally existed satisfying all the requirements, whether by getting Town permits or FEMA permits, which are stipulated in the Town regulations.

Mr. Irving stated the expansion of the footprint in the late 80's early 90's would have been prohibited. Mr. Irving stated we don't contest in the mid- or late-70's there was a travel trailer or a mobile home or a park trailer, we see in the records that there was an 8' x 30 trailer there of some form. Mr. Irving stated it is our contention that it has been modified, it has been elevated and it has been reconstructed. Mr. Irving stated based on all the information we had, we could not make a determination that what is there today is a legally existing non-conformity.

Ms. Deblois asked if there is any further evidence they could bring forward to prove that it is a legally existing non-conforming structure. Mr. Irving stated not that he is aware of. Mr. Holmes stated it was assessed in 1994 as a travel trailer because in 1994 it was not taxable real estate. Mr. Holmes stated in 2004 their office received a photo for 911 purposes.

**Mr. Hylen made a motion, seconded by Ms. DeWitt, to uphold the Administrative Decision. Motion unanimously carried.**

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A public hearing was opened at 7:43 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).

June and Charlie Deblois appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there are only 4 members present and the applicant is entitled to a five member Board. Ms. Sherman stated if the applicant is denied and wishes to appeal the decision, not having a full Board will not be considered a technical error. Ms. Deblois agreed to proceed with four members.

Mr. Irving read a letter from Peter Malia dated April 12, 2012. Ms. Deblois asked even though the structure existed before 1974, but is now a repaired structure. Ms. Deblois stated that they did not think this was a use violation, but a dimensional violation. Mr. Irving stated that it is Town Council's opinion that this is not an option. Ms. Deblois asked if their only appeal is to the Courts. Mr. Irving stated they could appeal to this Board and then take it to superior court.

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

Ms. Deblois referred to exhibit 1 and stated that the building has been in place for more than 10 years and they contend that it is not a use violation, but a dimensional. Mr. Deblois stated that an equitable waiver should apply to the existing structure. Ms. Deblois referred to RSA 674:33, A.4, which is an example of a use violation and does not pertain to them. Ms. Deblois stated it is a dimensional requirement and there were no violations commenced by the municipality.

Mr. Irving stated that an equitable waiver of dimensional requirement is related to dimensions in regard to setbacks; a good faith error encroaching into setbacks is an example of an equitable waiver.

**Mr. Hylen made a motion, seconded by Mr. Chalmers, to deny the applicant because the provision for an equitable waiver of dimensional requirement is not available to this applicant for this application. Motion unanimously carried.** Mr. Irving reviewed the appeal process.

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A public hearing was opened at 7:56 pm to consider a **VARIANCE** requested by **LARRY BLANEY AND SUSAN WILSON-BLANEY** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** at 23 E Road, Conway (PID 251-87). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011. This hearing was continued from December 14, 2011 and March 21, 2012.

Susan Wilson-Blaney and Larry Blaney appeared before the Board. Ms. Sherman stated there are only four members. Ms. Wilson-Blaney stated that they are continuing. Ms. Sherman stated one of the confusions she has was the Board of Adjustment ruling in 1991 and wondered what they had to do with this property. Ms. Wilson-Blaney stated it is a house that is across the street from her house and adjacent to her property. Ms. Wilson-Blaney stated it is the same house as hers with the exception that water flows underneath her house and her house is secured properly into the ground with eight foot concrete pillars.

Ms. Sherman stated it is not your property. Ms. Wilson-Blaney agreed and stated that it is the property of her sister. Ms. Wilson-Blaney stated it is the house across the street and in 1991 they went before the Zoning Board and the Zoning Board found in their favor. Ms. Wilson-Blaney stated they are far enough away from the river not to impact the flood waters and we built off of those specifications.

Ms. Sherman asked if you came to the Town. Ms. Wilson-Blaney stated that we didn't know we needed a building permit to raise it. Ms. Wilson-Blaney stated that it had already been raised when they purchased it. Ms. Wilson-Blaney stated that they raised it to make it stronger; they never intended to live there.

