

ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 16, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 16, 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; Sheila Duane; Alternate, Luigi Bartolomeo; Alternate, Jeana DeWitt; Town Attorney, Peter Malia; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Thomas Holmes, Tax Assessor, was in attendance.

APPOINTMENT OF ALTERNATE MEMBERS

Ms. Sherman appointed Ms. DeWitt and Mr. Bartolomeo as voting members (Ms. Duane was not in attendance at this time).

OTHER BUSINESS

A public meeting was opened at 7:04 pm to consider a motion to clarify the April 18, 2012 decision in regard to §147.14.1.1 and §147.14.1.2 of the Conway Zoning Ordinance in regard to **BARRY PACKARD** (PID 280-57). The members voting on this item were Ms. Sherman, Ms. DeWitt, Mr. Chalmers and Mr. Hysten. Mr. Irving stated the intent of the motion was to overturn the decision, however, one could argue that the Board did not make a decision.

Mr. Hysten made a motion, seconded by Mr. Chalmers, to overturn the Administrative Decision. Motion carried Mr. Bartolomeo abstaining from voting.

MEMBERS

Ms. Duane arrived at this time and Ms. DeWitt left at this time.

PUBLIC HEARINGS

A public hearing was opened at 7:08 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **PAUL AND PATRICIA PELLERIN** in regard to §147.14 of the Conway Zoning Ordinance to request that the ZBA find that the existing structures are legally existing non-conformities at 129 E Road, Conway (PID 251-68). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Paul and Patricia Pellerin and Edward Alkalay of Alkalay & Smillie appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Alkalay stated there are four legal reasons the administrative decision should be overturned. Mr. Alkalay stated there was an affidavit submitted with the request for an appeal from administrative decision from Paul Pellerin, Sr that he went to the Town in 1985 asking if he

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could build a structure, elevated camper and pavilion and was told that it was a seasonal campground and could build the structures.

Mr. Alkalay stated there has been an unreasonable delay with the Town taking enforcement actions against the Pellerin's. Mr. Alkalay stated with the delay in enforcement it has created an issue for the Pellerin's. Mr. Alkalay stated that the Pellerin's purchased the property in 2007 from Paul's father believing the structures were legal and they had every reason to believe they were legal. Mr. Alkalay stated because they purchased the property relying on the Town's actions that the structures had been there for 25 years without any enforcement actions.

Mr. Alkalay stated this is estoppel. Mr. Alkalay stated that the town cannot now enforce after the Town's own actions or inactions since 1985 which really establishes that the Pellerin's structures are legal. Mr. Alkalay stated that Paul Pellerin Sr relied on the Town, Paul and Tricia Pellerin relied on the Town's actions or inactions when purchasing their property. Mr. Alkalay stated that is not one or two years, it has been nearly 30 years.

Mr. Alkalay stated another legal reason is detrimental reliance and laches. Mr. Alkalay stated that Paul Pellerin Sr came to the Town about approvals to build the structures and there has been no enforcement action for nearly 30 years. Mr. Alkalay stated that Paul and Tricia Pellerin detrimentally relied on the Town's representation to Paul Sr and the actions or inactions of the Town when purchasing their property.

Mr. Alkalay stated that the town contends that anything post 1979 must be removed, but the Town is not equally enforcing it. Mr. Alkalay stated there is a campground across the river from Transvale Acres that they believe the structures have been grandfathered in but were built after 1979 that the Town has not required them to be removed.

Mr. Bartolomeo asked in regard to unreasonable delay didn't that work in your client's advantage; didn't they have 27 years of enjoyment of this property due to this lack of enforcement. Mr. Alkalay stated that they have paid taxes for the past 27 years. Mr. Alkalay stated that they did what any other property owner in the valley would do; they owned property, they enjoyed their property and they paid taxes on it. Mr. Alkalay stated that the town is now telling them that they cannot do that anymore and that they have to remove a structure that has been there for 25 years and rendering their property useless.

Mr. Pellerin stated that they brought revenue to the Town. Mr. Pellerin stated that they bring people with them and they spend money in the valley. Mr. Pellerin stated that they have been coming here since 1985. Mr. Pellerin stated that they have been working on this property not thinking that we would have to tear it down. Mr. Pellerin stated that they enjoy coming here.

