

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 18, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 18, 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; Sheila Duane; Alternate, Luigi Bartolomeo; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Town Counsel, David Hastings; Tax Assessor, Thomas Holmes; and Code Enforcement Officer, James Yeager, were 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 **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. Mr. Irving stated that the applicant has withdrawn the application.

PUBLIC MEETING

Barry Packard (PID 280-57) to consider a Motion for Rehearing at 195 Maple Manor Road, Conway (File #12-45): The Board reviewed the information. Ms. Sherman asked if the Board sees anything in the appeal that was information that they did not have at the time of the meeting. Ms. Sherman stated that the appeal states that the abutters did not appeal the decision within the allowed time frame. Mr. Irving stated that zoning permit decisions are not noticed in the paper, so the neighbors did not know about the decision until it was going to the Planning Board.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant the Motion for Rehearing requested by Barry Packard. Motion defeated with Ms. Duane and Mr. Colbath abstaining from voting.

PUBLIC HEARINGS

A public hearing was opened at 7:10 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. This hearing was continued from May 16, 2012.

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Jeffrey and Michele Knowles and Attorney Edward Alkalay of Alkalay & Smillie appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman stated the applicant had requested a variance and a motion for rehearing previously, which both were denied. Ms. Sherman stated that the applicant is now requesting an Appeal from Administrative Decision in regard to nonconformity. Mr. Alkalay stated that they came to him after the variance and decided not to pursue the denial of that application in court, but to apply for an appeal from administrative decision. Mr. Alkalay stated that they are requesting for the shed and pavilion to remain on the property.

Mr. Alkalay stated that the Knowles purchased the property from the Duggan's in 2007 and the Duggan's had owned the property since 1977. Mr. Alkalay stated that the Duggan's had the shed and the pavilion in 1978 and there have been no changes to the property since then. Mr. Alkalay stated that the Knowles purchased the property relying on the actions or the in actions of the Town.

Ms. Sherman asked if the applicant has proof that the buildings were there prior to 1979. Mr. Alkalay stated that they have submitted three affidavits from individuals who have no connection to this case; Gene Duggan, prior owner, who has sworn under oath; Leo McCarthy, who lived next door since 1978, who has sworn under oath that the building and pavilion have been there since 1978 and have not been expanded since; and Susan Blaney, who has owned property in Transvale Acres since 2000, but has visited the area since 1977.

Mr. Alkalay stated that the administrative decision wrongly states that there is no tangible evidence. Mr. Alkalay stated there are three sworn affidavits that have not been rebutted by the Town. Mr. Alkalay stated the Town only has an estimated date. Mr. Alkalay stated that the administrative decision indicates that the Town records show that they were not taxed until 1980 and then the Town, in 1994, hired a private firm to assess all Town properties including Transvale acres. Mr. Alkalay stated that those are estimated dates of when the Town thinks the structures were there, but it does not mean the Town was out there.

Mr. Alkalay stated the people who have submitted affidavits don't have a vested interest. Mr. Alkalay stated they are from the former owner; a neighbor, Mr. McCarthy, who has nothing to gain; and same, can be said by Ms. Blaney as she has no interest in this case. Mr. Alkalay stated that the Knowles shed and pavilion should be grandfathered.

Michele Knowles stated before we purchased the property her husband came to the Town as the seller was asking for full value of the land. Ms. Knowles stated her husband went to the Assessing office and was told that the land was not buildable, but there was a pavilion and a shed already on the property. Ms. Knowles stated so they purchased the property for fair market value. Ms. Knowles stated there have been subsequent times that the Town could have noticed them of a violation.

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Ms. Knowles stated since Hurricane Irene we have been dealing with this. Ms. Knowles stated that they shut off our electrical and had us fix the electrical box. Ms. Knowles stated that once it was fixed the electrical was turned back on, but they have neighbors that the Town still refuses to turn their power on.

Mr. Alkalay stated that they have provided three affidavits and they have not been rebutted by the Town. Mr. Holmes stated that the Town records do not show proof that the buildings existed prior to 1979 so it is up to the applicant to bring in other records. Mr. Holmes stated people had been down there in 1977 and 1978, but there is a gap when there wasn't a shed and then was a shed. Mr. Holmes stated that the Assessing records are not able to prove or disprove that they were there prior to 1979. Mr. Holmes stated that the canopy was first picked up in 1994.