Ms. Wilson-Blaney stated after they were notified by Mr. Pandora they did apply for a building permit and after he denied it she came in with evidence showing that it was less than \$1,500 which is what he told her that she needed. Ms. Wilson-Blaney stated that she also submitted two affidavits

**Adopted: May 16, 2012 – As Written**  
**CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012**

stating that the porch shed was there and they were just replacing it and was told because it was less than \$1,500 she did not need a permit. Ms. Wilson-Blaney stated when Mr. Pandora came to do an inspection he told them they had the best house in Transvale, which was before the Log Cabin was built.

Ms. Sherman asked for Board comment; there was none.

Ms. Wilson-Blaney asked if she could say one more thing. Ms. Sherman agreed. Ms. Wilson-Blaney stated this being the same house we live in; pretty much the same size, the same dimensions, same height she read, the emergency assistance, Title 44.60.1. Ms. Wilson-Blaney stated since the Board has granted her sister a variance at that time, she feels under that they deserve the same treatment. Ms. Sherman asked if the construction was done at the same time. Ms. Wilson-Blaney stated that it was not, but she went to the building inspector's office and was told that she did not need a building permit.

Mr. Irving read a memo from Peter Malia dated April 6, 2012. Mr. Irving stated as a point of clarification and a reminder to the Board that if the building inspector had made that claim he would have been in error; not only does NFPA requires a permit, there is not just a \$1,500 requirement, but a permit is required for any additional footprint or any structural changes and clearly elevating the structure would have required a building permit.

Ms. Wilson-Blaney stated that building inspector did issue her a permit for another structure that she owns in Transvale Acres in 2009. Ms. Wilson-Blaney stated that she received violations on that building as well and is in non-compliance with the zoning as well and he never went out and inspected the building he just issued her a permit.

Ms. Wilson-Blaney read RSA 676:13.I and II stated if he did it in 2009, then he did it in 2002. Ms. Wilson-Blaney stated that he never went to the Assessing Department to determine if the building was legal, he just issued her a permit. Ms. Sherman stated she doesn't think Assessing would be able to tell you if it was legal. Ms. Wilson-Blaney stated that Mr. Holmes told her three months ago that the house she bought was built illegally without permits. Mr. Holmes stated that it may have been built without permits, but doesn't mean it is illegal.

Ms. Wilson-Blaney stated when she came into Town Hall and handed him all her information he did not tell her that she needed a building permit; not only did he not tell her she needed a building permit, but he never came back. Ms. Wilson-Blaney stated that they sat and they waited to see if they received anything from the Town and we never heard from the Town again.

Ms. Wilson-Blaney stated that we came here in good faith, we offered what we had and when we did not hear back from the Town we figured we were good. Ms. Wilson-Blaney stated nobody ever came back, nobody knocked on her door, and they never received another letter that they were building without a permit. Ms. Wilson-Blaney stated if someone tells you to stop putting up a fence that you cannot put up a fence, don't they come back to make sure you didn't put up a fence. Ms. Wilson-Blaney stated that she was never told she was wrong so she thought in good faith she was doing what she was supposed to be doing.

**Adopted: May 16, 2012 – As Written**

**CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012**

Ms. Sherman asked about the work done. Ms. Wilson-Blaney stated that they replaced the deck in 2000 and enclosed it in 2002; all of which was less than \$1,500 every time they worked on it. Ms. Wilson-Blaney stated in 2004 the Town took another picture and there had been another deck installed and nobody ever told her that she wasn't supposed to build a deck in 2004.

Ms. Sherman asked if the picture was by the Town Assessor. Ms. Wilson-Blaney answered in the affirmative. Ms. Sherman stated that the Town Assessor doesn't have anything to do with Planning and Zoning. Ms. Wilson-Blaney stated that no one came to her and said she was still building. Ms. Sherman stated that the Assessing Department doesn't have anything to do with allowing or not allowing.

Mr. Irving stated this is a variance request and if they are making an argument on estoppel that is not for this Board. Mr. Irving stated that this Board needs to determine if they have met the criteria's for a variance request or not. Ms. Wilson-Blaney stated that she had asked for a continuance anyways so she does not know why we are doing this. Ms. Sherman stated that this is your continuance. Ms. Wilson-Blaney stated that she had asked for a continuance at the beginning of the meeting; she is not going to continue with four people when she is entitled to five.