Tricia Pellerin stated that her husband's family has owned this property since 1985 and they started dating in 1994. Ms. Pellerin stated that they spend their hard earned money in the valley. Ms. Pellerin stated they don't go to Disney World; they come here for their vacations. Ms. Pellerin stated that this is what we do all summer. Ms. Pellerin stated that the structure has been

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there since 1985 and they have maintained them as they have pride in their property. Ms. Pellerin stated that they have a contained trailer that they bring with them every time.

Ms. Pellerin stated that she is confused with some of the Town's documents where there is conflicting information. Ms. Pellerin stated there is documentation that shows in 1990 that it was a vacant lot and then above it says there was a trailer. Ms. Pellerin stated that there has never been any enforcement or Town Officials that have come through. Ms. Pellerin stated due to an act of God the Town now wants to pay attention to something that they have ignored. Ms. Pellerin stated that their structure is above the floodplain. Ms. Pellerin stated at one time it was used for living and sleeping, but now it is used mostly for storage.

Mr. Alkalay asked if all the tax records and property cards are a part of the record or do they need to be submitted. Mr. Irving stated all the information they submitted with their application is in the file. Mr. Alkalay submitted photographs from the 1980's and tax bills for the years 2008 through 2011.

Mr. Bartolomeo stated in a letter from both Mr. and Mrs. Pellerin dated October 3, 2011 it quoted Chapter 88 and a statement about existing structures prior to March 11, 1986. Mr. Bartolomeo asked where that came from. Mr. Pellerin answered from the Town building codes. Mr. Bartolomeo asked if that is a zoning regulation. Ms. Sherman answered in the negative.

Ms. Pellerin stated when they first received their violation notice they were told that they needed to prove the structure was there prior to 1986, which they did; but then was told to be grandfathered it had to be before 1979. Mr. Bartolomeo asked if they were admitting the structure was there after 1979. Ms. Pellerin stated the structures that her husband's father built were built in 1985; however, there is documentation that there were structures there prior to the ones he put up.

Mr. Alkalay stated that the Town records do show that there were structures there from 1968, but the structures that are there now were built by Paul's father in 1985.

Mr. Malia stated that Mr. Alkalay has raised some issues regarding unreasonable delay, estoppel detrimental reliance and laches. Mr. Malia stated that it is important to keep in mind that this is an appeal from an administrative decision. Mr. Malia stated when the zoning official makes a decision involving the interpretation of the town zoning ordinance, then an appeal comes to this board as you are the final decision makers.

Mr. Malia stated when an administrative official made a determination that the structures on this property were not there prior to 1979 that decision involved an interpretation of the zoning ordinance and it is up to this Board to review that decision. Mr. Malia stated that these property owners have stated that these structures were not there prior to 1979, but are raising other issues which are legal issues and not this Board's purview.

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Mr. Alkalay stated although the structures there were not built until 1985, it is his understanding that it was placed on the same footprint of a structure that was there in 1960's. Mr. Irving deferred to Mr. Holmes to discuss if there were footprints that preexisted prior 1979.

Mr. Holmes stated the property was checked in 1977 and again in 1980. Mr. Holmes stated from 1979 to 1989 the Town was not assessing any structures on this lot and there were no sketches made. Mr. Holmes stated in 1994 the Town hired a private firm and the private firm sent out private contractors to measure every property in Town. Mr. Holmes stated at the time they went out to this site, they either estimated the age of each building on the site by condition or they asked the owner how old the structures were.

Mr. Holmes stated that you cannot rely that the structures were on the property since 1968 since they did not show up for ten years prior to 1994. Mr. Holmes stated in this particular case, the 1968 date on the 1994 card could be someone's best guess as to the age and condition of the property. Mr. Holmes stated maybe Mr. Pellerin or his father were on the site when they drove by and was asked how old this stuff was. Mr. Holmes stated someone could have answered that the structures were bought in 1968 or it was a 1968 trailer and it was put up on stilts and put this stuff up around it in 1985 and that is what he wrote down. Mr. Holmes stated that doesn't mean it was placed on the site in 1968; the Town did not start taxing it until 1994.

Mr. Pellerin stated so there was no one that went out there prior to 1994. Mr. Holmes stated not if there wasn't a building permit. Mr. Pellerin stated should that have caused a red flag that there was nothing out there before. Mr. Holmes agreed and stated that is why the Town spent \$300,000 to have the Town reevaluated. Mr. Holmes stated that the structure was picked up in 1994 and that is when the Town starting taxing it.

