

## ZONING BOARD OF ADJUSTMENT

### MINUTES

AUGUST 19, 2015

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 19, 2015 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Recording Secretary, Karen Hallowell.

#### ALTERNATE MEMBERS

Ms. Sherman appointed Martha Tobin as a voting member.

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **JOSEPH AND JAYNE POWERS** in regards to §147.13.16.10.7 of the Conway Zoning Ordinance **to allow the construction of a wetland crossing for a driveway and installation of utilities within the Wetland and Watershed Protection Overlay District** on Brownfield Road, Center Conway (PID 282-1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 7, 2015.

Ron Briggs of Briggs Land Surveying appeared before the Board. Mr. Briggs advised that they do have state wetlands approval for this crossing. This came about as being necessary when he was called to do a unit subdivision on this property. It was discovered that this was put in for logging purposes so they went to the DES Wetlands Bureau to get an after-the-fact permit for what was originally a logging road. It does conform to the state standards for minimal impact to the property and we do have an essential use not only for the proposed second home but they also want to harvest wood that is on the rear portion of the lot.

Mr. Bartolomeo asked if the letter from NHDES has to do with the old logging road and not the application in front of us. Mr. Briggs stated that the approval they have is for the application that is before this Board tonight and is for the same crossing. Mr. Bartolomeo stated that we are then ruling on minimal impact. Mr. Briggs responded in the affirmative. Mr. Bartolomeo next asked for an explanation of where this is retaining fill for so many square feet of wetland. Mr. Briggs reviewed a map of the property with the Board. Mr. Briggs explained they didn't actually permit what was existing out there they want the impact reduced and to have a smaller footprint. Mr. Bartolomeo asked if the culvert exists. Mr. Briggs stated yes and it will remain.

Ms. Sherman asked for further questions from the Board. There were none.

Ms. Sherman asked for public comment. Donald LaPlante stated he lives on Rebecca Lane and asked about where the river is on this plan. Mr. Briggs reviewed the map. Mr. LaPlante asked how much land is involved. Mr. Briggs advised 12 acres. Mr. LaPlante questioned if once this is back there, can they build more houses back there. Mr. Briggs stated they could but this is a

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family property. Mr. Briggs further added that they are also limited to two residences on this driveway. Mr. Irving stated that if they wanted a larger subdivision there, they would have to put in a road.

Mr. LaPlante stated that his only objection would be that the laws were put in for a reason for wetlands and floodplain and people want to keep going back and changing this. He knows that if you own property you want to be able to use it as you want but the laws are put in there for a reason by people for us. Mr. Irving explained that this is not a request to get a change or a variance from the rules. They are not changing the rules. If the applicant meets the standards for this request they are entitled to do it.

Richard Samia asked to see the plan. Mr. Briggs reviewed the plan with Mr. Samia. Mr. Samia asked if this crossing is so they can get another lot out of it. Mr. Briggs stated this is to get to the second building site and, also, to get to the back of the property to harvest timber, etc. There was further discussion and review of the map.

Mr. Briggs next stated that with regard to Mr. LaPlante's concerns, this application today is not giving the owner the opportunity to develop beyond this building site. If they wanted to do that they would have to come back before the ZBA.

Mr. Chalmers asked about the wetland crossing area. Mr. Briggs stated they needed that access to harvest some timber. Also, someone did go in there and cut wood at some point but didn't know they needed a permit and now they have applied for an after the fact permit. Mr. Chalmers next questioned if there is a brook that feeds the wetlands. Mr. Briggs stated no this feeds into the brook. Mr. Colbath questioned how long ago the timber was harvested. Mr. Briggs stated he did not know. Mr. Briggs next stated that there are areas that are narrower to cross but they are in an area of a vernal pool. Also, north of this there is a stream crossing, etc.