Mr. Alkalay asked what time of year did they go out in 1978. Mr. Holmes stated he thinks in the fall. Mr. Holmes stated he is pretty sure someone was out there from the Town in 1977 and in 1978 and then again in 1981. Mr. Alkalay asked if there is any way to know for sure when someone was out on this property. Mr. Holmes answered in the negative and stated he can only verify 1994.

Mr. Holmes stated that someone was there in 1994 and estimated that they were built in 1980. Mr. Alkalay stated that no one can say for sure when the pavilion and shed were constructed. Mr. Bartolomeo asked if they picked up the shed in 1981 did they just miss the pavilion. Mr. Alkalay stated that the Town does not have anything to say when these structures were constructed and the applicant has provided three affidavits from people who have nothing to gain in this case that state the shed and pavilion were constructed prior to 1979.

Ms. Duane stated that the paperwork that is missing is the building permit and that is because no one applied for one. Mr. Alkalay stated that he has heard over and over that the Town told them since it was a seasonal camp ground a building permit was not necessary. Ms. Duane stated that the people who submitted affidavits may not have interest in this particular land, but they do have an interest in Transvale Acres as a whole; and one of them had an application before this Board. Mr. Alkalay stated that the former owner is from away and doesn't own property here anymore; the McCarthy's no longer own property here, so there is only one person who owns land in Transvale Acres.

Mr. Bartolomeo asked what the dimensions of the buildings are today. Mr. Knowles answered there is an 8' x 8' shed and a 14' x 18' pavilion. Mr. Bartolomeo stated you want me to believe that the Assessor saw an 8' x 8' shed, but missed a pavilion. Mr. Bartolomeo asked how do you pick up a shed and miss a structure that is twice its size. Mr. Alkalay stated the estimated date by the Assessor is that those structures were constructed in 1980 that is the best in the Town's records; however, they could have been constructed in 1981 or 1978.

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Mr. Bartolomeo stated that he might be able to say that the shed was there, however, how someone could pick up an 8' x 8' shed and miss another structure twice its size doesn't make sense to him. Mr. Alkalay stated there is not a lot of paperwork from this time period and what the applicant has provided is three sworn affidavits.

Mr. Hastings stated a factual decision was made by the Code Enforcement Officer that these structures were not there in 1979; the role tonight is to make an independent decision as to if they were there and entitled to grandfathering or not. Mr. Hastings stated the Board can base their decision on all the information they have heard tonight. Mr. Hastings stated that it is a question of fact and what was there in 1979.

Mr. Irving stated in regard to the affidavits and Mr. Alkalay saying that they are disinterested parties, except save for the Knowles. Mr. Irving asked Mr. Alkalay if the Knowles purchased the property directly from the Duggan's. Mr. Alkalay answered in the affirmative. Mr. Irving asked if there is any liability at all that the Duggan's might face selling property without disclosing that they did not obtain permits for these structures. Mr. Irving stated that the Knowles's might be able to have an action against the Duggan's. Mr. Hastings stated it is a possibility and only a possibility, he would not want to say yes or no.

Mr. Alkalay stated that the statute of limitation would have run out. Mr. Alkalay stated any possible cause of action would have to be a knowing failure to disclose and there is not a possible action against the Duggan's. Mr. Colbath stated that we have heard these cases for months and there are so many emotions, but this Board has to review each application with objectivity.

Mr. Alkalay stated there is objectivity in the affidavits; two of the three do not live in Transvale Acres. Mr. Alkalay stated there is no reason for each of these people to get involved, plus it would be perjury. Mr. Chalmers stated a form dated 10/20/11 indicates that Jeff Knowles called and it is noted that he said the canopy was constructed in 1983 or 1984. Mr. Chalmers asked where this came from. Mr. Yeager stated that it was a phone conversation that he had with Mr. Knowles on that day. Mr. Alkalay stated that his client wouldn't deny he said that, but he had not spoken to the Duggan's at that time, and it was an estimated date.