Mr. Irving asked if the Board was of the opinion that she wanted to move forward this evening and therefore we moved forward. The Board agreed. Ms. Wilson-Blaney stated that she asked for a continuance.

**Mr. Chalmers made a motion, seconded by Ms. DeWitt, to continue the hearing for Larry Wilson and Susan Wilson-Blaney until June 20, 2012 at 7:15 pm. Motion carried with Mr. Hylen voting in the negative.**

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A public hearing was opened at 8:15 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **MICHAEL COURVILLE REGARDING BARRY PACKARD** in regard to §147.14.1.1 and §147.14.1.2 of the Conway Zoning Ordinance **to permit the change of use from a heating and plumbing warehouse to commercial equipment storage and maintenance** at 195 Maple Manor Road, Conway (PID 280-57). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 6, 2012.

Michael Courville and Larry Martin appeared before the Board. Barry Packard was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there are only 4 members present and the applicant is entitled to a five member Board. Ms. Sherman stated if the applicant is denied and wishes to appeal the decision, not having a full Board will not be considered a technical error. Mr. Courville stated that they would proceed with four members.

Mr. Martin stated there may be confusion over what existed on the site and what would be allowed on this site. Mr. Martin stated that there was a building and a grandfathered, non-conforming use in the residential area on the site which hasn't changed in over 30 years. Mr. Martin stated that it has been a warehouse type facility with storage only.

**CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012**

Mr. Martin stated that they would come in the morning fill up their trucks and take off for the day. Mr. Martin stated occasionally there were one or two vans parked there, but now we have a tree service operation. Mr. Martin stated that he is doing mechanical repairs and a lot of things that the neighborhood as a whole are not comfortable with. Mr. Martin stated that they wanted to nip this before it becomes worse than what it is.

Mr. Martin stated the deed indicates the original intent of the subdivision and this use is definitely exceeding that. Mr. Martin stated that equipment does not belong there; that was not the intent of the commercial use. Mr. Martin stated that they are working outside, there is material on the ground that doesn't get cleaned up and they are sandblasting. Mr. Martin stated there are wells in the area and this cannot continue to go on.

Mr. Martin stated that the permit states that things will be stored inside, but the equipment on the property cannot fit in the building. Mr. Martin stated that this is not the right environment and it doesn't fit into the neighborhood. Mr. Martin stated that we have to drive by it every day and it has gotten that he doesn't use that entrance any more, he uses the other entrance and he has used the same entrance for 30 something years. Mr. Martin stated he does not have anything personal against the gentleman who owns the property. Mr. Martin stated that he just doesn't like when the regulations are not followed.

Mr. Martin stated that the Town may not have had all the information when the zoning permit was issued. Mr. Martin stated there had been a new garage door installed without a building permit. Mr. Martin stated if you don't want to play by the rules you don't have to, but we are asking for the decision to be reversed.

Mr. Irving stated a building permit for a new garage door has not been issued. Mr. Irving asked Mr. Packard if he installed the garage door on the south side of the building. Mr. Packard answered in the affirmative and stated it was installed last October. Mr. Irving asked if he applied for and obtained a building permit. Mr. Packard answered in the negative. Mr. Irving stated that a building permit would not have been issued because it took the building out of compliance with the site plan review regulations.

Mr. Irving stated in regard to the building permit that was issued; Mr. Packard, David Pandora [Building Inspector] and he sat in his office and discussed a couple of times and he was led to believe that the substantial use of the property would be for the storage of his equipment indoors. Mr. Irving stated that the discussion did come up about storing equipment outside and he had indicated he had seen from time to time Mr. MacDonald, the previous owner, park vehicles outside.

Mr. Irving stated that Mr. Packard asked if he could store vehicles outside and we had indicated as long as they were incidental and an accessory to the use, just like picking up and taking materials from a warehouse, it would be acceptable. Mr. Irving stated that Mr. Packard asked about a trailer. Mr. Irving stated that a trailer would be acceptable from time to time. Mr. Irving stated that Mr. Packard asked him about equipment and he was told if the equipment is on the trailer and the trailer was used from time to time, than that would be acceptable.



**CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012**

Mr. Irving stated at no time was there any indication that the majority of the equipment would be stored outside, nor was it indicated that there would be a significant amount of equipment repairs, much less that there would be repair of vehicles not owned by Mr. Packard.

Mr. Irving stated that he was at the site today and spoke with the gentleman who was working on a trailer that is used for logging purposes and he indicated significant work to the trailer. Mr. Irving stated that he asked the gentlemen if this was Mr. Packard's equipment he was working on and he indicated no it was his. Mr. Irving stated he would not have been able to issue a permit allowing equipment from some other owner being worked on this site.

Mr. Irving stated the substantial storage outside would have been a significant expansion of a non-conforming use and would have been more than an accessory expansion of a non-conforming use; it is more than the amount of floor space. Mr. Irving stated if what has been happening on that site over the past few months had been disclosed to him he would not have been able to issue the permit.

Barry Packard stated in regard to the trailer it is not his trailer, but we are in a business venture together. Mr. Packard stated that he is not doing work for hire for people off the street. Mr. Packard stated as far as the vehicles parked outside, he knew before he bought the building that certain vehicles would not fit in the building. Mr. Packard stated as far as other stuff going on there he is in and out of there less than the plumber was. Mr. Packard stated that he does have plans for that property that would address 90% of their concerns had they come and talked to him.

Mr. Packard stated that they have plans for fencing and he would like to raise the building and add a living space. Mr. Packard stated that this would allow for a lot of the equipment to be inside. Mr. Packard stated he was to go to the Planning Board but he withdrew his application when this appeal was filed.

Mr. Packard stated that it has been his intention to live there and he doesn't want to look at his stuff either. Mr. Packard stated that he is doing his best to be a good neighbor and he doesn't want to run any of the equipment more than is absolutely necessary. Mr. Packard stated the end result will be what his neighbor's want.

Mr. Irving submitted a photo 2001, a photo from 2007 and a recent photo. Mr. Irving stated Mr. Packard could apply to this Board requesting to change one non-conforming use to another non-conforming use and a subsequent application to consider an expansion of the non-conforming use. Mr. Irving stated if successful he could proceed to the Planning Board for a site plan review.

Ms. Sherman asked for public comment; Robert Babine of Maple Manor Road stated this is a total change of use. Mr. Babine stated that this is a residential area not a commercial area. Mr. Babine stated there are wells in the area, including Mr. Packard's well.

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

Kevin Gregston, who lives across the street, stated there was a tractor trailer there this morning plus there has been a piece of equipment unloading logs onto the property. Mr. Gregston stated that the tractor trailer on the property today could not turn out of the property. Mr. Gregston stated for the equipment to fit in the building the building would have to be quadrupled. Mr. Gregston stated that this was a plumbing office, not a warehouse, with some equipment there. Mr. Gregston stated that tractor trailers cannot negotiate that area.

Mr. Packard stated as far as the truck today it is gone and is not coming back. Mr. Packard stated that his smaller trucks will fit in the building. Mr. Packard stated that he spent two weeks tearing out shelving; it was a warehouse. Mr. Martin stated you cannot say other trucks of that size will never be returning.

Ms. Sherman Board comment; Ms. DeWitt asked if the restrictions and covenants have been updated and rerecorded. Mr. Martin stated that the 30 years have lapsed; they wanted to show the original intent of the subdivision.

**Mr. Chalmers made a motion, seconded by Mr. Hylan, to uphold the Administrative Decision. Motion unanimously defeated.** Ms. Sherman reviewed the appeal process.

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A public hearing was opened at 8:41 pm to consider a **SPECIAL EXCEPTION** requested by **TODD MARSHALL** in regard to §147.13.14.3.6; §147.13.14.3.10 and §147.13.16.10.4 of the Conway Zoning Ordinance **for the proposed bank stabilization project** on West Side Road, Conway (PID 262-56). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 6, 2012.

