

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 20, 2019

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 20, 2019 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **WHITESIDES REALTY, INC.** in regards to §190-20.B.(5)(c) of the Conway Zoning Ordinance to allow 12 dwelling units per acre at 2076 White Mountain Highway, North Conway (PID 230-4). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 8, 2019.

Josh McAllister of HEB Engineering appeared before the Board. John Whitesides was in attendance. Mr. Colbath stated that there are 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. McAllister agreed to proceed with four members.

Mr. Colbath read the application and the applicable section of the ordinance. Mr. Irving stated he just wanted to clarify that the applicant understands that only having a four-member Board is not grounds for a technical error for a rehearing. Mr. McAllister stated that is understood.

Mr. McAllister stated this site is located across from the North Conway Cemetery and is a two-building site. Mr. McAllister stated there is an existing residential unit in the upstairs of the front building. Mr. McAllister stated the owner is proposing a development that maintains the existing front building as it is and proposes three residential structures on the rear portion of the site with 34 new dwelling units beyond the commercial unit.

Mr. McAllister stated they will improve the parking layout, access points to the site, and greenspace along the frontage of Route 16. Mr. McAllister stated it is intended for this project to be designed to meet all or most of the site plan review regulations. Mr. McAllister stated the current request is to utilize the density allowance through this special exception to create more residential housing in the Mount Washington Valley.

Mr. McAllister stated he would go through each criteria of the special exception. Mr. McAllister stated that each structure shall have three dwelling units, the buildings in the back will have 10 to 12 units in each of the buildings and the building in the front will solely be commercial.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Mr. McAllister stated the proposal is for 34 residential units and one commercial unit for a total of 35 units. Mr. Colbath asked how many acres is this site. Mr. McAllister answered this is a four-acre site. Mr. Bartolomeo stated once you subtracted the half-acre for the commercial use the site was allowed 34-residential units. Mr. McAllister agreed. Mr. McAllister stated the intent for the dwelling unit that exists is for it to remain until the third building is constructed and then at that point it will be vacated.

Mr. McAllister stated not less than 25% of the units shall be designated as full-time rentals. Mr. McAllister stated it is the intent of the project that they will all be full-time rentals, but we will make sure that we meet the conditions at the time of site plan review to identify nine of the units for 20 years as full-time rentals. Mr. Bartolomeo asked if they would become condominiums. Mr. McAllister stated not at this time.

Mr. McAllister stated all lots must be serviced by water and sewer, this site is serviced by the North Conway Water Precinct for both water and sewer. Mr. McAllister stated rental deed apartments shall be between 300 and 1,000 square feet, the floor layouts submitted are all in that range, but we will make sure when we finalize the layout that they meet that requirement. Mr. McAllister stated architectural designs were submitted as required.

Mr. Bartolomeo asked if the murphy bed units/studio apartments are the ones being designated as the deed restricted rental units. Mr. McAllister stated we have not identified which ones will be the full-time rentals. Mr. Bartolomeo stated they are pretty small. Mr. McAllister stated they need to be between 300 and 1,000 square feet and there are at least nine units that meet that requirement.

Mr. Bartolomeo asked if there were any plans to upgrade the commercial building. Mr. McAllister stated not at this time, but that will be reviewed during the site plan review process. Mr. Colbath asked about the exterior materials. Mr. McAllister stated they would meet all of the town requirements. Mr. Colbath asked if there is required greenspace. Mr. Irving answered in the affirmative and stated the standard is 25% greenspace. Mr. Colbath asked if they meet that. Mr. McAllister answered in the affirmative.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Russ Lanoie asked how far back is the stump dump there. Mr. McAllister stated we have done some geotechnical investigation and there has been some buried material that has been found. Mr. McAllister stated we have been working with contractors to identify an appropriate foundation design and any remediation that will need to happen. Mr. McAllister stated we are actively exploring it and ensuring, as a private developer and private land owner, that the investment is sound.