Mr. Yeager asked why on the Duggan's affidavit the portion that said they contacted the Town regarding a building permit was crossed out. Mr. Alkalay stated that he drew up the affidavit after speaking with his client and what the Duggan's had relayed to his clients. Mr. Alkalay stated that he did not speak to the Duggan's directly. Mr. Alkalay stated that he forwarded the affidavit to the Duggan's and this is what they returned.

Ms. Sherman asked for public comment; Patrick Hill stated that he moved to Transvale Acres in the 1980's and those building were there. Ms. Sherman asked if the buildings were there in the 1970's. Mr. Hill stated that he was not there until the 1980's.

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Richard Carruthers stated there is a lot of emotion and the crux of the whole issue is the tax issue. Mr. Carruthers stated that he spoke with Tom Irving who told him that his property had added square footage without building permits. Mr. Carruthers stated the Town changed the tax map and increased the tax value and moved on. Mr. Carruthers stated the Town has done this throughout Transvale Acres. Mr. Carruthers stated that the fact of the issue is, is when the Town became aware of a situation they should have addressed it then, but they didn't.

Mr. Carruthers stated due to the tax situation the Town was aware of it and they accepted the situation for what it was. Mr. Irving stated there are three items that cannot be addressed by the Board, waivers, estoppel and laches. Mr. Hastings stated waivers, laches and estoppel is not the subject of the appeal today; it can be raised in Superior Court or maybe under a variance, but those issues are not before this Board tonight. Mr. Hastings stated that the Board needs to focus on the facts.

Mr. Hastings stated that the Duggan affidavit did cross out that they contacted the Town, but left that no permits were necessary. Mr. Hastings asked if a building permit would have been necessary. Mr. Yeager stated a Registration of Intent to Build ordinance was recorded at the Carroll County Registry of Deeds in 1974 which required people to obtain Intents to Build; he even has a few issued in Transvale Acres. Mr. Yeager stated in his opinion they should have obtained an Intent to Build.

Mr. Alkalay asked why he has heard several people state that they came to the Town. Mr. Hastings stated that the Board is not witnesses here tonight; the Board is supposed to hear information and make a decision. Mr. Alkalay asked Mr. Yeager why he has heard so many people say that they contacted the Town and were told that it was a seasonal campground and a building permit was not necessary.

Mr. Yeager asked who came to the Town, what year did they come to the Town, who did they speak with at the Town; it is an impossible question to answer without knowing the facts. Mr. Alkalay stated that it was Paul Pellerin, Sr and it was in the 1970's; he came to the Town but he did not keep records of who he spoke to. Mr. Irving stated that the Board should be focusing on the affidavits and whatever information the applicants have provided.

Susan Blaney asked is it possible that they saw the shed but thought they saw it on one lot and didn't realize it was connected to another lot. Mr. Bartolomeo stated that the pavilion is four times the size of the shed. Ms. Blaney asked if it is possible that they saw the shed on one lot and that the pavilion was not the next lot. Mr. Holmes stated that that only means you need to bring your own proof in; and it doesn't grandfather anything, the burden shifts. Ms. Blaney stated however, it is possible. Mr. Holmes stated anything is possible.

Mr. Alkalay stated this is laches, detrimental reliance, estoppel and selective enforcement by the Town as the Town has failed to enforce any of these provisions for over 30 years. Mr. Alkalay stated that this has been selective enforcement and they would argue that there are campgrounds

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in the floodplain that have constructed buildings after 1979 and the Town has not enforced their removal. Mr. Hastings stated those arguments may or may not have some validity but they are not part of the decision you are being asked to make today.

Mr. Chalmers asked if there are any pictures that show that these structures existed. Mr. Alkalay stated that the pictures in the assessing records are the structures that have been there since 1978. Mr. Bartolomeo stated that he might be able to accept that the shed was there, but he cannot buy that the canopy was there.

Mr. Colbath made a motion, seconded by Ms. Duane, to overturn the Administrative Decision. Motion unanimously defeated. Mr. Irving asked if the Board was interested in considering the shed. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to reconsider the vote and deal with the structures separately. Motion defeated with Ms. Duane, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo and Mr. Chalmers voting in the affirmative.**

Ms. Sherman reviewed the appeal process.