Todd Marshall, Matt Henrick of Horizons Engineering and Ray Lobdell of Lobdell Associates appeared before the Board. Ms. Sherman stated there are only 4 members present and the applicant is entitled to a five member Board. Mr. Marshall stated that he would like to proceed this evening. Ms. Sherman read the application and the applicable sections of the ordinance. Mr. Marshall stated that he was hoping to have the State permits in hand for this evening, but, unfortunately, he does not.

Mr. Henrick stated there is erosion caused by an upside bend in the river that is undermining the bank which is causing more and more of the bank to fall into the river and the river is shifting course. Mr. Henrick stated that this parcel has lost substantial farm land and this is an attempt to stabilize the bank. Mr. Henrick stated there are two types of stabilization; hard, which is stone and concrete, but doesn't offer great habitat; and soft, which is vegetative.

Mr. Henrick stated that they are proposing a combination of hard and soft as well as stream bars. Mr. Henrick stated that the water will hit and dissipate to the center of the channel. Mr. Henrick stated there will be turbulence more in the middle of the river rather than along the bank. Mr. Henrick stated for recreation users, it is like any other off slope, you go around it.

**CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012**

Mr. Lobdell stated that they want to improve the wildlife habitat so they are proposing a forested buffer about 50 feet back. Mr. Lobdell stated that they plan on planting species native to the area which over time will create a buffer and provide shade and habitat quarters. Mr. Lobdell stated that they are proposing dormant staking, some in the stone and some above the stone, which will be willow and dogwood as they are flexible and can lay flat during a flood.

Mr. Henrick stated that the overall design is for the 50 year storm. Mr. Henrick stated they are proposing protective rip rap as there is erosion on going and they have attempted to dissipate the energy to the middle of the stream. Mr. Henrick stated that during the course of the design they consulted with NRCS and NHDES. Mr. Henrick stated that they do not have a wetland permit yet, but they have provided more information to them several times. Mr. Henrick stated that they hear the permit is forth coming.

Mr. Henrick asked the Board to approve the special exception conditionally upon state and federal permits. Mr. Henrick stated that they have received a NHDES Shoreland Permit and a letter of support from the Conway Conservation Commission.

Mr. Henrick stated any imported material will be rock and the rip rap; the vein is made of boulders. Mr. Henrick stated the purpose is to prevent erosion and the intent is to not fill or cause alteration of flood levels. Mr. Henrick stated that the material that is eroding now from this spot ends up in the channel, reducing the channel capacity somewhere else.

Ms. Sherman asked for board comment; there was none. Ms. Sherman asked for public; Roberta Webster stated that she lives across from the Eastern Slope Campground and asked if there has been any consideration to people upstream. Ms. Webster stated this last flood was pretty close to the top of the embankment. Mr. Henrick stated large flooding events like Hurricane Irene is an over 100-year event. Mr. Henrick stated the elevation of the material is within the channel and not into the floodplain and when there is a large flooding event; anything we are doing in the channel will not have an effect floodplain. Mr. Henrick stated that the intent is not to change the capacity at all. Ms. Sherman stated they would not be increasing the level of the flood water by doing this.

Charles Seavey stated anything under the river is not going to create a hazard upstream. Mr. Seavey stated that he doesn't think this this is going to be an issue.

Debbie Kelly stated their embankment has not changed in 22 years, but since Hurricane Irene it has changed considerably and they are very concerned. Ms. Kelly stated that the sediment has raised the river. Ms. Kelly stated that she doesn't know anything about these bars, or if they work, or if they will change the course of the river.

Ms. Kelly stated the river is up from where it used to be and they lost a lot of their vegetation. Ms. Kelly stated that she is not against the project, but she doesn't know anything about the barbs and how well they work and how they affect people upstream and/or downstream.

**CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012**

Ms. Kelly asked if there is going to be any dredging. Mr. Henrick stated a dredge and fill application is a standard application. Mr. Henrick read from the last page of the handout. Mr. Henrick stated with the water going over the bar, the channel gets deeper, so there is an increase in capacity. Ms. Kelly stated this is a brand new system with no experience that it will work. Ms. Kelly stated that she is concerned with the barbs and asked for a little more time and to not make any rush decisions.

