

ZONING BOARD OF ADJUSTMENT

MINUTES

AUGUST 21, 2013

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 21, 2013 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Acting/Vice Chair, John Colbath; Andrew Chalmers; Dana Hylan; Luigi Bartolomeo; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of June 19, 2013 as written. Motion unanimously carried.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **ERNEST AND PATRICIA PHILLIPS** in regards to §147.13.16.3.1 and §147.13.16.4 of the Conway Zoning Ordinance to allow a deck within the Wetland and Watershed Protection Overlay District setback and buffer at 843 Kearsarge Road, North Conway (PID 203-33). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 1, 2013.

Mr. Hylan joined the Board at this time. Ernest (Drew) Phillips appeared before the Board. David Pandora, Building Inspector, was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there were only four-members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Phillips agreed to proceed with four members and understood that not having a five-member Board was not grounds for a rehearing.

Mr. Phillips stated that they would like to construct a deck with a small portion of the deck within the 75-foot wetland setback in order to square off the proposed deck. Mr. Irving stated that Mr. Pandora measured the distance from the wetland with the applicant.

Mr. Colbath asked if the deck could be constructed without encroaching into the wetland setback. Mr. Phillips stated that just a corner of the deck would be in the setback. Mr. Chalmers asked in the residential district allowed a shed within 50-feet of the wetland. Mr. Irving stated that he meets the 50-foot setback. Mr. Chalmers stated if the requirement is 50-foot for a shed, which can house lawnmowers, gas, etc, then what is the impact of a deck versus a storage shed. Mr. Chalmers stated that the structure proposed has a less of an impact on the protected area than a shed.

Mr. Bartolomeo stated that he doesn't have any substantial issues. Mr. Colbath asked for public comment; there was none.

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

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

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

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

Mr. Colbath read item 5.a.i. **Mr. Hylen made a motion, seconded by Mr. Chalmers, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Hylen 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 5.b. **This item is not necessary for this application.**

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 and §147.13.16.4 of the Town of Conway Zoning Ordinance to allow a deck within the Wetland and Watershed Protection Overlay District setback and buffer be granted. Motion unanimously carried.

A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **CLIFFORD AND CYNTHIA BURNS** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow a deck within the front setback** at 27-35 B Road, Conway (PID 251-36). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 1, 2013.

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Clifford Burns appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there were only four-members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Burns agreed to proceed with four-members and understood that he could not appeal based on not having a full Board.

Mr. Burns stated two to three-feet of an 8' x 10' covered deck is within the front setback. Mr. Bartolomeo asked when the deck was constructed. Mr. Burns answered 7 to 10 years ago. Mr. Irving stated this particular property is in Transvale Acres, but it not located within the Floodplain Conservation Overlay District and they have done what they can to bring the property into compliance; this is the only issue left. Mr. Colbath asked if the deck was on a slab and could be moved. Mr. Irving stated that it would not be easy to move. Mr. Colbath asked for public comment; there was none.

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

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

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

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

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

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

Mr. Hylen 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Colbath read item 5.b. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that item 5.b is not necessary for this application. Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the existing deck within the front setback be granted. Motion unanimously carried.

A public hearing was opened at 8:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **HANCOCK WHITE MOUNTAIN LLC** in regard to §147.13.7.6.1 and §147.13.7.6.9 of the Conway Zoning Ordinance **to appeal the Code Compliance Officers determination that the subject structure and appendages is not a permitted sign** at 2451 White Mountain Highway, North Conway (PID 219-228). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 1, 2013.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Jim Yeager was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there were only four-members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Bergeron agreed to proceed with four members and understood that he could not appeal based on only having four-members.

Mr. Bergeron stated the flags were installed in the spring of 2013 and were taken down after receiving a notice of violation. Mr. Bergeron stated what is important for them and what needs to be made clear is the property owner’s position. Mr. Bergeron stated what they purchased and installed are not signs, they are flags according to the flag portion of the ordinance. Mr. Bergeron stated in the notice of violation they were found to be in violation of §147.13.7.6.1, the freestanding sign portion of the ordinance. Mr. Bergeron read the description of the code and stated that the wording will become important later in the meeting.

Mr. Bergeron stated the flags were installed 15-feet above grade and are 2’ x 6’. Mr. Bergeron referred to page 88, §147.13.7.6 and stated that he is not questioning that requirement. Mr. Bergeron referred to page 91, §147.13.7.6.7; signs exempt from property lines setbacks. Mr. Bergeron stated there are 12 items listed and the fifth one is flags; it describes a flag in a different manner than a sign.

Mr. Bergeron stated that page 93 specifically handles flags, which is not a sign in the Town of Conway. Mr. Bergeron read the ordinance and stated every single detail relates to flags; his client has met all of the requirements. Mr. Bergeron submitted pictures of other flags in the Town.

Mr. Bergeron stated that the notice of violation indicates that they were a banner. Mr. Bergeron asked the Board to look up the definition of banner in the ordinance. The Board determined that the ordinance did not have a definition of a banner. Mr. Bergeron read the definition of a banner

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from a dictionary. Mr. Bergeron stated what they have are two flags, mounted on a vertical flag pole that meets the size requirement. Mr. Bergeron stated that he thinks his client is in their full right to put them back.