A public hearing was opened at 8:00 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. This hearing was continued from May 16, 2012.

Martin Jones appeared before the Board. Mr. Irving stated that the applicant is requesting a continuance as they have filed for a letter of map amendment (LOMA) and it appears that this property is a candidate for one. Mr. Irving stated if the LOMA is granted then there would be no reason to hear the variance. **Mr. Colbath made a motion, seconded by Ms. Duane, to continue the public hearing for Martin and Ann Jones until October 17, 2012 at 7:30 pm. Motion unanimously carried.**

A public hearing was opened at 8:04 pm to consider a **VARIANCE** requested by **DAVID GOULD** in regard to §147.13.16.3.1 of the Conway Zoning Ordinance **to allow the construction of a single-family home within the Wetland and Watershed Protection Overlay District setback** on Cranmore Circle, North Conway (PID 219-118). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 6, 2012.

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Ronald Briggs of Briggs Land Surveying and David Gould appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Briggs stated that this property was granted a special exception in 2009 and at that time they only owned lot 118. Mr. Briggs stated that subsequently they have purchased lot 117. Mr. Briggs stated at this time there are no plans to construct a home on lot 117. Mr. Briggs stated that they have received the wetlands permit for the new plan.

Ms. Sherman asked if lot 118 has been built upon. Mr. Briggs answered in the negative. Ms. Duane asked if there are two homes proposed. Mr. Gould answered in the affirmative. Mr. Gould stated that they are reducing the impact on the wetland and restoring some of the wetlands that were filled prior to them owning it. Mr. Briggs stated when they applied to the ZBA for lot 118 they did not know there had been wetlands filled.

Ms. Sherman asked for public comment; there was none. Mr. Chalmers asked what the total impact is in the building setback. Mr. Briggs answered about half. Mr. Bartolomeo asked what the State setback is. Mr. Briggs answered 50-feet, but not sure if Kearsarge Brook is under the State regulations. Mr. Briggs stated there is about a 10-foot encroachment.

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; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. 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; there was none. **Motion unanimously carried.**

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

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Mr. Colbath made a motion, seconded by Ms. Duane, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that item 5.b is not necessary. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to allow the construction of a single-family home within the Wetland and Watershed Protection Overlay District setback be granted. Motion unanimously carried.

A public hearing was opened at 8:21 pm to consider a **VARIANCE** requested by **ANNE GOULD** in regard to §147.13.16.3.1 of the Conway Zoning Ordinance **to allow the construction of a single-family home within the Wetland and Watershed Protection Overlay District setback** on Cranmore Circle, North Conway (PID 219-117). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 6, 2012.

Ronald Briggs of Briggs Land Surveying appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Briggs stated the total area is 358 square feet. Mr. Colbath stated that the application states that you want it to be comparable to other homes in the neighborhood. Mr. Briggs agreed and stated they are proposing a 1,932 square foot building envelope. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

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Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath made a motion, seconded by Ms. Duane, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.b. **M. made a motion, seconded by M., that item 5.b is not necessary.** **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to allow the construction of a single-family home within the Wetland and Watershed Protection Overly District setback be granted. After a brief discussion regarding putting a condition on the approval, **Ms. Duane withdrew her second and Mr. Colbath withdrew his motion.**

Mr. Briggs stated that the 358 square foot area within the setback represents about 18.5% of the proposed building envelope. Mr. Colbath stated the proposed footprint seems to be much larger than the properties in the neighborhood. Mr. Briggs stated that the average footprint in the area is about 1,400 square feet.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to allow the construction of a single-family home to not exceed the comparable homes square footage in the neighborhood of 1400 square feet in the subject area within the Wetland and Watershed Protection Overly District setback be granted. **Motion carried with Ms. Sherman voting in the negative.**

Mr. Irving asked if the Board granted that the building could not exceed a 1,400 square foot footprint. Mr. Bartolomeo agreed. Mr. Irving suggested granting the variance as requested with a condition that any building built within the setback encroachment cannot exceed a total footprint of 1400 square feet.

Mr. Colbath made a motion, seconded by Ms. Duane, to reconsider the motion. **Motion unanimously carried.** Mr. Bartolomeo withdrew his second. Mr. Chalmers withdrew his motion.