Mr. Holmes stated that he believes the structures were put on the site in 1985, but that you were not being taxed for them until 1994. Mr. Holmes stated the Town has been taxing the structures on that lot since 1994 until now, but 1994 is when the Town became aware of the stuff on that lot.

Mr. Pellerin stated from 1978 to 1994 the Town just doesn't know if there was a structure on that site because they didn't go out there. Ms. Duane stated it is not that the Town didn't go out, they didn't have a reason to go out there and they didn't have a reason because a building permit had not been issued and a building permit would have prompted an inspection of the property. Mr. Alkalay stated that Paul Pellerin Sr in his affidavit came to the Town and was told that a building permit was not necessary.

Ms. Pellerin stated that it is her understanding that there were no building permits required until 1986. Ms. Sherman disagreed and stated that she had to obtain intent to build from the Town in 1972. Mr. Alkalay asked if the Town has issued any building permits for Transvale Acres during the 70's or 80's. Mr. Irving stated that he could not say yes or no to that question without looking through the archived files from 30 years ago.

Ms. Sherman asked for public comment; Richard Carruthers of Transvale Acres stated that he was issued a building permit in 1999 and he has found several building permits issued in Transvale acres well before this.

Mr. Hylen made a motion, seconded by Ms. Duane, to uphold the Administrative Decision and deny the appeal. Motion unanimously carried. Mr. Irving reviewed the rehearing process.

A public hearing was opened at 7:43 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **JEFFREY AND MICHELE KNOWLES** in regard to §147.14 of the Conway Zoning Ordinance to request that the ZBA find that the existing structures are legally existing non-conformities at 128 E Road, Conway (PID 251-61). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Edward Alkalay of Alkalay & Smillie appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Alkalay asked for a continuance as the applicant was not able to attend this evening.

Ms. Duane made a motion, seconded by Mr. Hylen, to continue the public hearing for Jeffrey and Michelle Knowles until July 18, 2012 at 7:05 pm. Motion unanimously carried.

A public hearing was opened at 7:44 pm to consider a **VARIANCE** requested by **MARTIN AND ANN JONES** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation Overlay District** at 109 Brookview Road, Conway (PID 250-190). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Martin Jones appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Martin asked for a continuance as he has new information that makes him believe he is not ready to present his application tonight.

Ms. Duane made a motion, seconded by Mr. Hylen, to continue the public hearing for Martin and Ann Jones until July 18, 2012 at 7:10 pm. Motion unanimously carried.

A public hearing was opened at 7:48 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **ANTHONY CALLAHAN AND SHERYL CARUSO** in regard to §147.14 of the Conway Zoning Ordinance to request that the ZBA find that the existing structures are legally existing non-conformities at 34 B Road, Conway (PID 251-45). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Elizabeth Callahan, mother of Anthony Callahan, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Callahan stated that since she was a child she remembers going to Transvale Acres where she used to tent, but they had a shed where they housed lawn furniture, shovels, etc.

Ms. Callahan stated she has a picture of the shed dated 1981, but you can tell by the condition of it that it was built prior to 1979. Ms. Callahan stated that her dad had told her that it was built in the 1960's. Ms. Callahan stated that property is at the highest point. Mr. Irving stated the tax records indicate nothing in 1978, but was picked up in 1981.

Mr. Holmes stated data collection took place in 1977, 1978 and 1979 and then not again until 1981. Mr. Irving stated the date stamped on the original picture is May 1981, but you can see the relative age of that structure is prior to 1981. Mr. Irving stated it appears that the shed there now is not the same shed. Ms. Callahan stated that it is new, but smaller than the original. Mr. Irving asked when it was reconstructed. Ms. Callahan answered approximately 16 years ago.

Mr. Bartolomeo stated that you can maintain your structure. Mr. Irving asked what is in the shed. Ms. Callahan answered shovels, chairs, etc. Mr. Irving asked if there is an outhouse or septic. Ms. Callahan answered in the negative.

Ms. Sherman asked for public comment; Mr. Carruthers asked if the property got wet during the flood. Ms. Callahan answered in the negative. Mr. Carruthers thanked Mr. Irving for asking about the septic and stated there is way too much of that down there. Ms. Sherman stated that we have the photo dated 1981 which you can tell the shed is older than two years.