Paul Tobacco of Eastern Slope Camping stated the campground has flooded three times post Hurricane Irene. Mr. Tobacco stated that it used to flood at 10 now is flooding at 7. Mr. Tobacco stated there is a commission with NHDES that meet regularly with FEMA and NHDOT to discuss Hurricane Irene. Mr. Tobacco submitted materials to the Board.

Ms. Sherman asked if there have been any conclusions. Mr. Tobacco stated that it changed the river and they need to do the cross section of the river as they did in 1974 to help with the flooding issues. Mr. Tobacco stated that he has concerns with how the project is going to affect him. Ms. Sherman asked if they own the property that is near where the stream used to be. Mr. Tobacco answered in the affirmative. Ms. Sherman stated that they have gained land where Mr. Marshall has lost land.

Mr. Lobdell stated that Carroll County was flown in the 1950's. Mr. Henrick stated we have the reciprocal photo. Mr. Tobacco asked what do they intend to do; we don't know what will happen to our property. Mr. Tobacco stated that they are filling in 44,000 square feet of the river. Mr. Tobacco stated that they don't want to see the bank fall in, but we all need help. Mr. Tobacco stated the State needs to help with what will be best for everyone. Mr. Lobdell stated that is the square footage of impact, not the amount of fill. Mr. Tobacco asked how many cubic feet will be brought into the river from outside source. Mr. Henrick stated he did not know.

Ms. DeWitt stated we are not engineers and one of the stipulations is that they have State and Federal permits. Ms. DeWitt stated they are the engineers that are paid to figure this out. Mr. Marshall stated they can share their credentials. Mr. Marshall stated that this project is not to hurt anyone, not trying to gain any land back just trying to stabilize the bank.

Peter Gagne stated that he thinks this is great and he has his full support. Mr. Gagne asked what the timeline is and will there be any impact on the low water months. Mr. Marshall stated depending on the remaining permits and schedule of the contractors, he would prefer to do the work during low flow in the fall, when that season is over so when you come back next spring the work should be done.

Mr. Hylen asked what happens when the river floods and trees and logs and debris hit this, will it jam anything up. Mr. Henrick stated he cannot say it will not jam anything up, anything in the river has a potential to cause a jam, but as far as restriction, there is a similar project with a slightly different vein configuration on the Pemigewasset River that has survived quite well and done by their.

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

Mr. Lobdell stated he has worked on another project with rock veins, about four years ago, where there are large ice jams and they held up well and protected the road. Mr. Lobdell stated that the summer months are not a real problem; kayakers and fisherman love them. Ms. Sherman asked if the ice jam was caused by the veins. Mr. Lobdell answered in the negative and stated that ice jam was upstream from the veins.

Michelle Ricker stated that they also want the banks to be fixed but they feel this stabilization plan is going to impact and destroy their banks. Ms. Ricker stated that they are concerned that it is experimental and asked why this is not designed for a 100 year event. Mr. Henrick stated the velocity which is the controlling factor is not that different in the channel over a five year storm because there is the overflow.

Ms. Ricker stated that they are concerned with the actual failing, breaking apart and damming up the river and there are so many other concerns. Ms. Ricker stated we have had three flooding events post Hurricane Irene that would not have happened prior to Hurricane Irene. Ms. Ricker stated there has been a substantial change in the river. Ms. Ricker stated that they would like to support a project that will preserve all land.

Ms. Sherman stated the difference between a 50-year and a 100-year storm is that it covers less ground because it spreads out; it is a greater volume of water not velocity. Ms. Sherman stated the only difference is the capacity. Ms. Ricker stated that they have beaches across from the proposed veins and asked if it would increase their liability if someone is swimming there.

Mr. Chalmers stated that it makes more sense to wait to act on the application until the State permits are in place. Ms. Sherman stated they could be a condition of approval.

Ms. Webster stated she wants to know if this project is going to affect them upstream. Ms. Webster stated that they were not allowed to do anything to save their embankment 30 years ago. Mr. Marshall stated it is possible to get things done and repair your land, but you have to go through the application process. Ms. Webster stated you are changing the course of the river. Mr. Henrick stated the intent is not to change the river, but to save what is there.