Ms. Sherman asked for questions or comments from the Board and public. There were no further questions or comments from the Board or public.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment. Ms. Tobin stated she doesn't see how it is essential. **Motion carried 3-2-0 with Messrs. Bartolomeo and Colbath and Ms. Sherman voting in the affirmative and Ms. Tobin and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment. There were no comments. **Motion carried unanimously.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment. There were no comments. Ms. Sherman asked for public comment. There were no comments. **Motion carried 4-1-0 with Ms. Tobin voting in the negative.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction of a wetland crossing for a driveway and installation of utilities within the Wetland and Watershed Protection Overlay District be granted. Motion carried unanimously.**

Mr. Irving advised that the special exception is granted and if anyone would like to appeal they have thirty days to request a rehearing.

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A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **GARY AND KIM SYLVESTER** in regards to §147.13.14.3.4 of the Conway Zoning Ordinance **to allow the construction of a driveway and installation of utilities within the Floodplain Conservation District** at 1707 East Conway Road, Center Conway (PID 255-31). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 7, 2015.

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. Mr. Smith advised that the Sylvester's are available by phone if the Board has questions. Mr. Smith next stated that he is here to rectify a situation where they should have had this approval in 2007. Mr. Smith explained that the wetlands permit was issued in 2007 and they had then constructed the driveway. Also, there was discussion on this matter with the Conservation Commission back then to minimize the effects to the wetlands.

Mr. Bartolomeo asked to see the map of the property. Mr. Smith reviewed the property map and the bridge crossing site with the Board and public.

Linda Kearney stated that she is on the abutting property and also a member of the Conservation Commission. Ms. Kearney stated the road was not supposed to really be built up, but it is. Mr. Smith stated that it is not built up that much. Ms. Kearney next stated that she is taken aback about this. She was on the Conservation Committee when this came before them and she doesn't understand how this could have been missed. Mr. Smith stated that when they applied for the subdivision to the Planning Board, Mr. Irving helped them catch this problem and that this was not permitted and it has been since 2007.

Donald LaPlante questioned if it has been approved for a subdivision. Mr. Smith stated they have not applied for a subdivision. Mr. LaPlante stated that when the property was bought, he met the lady and was told that they were planning on dividing this into 4 or 5 lots to get the some of the money back on their investment. Mr. LaPlante further stated that this is in the floodplain and has to abide by floodplain rules. People buy property and decide they want to change the rules to benefit them. This is changing the environment from 38 acres of woods in wetlands to a development.

Linda Kearney stated that the initial plans she was shown only showed for the possibility of two units and there is no way they can develop this into five lots.

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Mr. Smith stated that when they applied for the two unit subdivision to the Town, it was glaringly obvious that they can't do more than two. The intention of these approvals is to not subdivide at all. There will be another application to allow two-units on this property.

Mr. Irving clarified that this request is for a special exception and this Board is not being asked to change any rules. If the standards for a special exception are satisfied then the applicant is entitled. Secondly, there was an approval for a stream crossing back in the late 80's but the alignment was different than what was constructed and this is why that approval won't stand for this particular development the way it has been done. The state did grant an approval for the crossing after receiving comments from the Conservation Commission on this matter. Also, for clarification, once the state gets comments from the Conservation Commission, they may still approve it without satisfying those comments. I would expect that the state would have required, if they inspected, that the construction be consistent with their approval. Lastly, we (the town) do not do inspections on these sorts of things. We don't have the power nor do we have the staff. And, much less would we have done anything relative to the inspection of the state permit without having had the town approval subsequent. Mr. Irving next stated his final point is with respect to further subdivision and development and this particular crossing is being used for access to a single dwelling on the other side of that bridge. Neither this bridge nor the driveway is built to town road standard and the bridge would not have been built to a state road standard so that all permits and approvals would have to be reapplied for should they chose to do any further subdivision that would utilize this driveway or crossing.

Ms. Kearney stated that so basically they are not changing anything. Mr. Irving stated correct. Ms. Kearney next questioned what the state did approve then, as she is curious. Mr. Smith reviewed the map again with Ms. Kearney. Mr. Irving clarified that none of that road was approved by the Town and what Wes is showing is what was approved by the state.