Mr. Hylen asked if it is the same size just that the roof and deck have been removed. Ms. Callahan answered in the affirmative. **Mr. Hylen made a motion, seconded by Ms. Duane, that the Appeal from Administrative Decision be granted and the Administrative Decision be overturned to grandfather the existing shed. Motion unanimously carried.** Mr. Irving stated that staff will confirm the existing shed [the dimensions of the shed were confirmed to be 8' x 12' by Mr. Irving and Mr. Yeager on May 17, 2012].

A public hearing was opened at 8:10 pm to consider a **VARIANCE** requested by **DONALD AND CHRISTINE BOWDEN** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation Overlay District** at 95 Brookview Road, Conway (PID 250-180). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Donald Bowden appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bowden stated that he believes he may be above the flood elevation and would like to request a continuance so that he could move forward with a Letter of Map Amendment (LOMA) request.

Mr. Bowden stated that the deck was constructed in 1993 and there is information that the shed was constructed in 1979. Mr. Irving stated if you are above the elevation that would certainly take away the issue of constructing in the floodplain.

Mr. Irving asked what is the shed being used for. Mr. Bowden answered bicycles, lawn furniture and gardening equipment. Mr. Irving asked if there is a septic system for the shed Mr. Bowden answered in the negative. Mr. Irving asked if there is a septic system for the house. Mr. Bowden answered in the affirmative. Mr. Irving asked if the septic is approved by the State of New Hampshire. Mr. Bowden stated he is in the process of having it approved.

Ms. Duane made a motion, seconded by Mr. Bartolomeo, to continue the public hearing for Donald and Christine Bowden until August 15, 2012 at 7:00 pm. Motion unanimously carried.

A public hearing was opened at 8:15 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **WILLIAM AND ANNE PORTER** in regard to §147.4.1 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities at 48 Brookview Road, Conway (PID 250-184).** Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

William and Anne Porter appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Porter stated that the 6' x 8' enclosed porch is not living space. Mr. Porter submitted photos of the interior of the enclosed porch. Mr. Porter stated that he submitted affidavits from the people he purchased the property from and they indicated that the footprint is the same as it was when they purchased it. Mr. Porter stated that the people who owned it before the people he purchased it from have passed away and he could not get photos. Mr. Porter stated that he has never changed the footprint and it is the same as it was when they purchased it 25 years ago.

Mr. Malia stated that the Town has grandfathered the three bedroom one bath home. Mr. Malia stated it is the porch and the shed that the Town is saying were converted to living space. Mr. Bartolomeo asked if the porch was a part of the original building. Mr. Porter stated everything is the same as when he purchased it. Mr. Bartolomeo stated that the porch wasn't expanded, but enclosed. Mr. Irving agreed.

Mr. Bartolomeo stated so there has not been an enlargement of the porch. Mr. Holmes stated the assessing records show that in 1977 the front right corner of this property was an open porch, which means screens and maybe a knee wall, and in 1994 the Town measured the exterior and began assessing it for living space. Mr. Holmes stated that they did not get inside to do an interior inspection.

Mr. Holmes stated the other issue is that the original 1977 sketch shows a 20' x 30' building with a 9' x 9' rear left corner shed. Mr. Holmes stated the 1994 assessment record shows a 20' x 36' building, it got 6-feet longer, with the 9' x 9' shed now being 9' x 15' living space. Mr. Holmes stated he is not sure if there was a measurement error or if it was expanded.

Mr. Bartolomeo asked who was sent out to measure. Mr. Holmes stated that they are entry level people, might have been a college student. Mr. Bartolomeo stated they were not registered land surveyors. Mr. Holmes answered in the negative. Mr. Bartolomeo asked how much water they got with Hurricane Irene. Mr. Porter stated they had 4-inches of water; they have been there 25 years and this is the first time they had seen water in their home.

Mr. Malia asked Mr. Porter if it is the same footprint as when he purchased it. Mr. Porter answered in the affirmative. Mr. Malia asked if he submitted an affidavit from a previous owner that it is the same footprint. Mr. Porter answered in the affirmative. Mr. Malia asked if they believe it is the same footprint as of 1979. Mr. Porter answered in the affirmative.