Mr. Bartolomeo stated they are not mounted directly to the pole. Mr. Yeager stated that is one of the issues. Mr. Bergeron stated there are 36 identical flags at Settler's Green and they are not grandfathered. Mr. Bergeron stated that these exist at other locations and have not been treated the same way. Mr. Hylen stated they are mounted on a light pole at Settler's Green and in Conway Village they are on the utility poles. Mr. Hylen stated that Hancock Lumber's are on a separate pole.

Mr. Yeager asked Mr. Bergeron if he was in his position at one time. Mr. Bergeron answered in the affirmative and stated 1993 to 1999. Mr. Irving stated prior to your letter of 1995 there was quite a free for all between Settler's Green and the Town. Mr. Irving stated that the documentation indicates that these elements on the light poles were exempted. Mr. Bergeron stated that his client completely complies with the ordinance.

Mr. Bartolomeo stated asked Mr. Yeager what are his objections. Mr. Yeager stated these banners are rectangle pieces suspended between spars and displayed horizontally. Mr. Yeager stated that they cannot move like a flag would commonly move. Mr. Bartolomeo stated it is the attachment to the pole. Mr. Yeager answered in the affirmative. Mr. Bergeron stated if we look at a typical flag it is attached to a pulley and rope and not attached to a pole. Mr. Yeager stated that he, Mr. Irving and the Town Manger had a lengthy discussion with Erin Plummer regarding what would be acceptable.

Mr. Bergeron asked if they remove the bottom spar so that their flag could blow in the wind, would be all set. Mr. Yeager answered in the negative and stated that the pole is not at a 45-degree angle. Mr. Colbath stated he does not understand the wording on how the flag must be displayed, can only see it as related to the sign pole. Mr. Colbath asked for public comment; there was none.

Mr. Bartolomeo stated what a direct attachment to a pole is. Mr. Irving stated that we can only go by what is in the ordinance. Mr. Yeager stated that the fabric has to be attached directly to a pole that is horizontal, not vertical, by a sleeve or grommets; in this case the pole is horizontal, not vertical. Mr. Chalmers stated the pole, not the spar. Mr. Yeager referred to the jewelry store across the street from Hancock Lumber. Mr. Bergeron stated that his client meets the ordinance. Mr. Chalmers asked what is being considered the pole, the spar or what comes out of the ground. Mr. Bergeron stated if we call the vertical portion a pole, what is the horizontal piece.

Mr. Bartolomeo stated there is some vagueness here. Mr. Chalmers asked what we are considering the pole, the vertical element. Mr. Bartolomeo stated that a pole is a pole. Mr. Chalmers stated he thinks the Board should uphold the administrative decision and have the applicant apply for a variance.

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Mr. Bergeron stated the Board is taking a leap of faith without reading the ordinance and it sends a bad message to the public. Mr. Chalmers stated they are reading the ordinance and interpreting it literally. Mr. Irving stated if it is not displayed in the manner of a flag then it is considered a sign. Mr. Bartolomeo stated there is some sloppy language here that could be cleaned up.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to grant the Appeal from Administrative Decision and overturn the administrative decision. Motion unanimously defeated.

A public hearing was opened at 8:40 pm to consider a **VARIANCE** requested by **CHARLES BLUNT** in regard to §147.13.14.3.11 of the Conway Zoning Ordinance **to allow the construction of a 10' x 16' boat storage shed within the Floodplain Conservation Overlay District** at 14 Crow Lane, Conway (PID 278-134). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 1, 2013.

Charles Blunt appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there were only four-members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Blunt agreed to proceed with four members and understood that he could not appeal based on not having a full Board.

Mr. Blunt stated that the lot is partially in Conway and partially in Albany. Mr. Blunt stated that State Shoreland Ordinance and Town’s Wetland Ordinance both provide provisions for boathouses; it establishes that this is an acceptable use in this location. Mr. Blunt stated that the building permit was rejected due to the fact that the lot is located in the Floodplain Conservation Overlay District.

Mr. Blunt stated that §147.13.14.3.11 allows for a special exception for the area around Pequawket pond for lots serviced by municipal water and sewer, which is not relevant to a boat house. Mr. Blunt stated that this lot does not have town sewer. Mr. Bartolomeo asked if the lowest floor would be above the 100-year flood level. Mr. Blunt stated the Town has the level at 464.1, but HEB Engineers has shown it to be 463.7; therefore, the floor level will be above, but the floor joists would be under water. Mr. Blunt stated that the sonar tubes will be at 463. Mr. Blunt stated that the Town ordinance requires you to measure from the lowest point of the land which is 462’ in his case.

Mr. Irving asked if it would be built on piles. Mr. Blunt answered sonar tubes. Mr. Irving stated there is a grade issue. Mr. Blunt stated the Town of Albany allows a shed within the floodplain, as long as you provide a one square inch hole in the floor for every square foot, so the building would flood itself. Mr. Colbath asked for public comment; there was none.