Ms. Ricker stated they had three evacuations of the campground post Hurricane Irene; there are safety issues. Ms. Kelly asked if these veins have been used in the Saco before. Mr. Lobdell answered in the negative and stated there are going to be trees that will catch up on it and eventually move down stream, but nothing inherent that will cause blockage. Mr. Lobdell stated they have been used on the Ammonoosuc River and there have not been any issues.

After a brief discussion the Board asked that the applicant address conditions of the Special Exception more clearly. **Ms. DeWitt made a motion, seconded by Mr. Hylen, to continue the hearing for Todd Marshall until June 20, 2012 at 7:20 pm. Motion unanimously carried.**

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CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

A public hearing was opened at 10:10 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, a ropes challenge course**, 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, April 6, 2012.

Peter Gagne and Larry Manson of North Conway Amusements, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there are only 4 members present and the applicant is entitled to a five member Board. Mr. Gagne stated that they would like to proceed tonight.

Ms. Sherman asked if they are abandoning the batting cages. Mr. Gagne answered in the affirmative. Mr. Irving stated they are starting from the waterslide and not the batting cages. Mr. Irving stated that the area of impact is the area that used to host the waterslides and one of the platforms for the golf course will be used as a launching point for the ropes course.

Ms. Sherman asked the height of the structures. Mr. Gagne stated they would be 20 to 50 feet. Mr. Irving asked if they would be any higher than the waterslide was. Mr. Gagne answered in the negative. Mr. Irving asked the total height of the waterslide. Mr. Gagne answered 50 feet. Mr. Irving asked if there were a ceiling on the waterslide would the towers be above the ceiling. Mr. Gagne answered in the negative. Ms. Sherman asked hours of operation. Mr. Gagne stated they would be open until 9 pm.

Mr. Gagne stated there is also a 90-foot zip wire. Mr. Hysten asked the color of the platforms. Mr. Gagne stated they will be natural; not going to be painted. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Ms. DeWitt made a motion, seconded by Mr. Chalmers 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. **Ms. DeWitt made a motion, seconded by Mr. Chalmers, that the proposed 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. **Ms. DeWitt made a motion, seconded by Mr. Chalmers, 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.**

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 18, 2012

Ms. Sherman read item 4. **Ms. DeWitt made a motion, seconded by Mr. Chalmers, 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 unanimously carried.**

Ms. Sherman read item 5. **Ms. DeWitt made a motion, seconded by Mr. Chalmers, 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. **Ms. DeWitt made a motion, seconded by Mr. Hylan, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to noise.** Ms. Sherman asked for Board comment; Mr. Hylan stated that he does not think this will be any more of a nuisance than the waterslide. **Motion unanimously carried.**

Ms. Sherman read item 7. **Ms. DeWitt made a motion, seconded by Mr. Chalmers that he 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.**

**Ms. DeWitt made a motion, seconded by Mr. Hylan, 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 waterslide, to another non-conforming use, a ropes challenge course, be granted. Motion unanimously carried.**

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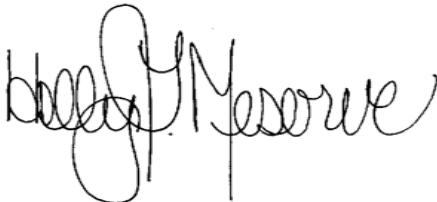
A public hearing was opened at 10:27 pm to consider a **VARIANCE** requested by **ELIZABETH WILSON/JUDITH WILSON/JENNIFER SUDAK** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation Overlay District** at 86 B Road, Conway (PID 251-39). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, April 6, 2012.

Jennifer Sudak appeared before the Board. Ms. Sherman stated there are only four members and the applicant is entitled to a five member Board. Ms. Sudak asked for the meeting to be continued. **Ms. DeWitt made a motion, seconded by Mr. Hylan, to continue the hearing for Elizabeth Wilson/Judith Wilson/Jennifer Sudak until July 18, 2012 at 7:00 pm. Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Hylan made a motion, seconded by Mr. Chalmers, to approve the Minutes of March 21, 2012 as written. Motion carried with Ms. DeWitt abstaining from voting.**

Meeting adjourned at 8:17 pm.  
Respectfully Submitted,



Holly L. Meserve, Recording Secretary