Mr. Colbath closed public comment. Mr. Whitesides stated his family purchased this property in the 1960's, and he was raised in North Conway. Mr. Whitesides stated the goal of this is to make that property better, we didn't want to present something that the town didn't need we wanted to present something that the town lacked. Mr. Whitesides stated we understand that the curb appeal of the building is not as it should be, and we want to improve the property, that is our goal.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that each structure must contain at least three dwelling units.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that not less than 25% of all dwelling units shall be designated as full-time rental apartments. At the time of Planning Board approval, the units designated as full-time rental apartments must be shown on the plan with a condition that they are leased for twenty years from the date of Planning Board approval by the developer and a deed restriction shall be recorded in the Registry of Deeds as evidence of the same.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that all lots must be serviced by municipal water and sewerage.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if we have any hard data on this requirement. Mr. McAllister stated outside of what has been presented, the majority of the units are in that range. Mr. Bartolomeo asked if the small murphy-bed units are less than 300 square feet. Mr. Whitesides answered in the negative and stated every unit is above that. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that architectural design plans must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the zoning regulations.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-20.B.(5)(c) of the Town of Conway Zoning Ordinance to allow up to 12 dwelling units per acre be granted. Motion carried unanimously.

A public hearing was opened at 7:16 pm to consider a **SPECIAL EXCEPTION** requested by **JOSEPH AND DONNA MORI** in regards to §190-28.I.(4) of the Conway Zoning Ordinance to **allow a wetland and/or stream crossing for proposed access and utilities in the Wetlands and Watershed Protection Overlay District** at 28 Banfill Road, Conway (PID 279-12). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 8, 2019.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Josh McAllister of HEB Engineering appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there are 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. McAllister agreed to proceed with four-members. Mr. Colbath stated if you agree to go forward with the hearing a rehearing cannot be called for a technical error because there are only four-members. Mr. McAllister stated that he understood.

Mr. Irving stated that this particular application is seeking this special exception but it is not necessarily to cross a wetland it is to encroach into a wetland buffer. Mr. Irving stated there will not be any wetlands actually affected.

Mr. McAllister stated this property is located off Banfill Road, which is located off Tasker Hill Road. Mr. McAllister stated this property is located in the Residential Agricultural District with much of the land located in the Wetland and Watershed Protection Overlay District. Mr. McAllister stated the existing use is a horse stable and field with a majority of the property being logged a while back. Mr. McAllister stated there are access roads for logging and pads all around this property.

Mr. McAllister stated it is the intent of this project to subdivide the property into four lots. Mr. McAllister stated the buildable area on each of the lots being subdivided out of the larger lot are small. Mr. McAllister stated as part of this subdivision a new road off of Banfill Road is proposed in order to create frontage for each of the proposed lots.

Mr. McAllister stated that the request is for the ability to reconstruct the existing driveway into the horse barn, which currently crosses the wetland buffer. Mr. McAllister stated there actually is an existing culvert there which we are not sure if it connects wetland on either side so that may have to be upgraded. Mr. McAllister stated that might be the only anomaly with opposition to what Mr. Irving stated is if that culvert needs to be replaced, we would also need a wetland permit to do that. Mr. McAllister stated this driveway, as it sits, crosses the wetland buffer and if we don't touch that culvert, we are not impacting any wetlands.

Mr. McAllister stated lot 3 will also have access rights off of the road, but will most likely access the buildable area over a logging road through an easement over the larger lot. Mr. McAllister stated there are wetlands on either side of it, but again we are crossing the buffer not necessarily impacting a wetland.

Mr. McAllister stated the final request is the road request for construction of the road right-of-way to create frontage for the proposed three lots. Mr. McAllister stated the proposed road sneaks into the wetland buffer of the large wetland complex, and does not necessarily impact wetlands, but that will be explored more once we get into the design phase. Mr. McAllister stated we are not necessarily crossing the wetlands we are just sort of traversing the buffers to gain access.

Mr. Steiner asked if there is additional construction proposed where the horse barn is located. Mr. McAllister stated not as a part of this application, but there are future plans.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Mr. Bartolomeo asked if these lots are serviced by municipal sewer and water. Mr. McAllister stated these services are located on Tasker Hill Road and there is a Conway Village Fire District pump station on Banfill Road.

Mr. McAllister stated this application is for access and for utility upgrades. Mr. McAllister stated it is anticipated that there will be a pump station at the end of the proposed road to pump to the existing pump station at the end of Banfill Road and then out to Tasker Hill Road. Mr. McAllister stated that is the worst-case scenario.