Mr. Bartolomeo stated that the structural construction would be able to tell if something was added on. Mr. Bartolomeo stated that this could be put to bed definitively with an interior construction inspection. Mr. Porter stated that he does have a new roof. Mr. Bartolomeo asked if it was new roofing or new rafters. Mr. Irving asked if the rafters or trusses were replaced. Mr. Porter stated he didn't do all the work himself. Mr. Irving asked if Mr. Porter knows the difference between trusses and rafters. Mr. Porter answered in the negative. Mr. Irving stated that he was not going to pursue this avenue any further.

Mr. Bartolomeo stated that he is inclined to support a portion of this application but not all of it. After a brief discussion, Mr. Bartolomeo stated that the shed may have been expanded but this applicant did not expand it. Mr. Porter agreed.

Ms. Sherman asked for public comment; there was one

Mr. Bartolomeo made a motion, seconded by Ms. Duane, to uphold the administrative decision regarding the expansion of the original 9' x 9' shed and reverse the decision regarding the porch as it doesn't involve an expansion. Motion unanimously carried.

A public hearing was opened at 8:47 pm to consider a **VARIANCE** requested by **WILLIAM AND ANNE PORTER** in regard to §147.13.14.6.1 of the Conway Zoning Ordinance **to allow existing structure [6' x 9' expansion that was not found to be legally existing conformity per Case #12-31] to remain in the Floodplain Conservation Overlay District** at 48 Brookview Road, Conway (PID 250-184). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

William and Anne Porter appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Porter stated it would be a hardship to take 6-feet off of a room; it would do more harm than good. Mr. Porter stated that it is not hurting the environment; it is not doing anything wrong and doesn't see what good the Town would get out of it. Mr. Irving stated that the town is obligated in order to stay in the flood insurance program to uphold and apply our ordinances.

Mr. Irving stated that he is assuming that anytime during the years Mr. Porter has owned the property he has not applied for a building permit. Mr. Porter agreed. Mr. Irving stated any expansion would have required a variance and if FEMA finds that we do not adhere to the regulations and find that we are violating their regulations as a Town the Town could be subject to suspension from the Program, which would affect the entire Town.

Ms. Sherman asked do you know when that extra 6-feet was added on. Mr. Porter stated that it was prior to 1984. Mr. Porter stated it is in that gray area between 1977 and 1983. Mr. Porter stated this is the first storm that we have had water at our house. Mr. Chalmers asked if there is an approved septic. Mr. Porter stated he is doing this a bit at a time.

Ms. Sherman asked for public comment; Richard Carruthers asked why a building permit was issued recently on Transvale Road for something that was not conforming and not permitted. Mr. Irving stated he would have to discuss that with the building inspector as it is not pertinent to this application.

Ms. Sherman read item 1. **Ms. Duane made a motion, seconded by Mr. Hylan, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it would be contrary to the public interest and could jeopardize the FEMA program. **Motion unanimously defeated.**

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

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Mr. Hylan, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Chalmers stated substantial justice is for the greater good of the community. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Hylan made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated others in the area could lose the FEMA/NFIP protection. **Motion carried with Ms. Duane, Mr. Chalmers, Mr. Hylan and Mr. Bartolomeo voting in the negative and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 5.a.i. **Mr. Bartolomeo 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; Mr. Hylan stated there is nothing that distinguishes this property from other properties in the area. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Mr. Chalmers stated construction in the floodplain is not a reasonable use. **Motion unanimously defeated**

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, 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. Bartolomeo made a motion, seconded by Mr. Chalmers, that if the criteria is 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. Chalmers stated that the property can be used in a smaller configuration. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Hylen made a motion, seconded by Ms. Duane, 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 that the applicant did not demonstrate this. **Motion unanimously defeated.**

Ms. Sherman read item 7. **The Board determined that item 7 was not applicable to this application as the property is not located in the floodway.**

Ms. Sherman read item 8. **Ms. Duane made a motion, seconded by Mr. Hylen that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Mr. Hylen stated granting the variance would not afford any relief. **Motion unanimously defeated.**

Ms. Duane made a motion, seconded by Mr. Bartolomeo that, based on the forgoing findings of fact, the variance from §147.13.14.6.1 of the Town of Conway Zoning Ordinance to allow existing 6x9 addition to the property to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

Ms. Sherman reviewed the rehearing process.