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Mr. Bartolomeo made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to allow the construction of a single-family home within the Wetland and Watershed Protection Overlay District setback be granted with the condition that if any part of the building encroaches within the subject area the footprint cannot exceed 1,400 square feet. Motion unanimously carried.

A public hearing was opened at 8:49 pm to consider a **SPECIAL EXCEPTION** requested by **ANNE GOULD** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance **to allow the construction of a driveway within the Wetland and Watershed Protection Overlay District and restoration of a previously filled wetland** on Cranmore Circle, North Conway (PID 219-118). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 6, 2012.

Ronald Briggs of Briggs Land Surveying appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated the improved driveway is lowering the impact on the wetland. Mr. Briggs agreed and stated by 150 square feet and they are restoring previously filled wetlands. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use is so located and constructed to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that there is no better feasible alternative, in keeping with the State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the special exception from §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction of a driveway within the Wetland and Watershed Protection Overlay District and restoration of a previously filled wetland. Motion unanimously carried.

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A public hearing was opened at 8:54 pm to consider a **VARIANCE** requested by **TARBERRY COMPANY/RIVER RUN COMPANY** in regard to §147.13.7.4 of the Conway Zoning Ordinance **to allow the construction of a 57 square foot addition within the side setback** at 2686 White Mountain Highway (aka 16 Norcross Circle), North Conway (PID 218-43). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 6, 2012.

Mr. Irving stated that the applicant has requested a continuance. **Mr. Colbath made a motion, seconded by Ms. Duane, to continue the public hearing for Tarberry Company/River Run Company until September 19, 2012 at 7:30 pm. Motion unanimously carried.**

A public hearing was opened at 8:55 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **PAUL RODOLICO** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation Overlay District** at 71 Brookview Road, North Conway (PID 250-178). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 6, 2012.

Paul Rodolico and Attorney Nicole Csiszer appeared before the Board. David Pandora, Building Inspector, was in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Irving stated that the Board has not addressed equitable waivers in this situation; an equitable waiver is a good faith measurement error. Mr. Irving stated that an expansion of any building in this district is not allowed and the applicant cannot seek relief under this section. Mr. Irving stated that this is not a candidate for an equitable waiver and does not invoke jurisdiction of the Board. Mr. Hastings concurred. Mr. Hastings stated that this section is for physical layouts and mathematical errors.

Ms. Csiszer stated that they take a different position and that this does apply in this situation. Ms. Csiszer stated that the home was constructed in 1965. Mr. Bartolomeo stated the Board should vote before the applicant continues. Mr. Hastings stated that the Board should give the applicant a chance to explain why they believe it applies.

Ms. Csiszer asked if the Board had a copy of a tax card with a date of 10/8/77. The board agreed. Mr. Csiszer stated that the interior was inspected in 1975 and it was noted that there was a 20' x 20' structure with an open porch; this is a grandfathered use. Ms. Csiszer stated any changes to this structure were dimensional changes; this is still a 20' x 20' structure with a change in height.

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Mr. Hastings stated that an equitable waiver applies to a lawful use; a good faith error in measurement. Ms. Sherman stated that the permitted structure went from a single story structure to a two-story structure. Mr. Irving stated an expansion of the three dimensional envelope is not allowed in the floodplain.

Ms. Sherman stated the applicant was granted a building permit to put a new roof on. Mr. Irving stated that the applicant applied to reroof the structure with a steel roof. Mr. Irving stated that a building permit could not have been issued to expand the three dimensional envelope in the floodplain. Mr. Irving stated there is no dimensional requirement to get relieve from because there is nothing to measure.

Ms. Csiszer stated the roof pitch was low so the applicant changed it to a 12:12 pitch for safety reasons. Ms. Sherman stated that the permit was to reroof the structure. Mr. Rodolico stated that he removed the roof and reroofed the structure.

Mr. Hastings stated the applicant needs to identify the dimensional requirement that they want the Board to act on. Mr. Hastings stated if it is the increase of building envelope that would not have been allowed. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the equitable waiver of dimensional requirement does not apply. Motion unanimously carried.**

A public hearing was opened at 9:10 pm to consider a **VARIANCE** requested by **PAUL RODOLICO** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation Overlay District** at 71 Brookview Road, North Conway (PID 250-178). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 6, 2012.