Mr. McAllister stated one of the criteria is that the use is essential to the productive use of the land not in the District. Mr. McAllister stated the proposed subdivision that will go to the Planning Board to create a larger lot and three residential lots. Mr. McAllister stated to access any of the buildable areas you have to cross the wetland buffer; you cannot get to the horse barn without crossing a wetland buffer, you cannot go straight on the logging road without crossing the wetland buffer and you cannot go left to the north without crossing a wetland buffer.

Mr. McAllister stated one of the criteria is that the use is so located and constructed as to minimize the detrimental impact upon the wetlands. Mr. McAllister stated we are utilizing existing locations of access. Mr. McAllister stated the driveway to the stable is a gravel driveway that will be reconstructed in the same location. Mr. McAllister stated the drive to the residential property straight off of Banfill Road is a logging road, and the proposed location of the road to the north is also along a wide logging swath.

Mr. Colbath asked if there was any further Board comment; there was none.

Mr. Colbath asked for public comment; Don Litchko of 247 Tasker Hill Road stated he thinks buffers were there for a purpose and this plan runs through the exact wetland the buffer is trying to protect. Mr. Litchko stated when he bought his property 18 years ago, he asked the owner the likelihood of someone building behind him, the owner stated it was protected wetlands and not likely. Mr. Litchko stated he thought Conway was more concerned about environment than they had been in previous years.

Mr. Litchko stated in the last five or six years the land behind him was timber, it was cleared in three or four days with no other activity. Mr. Litchko stated the fact that they are going on existing logging trails should be excluded because the ultimate use of this is highly different. Mr. Litchko stated if you put those roads in it won't be a matter of someone going down for a load of firewood or for someone taking a hike, you are going to be putting 100 cars in and out of those lands every day.

Mr. Litchko stated he understands the need for low-income housing, but we can do it in Conway without going through any wetlands. Mr. Litchko stated there is 40 acres almost across the street from this property that is for sale and most of it, not all of it, is not within the wetlands district. Mr. Litchko stated he believes if Conway is really concerned on how to solve the housing problem it can be done without crossing wetlands. Mr. Litchko stated there are ways to solve the problem without hurting wetlands, there are other alternatives if we want to be creative.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Mr. Litchko stated his other concern regarding this request is that they are asking the Town to approve crossing wetlands without having any details whatsoever, such as the location of the buildings, exactly what service they will be and will they actually help low-income housing. Mr. Litchko stated if he were developing this property, he would also want approval for the wetland crossings before putting any money into the other designs, but it would be ludicrous for the Town to approve this request without having a lot of due diligence to exactly what's going on, where it's going and who it is going to serve.

Mr. Litchko stated he would hate to think we are going to give up wetlands so we can put low-priced housing in there and suddenly have more tourists come in and have it be their second home and for them we have given up wetlands. Mr. Litchko stated he is not in favor of it, he doesn't disagree that there is a housing problem, but believes there are other solutions besides modifying wetlands.

Mr. Steiner asked what are we proposing. Mr. McAllister stated the proposal right now is a four-lot subdivision; it is anticipated that the larger lot, the lot with the horse stable, is going to be developed as a multi-unit 55 and older senior living facility. Mr. McAllister stated this application is not for that facility. Mr. McAllister stated this application is for the four-lot subdivision.

Mr. McAllister stated the buildable area on the smaller three-lots is not for a 30-unit building, but for a single-family residential structure or possibly a duplex. Mr. McAllister stated the lot proposed behind Mr. Litchko is only one and a half acres, and it is the applicant's anticipation that these lots become residential if the subdivision moves forward. Mr. McAllister stated the applicant does not anticipate developing the other three lots.

Mr. McAllister stated the number of vehicles down that road crossing that wetland buffer will not be 100, likely two of those residential lots will have access to the new road. Mr. Bartolomeo stated the applicant is creating a subdivision and wants to sell the lots. Mr. McAllister answered in the affirmative and stated their current plan is to sell those lots. Mr. Bartolomeo stated this has nothing to do with workforce housing. Mr. McAllister stated this application is for a four-lot subdivision. Mr. Bartolomeo stated in no case is this crossing wetlands, it is crossing wetland buffers. Mr. McAllister stated that is correct.