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

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

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

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

Mr. Colbath read item 5.a.i. **Mr. Chalmers made a motion, seconded by Mr. Hylen, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Hylen 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 5.b. **It was determined that item 5 was not necessary for this application.**

Mr. Bartolomeo made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow the construction of a 10' x 16' boat storage shed within the Floodplain Conservation Overlay District be granted with the condition that the top of the concrete sonar tubes to be at or above the 100-year floodplain (464.1). Motion unanimously carried.

A public hearing was opened at 9:00 pm to consider a **VARIANCE** requested by **RICHARD CARRUTHERS** in regard to §147.14.1.1.2 of the Conway Zoning Ordinance **to allow the existing three-dimensional structure envelope to be relocated to an area that was not within the original lot of record in the Floodplain Conservation Overlay District at 80 Bay Road,**

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Conway (PID 251-138). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 1, 2013.

Richard Carruthers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there were only four-members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Carruthers agreed to proceed with four members and understood that he could not appeal the decision based on only having four-members present.

Mr. Carruthers stated he purchased a lot beside his from the Town and merged that lot with his lot. Mr. Carruthers stated the Board of Selectmen had a restriction on the lot, which he asked to be rescinded and the Board agreed.

Mr. Irving stated that the request for variance was withdrawn. Mr. Carruthers stated that he changed his mind and does not want to withdraw the application as going straight up would be more expensive than moving the building, so he is back to moving the building. Mr. Carruthers reviewed a plan with the Board.

Mr. Irving asked how far northerly. Mr. Carruthers answered 20-feet. Mr. Irving stated it would be moving closer to the wetland setback and we don't have an application for a variance to allow a relocation that further encroaches into the wetland setback. Mr. Carruthers stated that he would agree not to encroach any further into the wetland setback.

Mr. Colbath asked for public comment; Mary Gibbons stated before any consideration is given on approving this application she would like him to remove the shed, the dog pens and his personal property from her property. Ms. Gibbons stated that she had her lot surveyed by Ron Briggs and sent Mr. Carruthers's a letter; the pins have been broken and removed. Ms. Gibbons stated that her lawyer sent Mr. Carruthers's a letter about the removal, but it has only gotten worse. Mr. Carruthers stated they were not intentionally removed and he would be willing to remove those items.

Mr. Irving stated that he did have a wetland scientist map the soils as his property is adjacent to the Moat Brook, but his entire property was not designated as a wetland.

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

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

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

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

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

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

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

Mr. Colbath read item 5.b. **It was determined by the Board that item 5.b was not applicable to this application.**

Mr. Colbath read item 6. **Mr. Hylen made a motion, seconded by Mr. Bartolomeo, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated that he is raising the building and moving it to a higher area. **Motion unanimously carried.**

Mr. Colbath read item 7. **It was determined by the Board that item 7 was not applicable to this application.**

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

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.14.1.1.2 of the Town of Conway Zoning Ordinance to allow the existing three-dimensional structure envelope to be relocated to an area that was not within the original lot of record in the Floodplain Conservation Overlay District be granted with the conditions to remove any and all physical property encroaching into the side yard setback adjacent to PID 251-139 and PID 251-139 and the owner shall move the dwelling in such a way that creates no additional encroachment into the wetland setback. **Motion unanimously carried.**

Adopted: October 16, 2013 – As Written
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A public hearing was opened at 9:55 pm to consider a **VARIANCE** requested by **RICHARD CARRUTHERS** in regard to §147.14.2.2.5 of the Conway Zoning Ordinance **to increase the three-dimensional envelope of the existing non-conforming structure by increasing the height at least 24” but not more than 48” in the Floodplain Conservation Overlay District and to relocate the existing structure** at 80 Bay Road, Conway (PID 251-138). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 1, 2013.

Richard Carruthers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there were only four-members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Carruthers agreed to proceed with four members and understood that he could not appeal the decision based on only having four-members present.

Mr. Colbath asked for public comment; there was none.

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

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

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

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

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

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

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Mr. Hysten 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. Mr. Colbath asked for Board comment; there was none. Motion unanimously carried.

Mr. Colbath read item 5.b. **The Board determined that item 5.b is not applicable to this application.**

Mr. Colbath read item 6. **Mr. Hysten made a motion, seconded by Mr. Bartolomeo that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense. Mr. Colbath asked for Board comment; there was none. Motion unanimously carried.**


Mr. Colbath read item 7. **The Board determined that item 7 is not applicable to this application. Motion .**

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

Mr. Hysten made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.14.2.2.5 of the Town of Conway Zoning Ordinance to increase the three-dimensional envelope of the existing non-conforming structure by increasing the height at least 24” but not more than 48” in the Floodplain Conservation Overlay District and to relocate the existing structure be granted with the condition to remove any and all physical property encroaching into the side yard setback adjacent to PID 251-139 and PID 251-139 and the owner shall move the dwelling in such a way that creates no additional encroachment into the wetland setback. Motion unanimously carried.

Meeting adjourned at 10:02 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Recording Secretary