Paul Rodolico and Attorney Nicole Csiszer appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bartolomeo stated that the steeper safer roof is okay, but the second story is what he would be concerned with. Mr. Colbath asked what is in the second story. Mr. Rodolico stated there is a loft. Mr. Bartolomeo asked if it covers the first floor. Mr. Rodolico answered half of the first floor.

Ms. Csiszer asked if it just covered the existing space. Mr. Rodolico answered in the affirmative. Ms. Csiszer stated the construction was driven by safety given the low pitch. Ms. Csiszer stated as the pitch was increased it created a cathedral ceiling and by covering the bathroom and the bedroom with ceilings a loft was created. Mr. Colbath asked when this was discovered by the Town. Mr. Irving stated after Hurricane Irene the Town went through Transvale Acres and the Board of Selectmen wanted to address all violations. Ms. Csiszer stated there is a memo dated June 4, 2001 from the Assessing Department to the Building Department addressing the change in roof pitch.

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Mr. Irving stated there are a number of issues that need to be considered; the benefit gained by the applicant is at the expense of public safety and threatens both first responders and properties in or near the floodplain. Mr. Colbath asked the location of the property. Mr. Irving stated it is before the bridge, so the property is in the floodplain. Mr. Irving stated if FEMA reviews the variances granted and if determines that they are inappropriate; the Town could be disqualified from the NFIP program.

Mr. Irving asked in the building permit application was the value of the work \$4,500. Mr. Rodolico stated that he does not remember as he used a lot of salvaged materials. Ms. Csiszer stated that he did the work himself. Mr. Irving stated he did not revise the building permit when it went from a reroof to an entire reconstruction of the roof. Mr. Rodolico stated he thought he was reroofing the structure by removing the roof and constructing a safer roof.

Mr. Irving stated prior to 1999 the value of the building was \$16,600 and the current value is in the vicinity of \$57,000. Mr. Holmes stated in 1994 the value was \$16,600. Mr. Irving stated that the value of structure has tripled. Mr. Irving stated that the value has increased by more than 50% which would constitute a substantial improvement by FEMA regulations.

Mr. Irving stated that it would have then been required to meet current FEMA standards which would include raising the building, which would have required a variance. Mr. Irving stated that he thinks the owner was doing what he thought was right, but there was a substantial permitting process that needed to be followed.

Mr. Bartolomeo asked how high the water was in this area. Mr. Irving stated they received about 8 to 10 inches of water in the building. Mr. Colbath asked if this is on a slab. Mr. Rodolico answered in the negative and stated that it is a cinder block foundation. Mr. Bartolomeo stated that this is a nice looking property; might there be some acceptable level like making the loft inaccessible. Mr. Bartolomeo stated by taking away the second floor it takes away the expansion.

Ms. Csiszer stated there are no threats to public safety, it improves the neighborhood as the structure is reinforced, in terms of the spirit and intent of ordinance, the footprint is still the same as the only change is the pitch of the roof; it does actually benefit in terms of improving the neighborhood and safety issues; and substantial justice is done as not approving this variance there would be substantial loss to the homeowner.

Mr. Bartolomeo suggested walling off the loft, removing the stairs and elevating the entire house. Ms. Csiszer stated that it is still only a one-bedroom, one-bath dwelling as the loft has no door or closet. Ms. Csiszer stated that it would not diminish the values of surrounding properties as it is an updated and attractive home.

Ms. Csiszer stated the proposed use is a reasonable use; it should be allowed to be updated and improved and homes should not have an expiration date. Ms. Csiszer stated that this was a

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vertical change and not a horizontal change; it is unique because of the low pitch roof and it was updated to the times. Ms. Csiszer stated that this is a vertical change so it will not increase flood heights or flood levels and it has been there since 1965.

Mr. Colbath asked if there was a building permit. Mr. Rodolico stated one was granted in 2000. Mr. Colbath asked if there was an inspection done. Ms. Duane stated there are no residential inspections in the Town of Conway. Ms. Duane stated he made a mistake and moving forward with it is not going to cause any problems. Ms. Csiszer stated that the vertical walls are the same. Mr. Chalmers stated reroofing makes him think of removing the existing material and replacing that material. Mr. Chalmers stated there was no other way to accomplish this without going to a 12:12 pitch. Mr. Bartolomeo stated he thinks the applicant went to that pitch to capture that area.