Mr. Chalmers asked if there is any reason why the north-south running road could not be moved so it is not in the buffer. Mr. McAllister stated there is an area that is really narrow and there is an existing property line and they have set the 60-foot right-of-way line off that property line. Mr. McAllister stated to construct a town standard road in this right-of-way there has to be the necessary amount of space.

Mr. McAllister stated the alignment of the road is mandated by the existing property line for the Russo/Morse property. Mr. McAllister stated after that we could kick it towards Mr. Litchko's property further, but then the buildable area of that lot is lost and we would not be able to get the four-lots. Mr. McAllister stated it is laid out as to allow at least four, 8,000-square foot buildable areas, if not more, while not deeply impacting the wetlands and only crossing the buffer.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Russ Lanoie stated he is an abutter in a different Town, but also a property owner and taxpayer in the Town of Conway. Mr. Lanoie stated when he purchased his property in 1972, he dug a hole and water ran out of it; Tasker Hill is notoriously wet. Mr. Lanoie stated the soils maps show in that area the depth of the water table is 0 to a foot. Mr. Lanoie stated the justification for this is for the ability for the developer to construct a 30-unit senior housing development. Mr. McAllister stated that is not the justification, the justification is to access the buildable portions of this property.

Mr. Lanoie asked if there is only one outlet for this property. Mr. McAllister stated this property will access only Banfill Road. Mr. Lanoie asked if they would be using the roads that are there. Mr. McAllister stated it is anticipated, but they are not in site plan review, that they will be required to upgrade Banfill Road, that they will be required to update the pump station and, as the project is laid out now, they will be required to construct a new road.

Mr. Lanoie asked where is the drainage going. Mr. McAllister stated for the driveway to the horse stable there would be no change, the drainage for the road going north will be standard road side drainage with outlets that will need to be identified once we get into design. Mr. Lanoie stated he is concerned with the new impermeable areas as water is going to have to go somewhere.

Mr. McAllister stated they understand for future phases of this project that drainage is going to be a challenge, and we are also going to be deeply regulated for any phases beyond this one by NHDES. Mr. Lanoie stated the original proposal was for 90 units. Mr. McAllister stated the wetland delineation nixed that.

Denise Hermanson stated her biggest concern is that her property is wet, and concerned with flooding of her house. Ms. Hermanson asked if this is going to displace water in a different way as there is already an issue there.

Mr. Litchko stated he voiced his premise on the fact of the previous proposal that was submitted trying to help low-income housing. Mr. Litchko stated if you are telling me now that the only reason that we can't put in a road that saves the buffer zone is for the financial gain of the owner who bought that property, has timbered that property and knew what he was buying before he bought it, if they cannot stay out of that buffer zone so he can make a few bucks then he is admittedly against it.

Mr. Litchko stated Conway has cut more trees down in the past five years for construction and we keep making exceptions, it is time to protect. Mr. Litchko stated somewhere along the line taxpayers paid a bundle to have wetlands identified and they did it for a reason and to violate that reason for someone to make a few bucks, he is against it and he hopes the Board is, too.

Charlie Macomber stated he is trying to understand what they are really proposing for these four lots. Mr. McAllister stated as part of the subdivision application, at the time of application, it will just be a subdivision and what is there will remain. Mr. McAllister stated there will be subsequent applications once the subdivision is approved.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Mr. McAllister stated it is anticipated that a 55+ senior living facility will be added to lot 4; it would be a multi-building facility. Mr. McAllister stated it is still in the development phase, we don't have architectural designs nor how many units it will be. Mr. McAllister stated we know that we will meet the density allowed and meet the site plan review regulations when we get there.

Mr. Macomber asked if they would eventually sell the other three lots to individuals to be developed as single-family homes. Mr. McAllister stated whether single-family or not they will be subdivided lots and able to meet the density at the time of their development. Mr. McAllister stated the applicant does not anticipate, or have any plans to, developing those lots after being subdivided. Mr. Macomber stated to be going forward with these permits when you have no idea what is going to happen on lot 4 is irresponsible.