A public hearing was opened at 9:07 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **DIANE FASOLO** in regard to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities at 306 Transvale Road, Conway (PID 250-106).** Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Diane Fasolo appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Fasolo stated that she purchased this property in 1988 from her brother and there have not been any changes to the property. Ms. Fasolo stated that they did replace some rotted wood on the deck and added a utility shed on the side maybe sometime after 1988.

Ms. Fasolo stated that she does dispute the footage as it has been a 32' x 24' structure since the 1970's. Ms. Fasolo stated the 1977 tax card indicates a 6' x 8' addition, but that is incorrect. Ms. Fasolo stated that it goes straight back and the drawing on the tax card is inaccurate. Ms. Fasolo stated it has always been there as that area houses the kitchen and the bathroom.

Ms. Fasolo stated the addition on the 1994 assessment card is actually a deck which was constructed in 1972. Ms. Fasolo stated that the only addition was a utility shed. Ms. Fasolo stated the 1994 assessment card shows a full bathroom and a kitchen and that is correct; it has always been there. Ms. Duane asked if there is a septic system. Mr. Fasolo answered in the affirmative and stated that she has a letter from the State that it was there prior to 1967. Ms. Fasolo stated there is no other place for the bathroom and kitchen other than the right hand side.

Mr. Irving stated that the records indicate that there certainly was at least a 24' x 24' structure with a 6' x 8' addition and we don't contest that that portion existed prior to 1979. Ms. Fasolo stated that the shed on the side was added by her father and she does not know a date, but there have never been any other additions.

Mr. Irving stated that Ms. Fasolo is trying to explain that the current location of the bathroom is and always has been in that area that the tax records are saying are new. Ms. Fasolo agreed. Mr. Irving stated that Ms. Fasolo is saying the original dimensions are in error because the original bathroom has never been moved; the original bathroom has never been in the 24' x 24' portion of the building but in the 32' x 24' building.

Mr. Bartolomeo stated he is placing the town's tax data over the affidavit. Mr. Bartolomeo stated that he doesn't think someone would build a lopsided building. Mr. Hylen stated he had the same thought when he first looked at the house. Mr. Chalmers stated that it seems inconsistent that the tax dimensions are so detailed that someone would miss an entire side of a building.

Mr. Holmes asked Ms. Fasolo if she is contending that the deck was there in 1977. Ms. Fasolo answered in the affirmative and stated that the wood has been replaced, but it is the exact dimensions. Ms. Fasolo stated her brother bought the property in 1972. Ronald and Donna Fasolo were in attendance.

Mr. Malia asked Mr. Fasolo if he owned the property from 1972 to 1988. Mr. Fasolo answered in the affirmative. Mr. Malia asked if he had submitted an affidavit that the property has never changed. Mr. Fasolo stated that it is the same today as it was when he bought it. Mr. Malia asked Mr. Fasolo if there has always been a deck. Mr. Fasolo stated there was a deck and his dad might have fancied it up with railings, but there was a flat deck.

There was a question regarding the pictures submitted and the date on a separate piece of paper stapled to each photo. Ms. Fasolo submitted the originals showing the date on the back. Mr. Irving stated the applicant provided the original postcard information with the date 1975 on the back of the photographs submitted with the postcard backing stapled to them.

Mr. Hylen stated that there appears to be something behind the mud room due to the snow in the photos dated 1975. Mr. Holmes asked Mr. Fasolo if he knew why the assessment was increased in 1978 and then reduced in 1984. Mr. Holmes asked if they had asked for abatement. Mr. Fasolo stated that he did not.

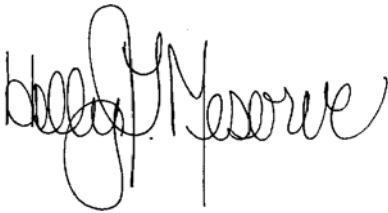
Mr. Hylen made a motion, seconded by Ms. Duane, to grant the appeal in part and overturn the administrative decision in part to find that the existing building excepting the 4x10 attached utility shed is grandfathered. Motion carried with Mr. Bartolomeo abstaining from voting.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of April 18, 2012 as written. Motion unanimously carried.

Meeting adjourned at 9:52

Respectfully submitted,



Holly L. Meserve
Recording Secretary