Mr. Colbath asked what the applicant would have to do if denied. Mr. Irving stated he would have to go back to original roof pitch. Mr. Holmes stated that the footprint is grandfathered. Mr. Irving stated if you choose to grant the variance he would advise not putting any internal conditions on the approval. Mr. Colbath stated he would be concerned with creating a fire hazard with a dead space and how do you check, go in every week.

Mr. Colbath stated there is that memo dated 12 years ago. Mr. Bartolomeo stated that he sees the roof as repair and maintenance. Mr. Chalmers stated that this is different, as there is an increase in volume. Ms. Csiszer stated there is volume, but it is within the spirit of the ordinance. Mr. Rodolico stated the reason for the reroof was the pitch.

Ms. Sherman asked public comment; Joe McDermott suggested removing the floor so there is no loft. Mr. Chalmers stated he is concerned that we are going against the public interest. Ms. Csiszer stated there is a section in the ordinance that allows for a variance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that it is contrary as anything constructed within the floodplain is prohibited. **Motion carried with Mr. Chalmers and Ms. Sherman voting in the negative and Ms. Duane, Mr. Colbath and Mr. Bartolomeo voting in the affirmative.**

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

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

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

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Chalmers and Ms. Sherman voting in the negative and Ms. Duane, Mr. Colbath and Mr. Bartolomeo voting in the affirmative.**

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

Mr. Colbath made a motion, seconded by Ms. Duane, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Chalmers and Ms. Sherman voting in the negative and Ms. Duane, Mr. Colbath and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 5.b. **M. made a motion, seconded by M., that item 5.b is not necessary. Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath 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; there was none. **Motion carried with Mr. Chalmers and Ms. Sherman voting in the negative and Ms. Duane, Mr. Colbath and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Ms. Duane, that item 7 is not necessary. Motion unanimously carried.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane that, based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow existing structures to remain in the Floodplain Conservation District be granted. Motion carried with Mr. Chalmers and Ms. Sherman voting in the negative and Ms. Duane, Mr. Colbath and Mr. Bartolomeo voting in the affirmative.

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Humbarger March 1994 Trust (PID 251-22) to consider a Motion for Rehearing at 103 A Road, Conway (File #12-46): After a brief discussion, Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant the Motion for Rehearing requested by Humbarger March 1994 Trust. Motion defeated with Ms. Sherman, Mr. Chalmers and Mr. Bartolomeo voting in the negative and Mr. Colbath and Ms. Duane abstaining from voting.

William and Anne Porter (PID 250-184) to consider a Motion for Rehearing at 48 Brookview Road, Conway (File #12-47): William Porter was in attendance. After a brief discussion, Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant the Motion for Rehearing for William and Anne Porter. Motion defeated with Ms. Sherman, Mr. Chalmers and Mr. Bartolomeo voting in the negative and Mr. Colbath and Ms. Duane abstaining from voting.

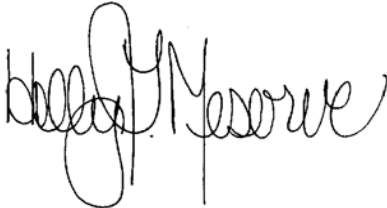
Paul and Patricia Pellerin (PID 251-68) to consider a Motion for Rehearing at 129 E Road, Conway (File #12-48): Ms. Duane made a motion, seconded by Mr. Bartolomeo, to grant the Motion for Rehearing for Paul and Patricia Pellerin. Motion defeated with Ms. Sherman, Mr. Chalmers and Mr. Bartolomeo voting in the negative and Mr. Colbath and Ms. Duane abstaining from voting.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of June 20, 2012 as written. Motion carried with Ms. Sherman, Mr. Chalmers and Mr. Bartolomeo voting in the affirmative and Ms. Duane and Mr. Colbath abstaining from voting.

Meeting adjourned at 10:00 pm.

Respectfully Submitted,



Holly L. Meserve
Recording Secretary