Mr. Colbath questioned how long of an area it is from East Conway Road to the bridge. Mr. Smith stated it is 650' plus or minus. Mr. Colbath asked if the state approved to a certain point. Mr. Smith advised that the state approved the wetlands crossing. Mr. Colbath questioned if there is a trail on the Charles Road side. Mr. Smith responded in the affirmative and stated there is an existing easement for access to the beach at the river and a walking trail.

Mr. Bartolomeo asked about future development. Mr. Irving stated that his understanding is they are not going to get a two lot subdivision because they couldn't subdivide the lot back there because they don't have any qualified road frontage back there. They could potentially apply for a two unit subdivision which creates no additional lots of record. He has been led to believe that it is the property owner's intent to rather than do a subdivision you may see him come back here for a special exception for an accessory apartment. Mr. Smith commented that they may also combine two lots of record so they only have one lot. Mr. Irving advised that the applicant also owns a small lot adjacent to their current driveway on East Conway Road and there is a building that straddles the property boundary line. They plan to, rather than move the building, merge the two lots together if they get a special exception for an accessory apartment and that would resolve all of the known defects relative to the regulations. This will come later.

Ms. Sherman asked for further questions or comments from the Board or public. There were no further questions or comment.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** Ms. Sherman asked for Board comment. Mr. Bartolomeo questioned if we heard any testimony regarding this conforming. Mr. Smith stated it does conform and he has the regulations. There were no further comments. **Motion carried unanimously.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that all fill, new construction, substantial improvements and other development within the floodway shall be prohibited unless the applicant's New Hampshire registered engineer can show the activity would not result in any increase in flood hazard within the Town of Conway.** Ms. Sherman asked for Board comment. Ms. Sherman questioned if we are in the floodway. Mr. Smith responded in the negative. **Mr. Chalmers withdrew the second and Mr. Colbath withdrew the motion.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that item 2 is not applicable.** **Motion carried unanimously.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Ms. Sherman asked for Board comment. There were no Board comments. **Motion carried 4-0-1 with Ms. Tobin abstaining.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.4 of the Town of Conway Zoning Ordinance to allow the construction of a driveway and installation of utilities within the Floodplain Conservation District be granted. Motion carried unanimously.**

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A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **GARY AND KIM SYLVESTER** in regards to §147.13.16.10.7 of the Conway Zoning Ordinance **to allow the construction of a wetland crossing for a driveway and installation of utilities within the Wetland and Watershed Protection Overlay** at 1707 East Conway Road, Center Conway (PID 255-31). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 7, 2015.

Wes Smith of Thaddeus Thorne Surveys appeared before the Board.

Ms. Sherman questioned if there is any other route that would be less of an impact. Mr. Smith stated not now and that they have already built the bridge. Linda Kearney commented that she believes that the state said this was the least impact. Mr. Smith commented that this is why it took basically from September of 2005 to March of 2007 to get it right and please as many people as possible.

Mr. Colbath questioned if this would again be an approval for what is already there. Mr. Irving responded in the affirmative.

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Ms. Sherman asked for questions or comments. Wes Smith advised that he has a blown up map of the impacted area if the Board would like to see it. The Board agreed and Mr. Smith reviewed the map with the Board.

Mr. Sherman asked for further questions or comments. There were none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment. Ms. Tobin stated this is not essential. **Motion carried 4-1-0 with Ms. Tobin voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment. Ms. Tobin stated she is voting yes based on what we have heard. **Motion carried unanimously.**

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

**Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction of a wetland crossing for a driveway and installation of utilities within the Wetland and Watershed Protection Overlay District be granted. Motion carried unanimously.** Mr. Colbath thanked the members of the public for attending today.

#### **REVIEW AND APPROVAL OF MINUTES**

**Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of July 15, 2015 as written. Motion carried unanimously.**

#### **BOARD COMMENTS**

Mr. Colbath reported that he will not be in attendance at the next scheduled meeting of the ZBA.

Ms. Sherman reported that she knows someone who may be interested in being a ZBA alternate.

At 7:45 p.m., **Ms. Tobin moved, seconded by Mr. Colbath, to adjourn the meeting. The motion carried unanimously.**

Respectfully Submitted,



**Karen Hallowell, Recording Secretary**