Mr. Colbath stated that the Zoning Board of Adjustment hears variances, special exceptions, appeals of administrative decisions and equitable waivers. Mr. Colbath stated a lot of what has been discussed tonight is of interest, but if it makes it through this step, which there are four criteria, then most of the concerns will become Planning Board concerns if it makes it that far.

Mr. Litchko stated wouldn't it be fair to say if this Board approves it your sending a message that it is acceptable to go to the next step. Mr. Litchko stated on lot 4 there is a proposal for senior housing, but their original application, which was withdrawn, showed three different buildings in that area. Mr. Litchko stated if they are granted approval for the housing will it stop there or will the owner be able to come back to ask for something else on the other lots. Mr. Litchko asked if they are making a commitment that they are only going to do one. Mr. Colbath stated we have no idea about that; we are criteria based on the special exception, we are going to see whether the applicant has done due diligence to use the property if they meet the special exception and that is all we do at this Board. Mr. Litchko stated he understands.

Mr. McAllister stated the access to lot 4 is anticipated to be in exactly the same place where a rather large gravel driveway exists and we anticipate keeping that same alignment and same location of that drive. Mr. McAllister stated we are not moving the location across the buffer, we are staying along the same alignment with a driveway. Mr. Colbath asked for other public comment; there was none. Mr. Colbath closed public comment.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated looking at the map he notices there are fourteen houses along Tasker Hill Road on relatively tiny lots and here we have one lot with six plus acres, one lot with 4 plus acres, and another lot with 1.5 acres. Mr. Bartolomeo stated it seems to him just with visual density these are minor impacts. Mr. Bartolomeo stated he thinks this is a low impact project relative to what is along the road.

Mr. Chalmers stated it seems if you look at the Russo property, and understand you are trying to stay away from that setback, but if you were to jog the road to the west, we would address some of Mr. Litchko's concerns with staying out of that wetland buffer. Mr. McAllister stated it may eliminate the buildable area that is adjacent to Mr. Litchko's property and put a road in his back yard where currently there could be a residential unit. Mr. McAllister stated it could be jogged over there but with that alignment we would not be left with any buildable area.

Mr. Chalmers asked if the setbacks are imposed correctly on the plans submitted. Mr. McAllister answered in the affirmative. Mr. Chalmers stated so there is no other feasible way. Mr. McAllister stated just to get beyond Russo's property they have to cross the buffer. Mr. McAllister stated the final design of the road is not complete, and it will be reviewed as part of the subdivision review process. Mr. McAllister stated they think this alignment is the best one to meet the goals of the project while not impacting wetlands.

Mr. McAllister stated Ms. Hermanson mentioned drainage on her property that he did not address, that would be part of our drainage design. Mr. McAllister stated the Town makes sure we do a drainage analysis that shows our impacts on abutting properties to make sure we match or decrease the flow rates. Mr. Colbath asked if the Town had any comments; Mr. Irving answered in the negative.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the use is essential to the productive use of land not in the District.** Mr. Colbath asked for Board comment; Mr. Chalmers stated when we are talking about productive use of the land, there is nothing on there now, they have used it for logging that has been its use, so it has been productively used and now looking at changing that use. Mr. Bartolomeo stated it is not any productive use, it is the owner's productive use for it. Mr. Steiner asked if Mr. Russo was in attendance; he was not. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Mr. Colbath asked for Board comment; Mr. Steiner stated he heard testimony from an abutter who was concerned with drainage. Mr. Bartolomeo stated drainage is reviewed during the site plan review process. Mr. Irving stated any drainage effected by the design of the road, and at this point in time we are not talking about site plan review as the next step would be the subdivision, which would require the applicant to submit a design for the road and the town would be reviewing that design to ensure that there was neither any increase in rate or volume of runoff coming off of the proposed road. Mr. Steiner stated then he can be assured that the abutter will be protected. Mr. Irving stated we have regulations that address drainage. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Steiner 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.** Mr. Irving stated as a point of clarification the applicant has indicated that they are not planning on doing any work in 404 jurisdictional wetlands save for perhaps the replacement of a culvert. Mr. McAllister stated there may be some minor fill pass Russo's property depending on where we end up on the road design.

Noel Lockwood of 30 Banfill Road asked if she could make some comments as she was out of the room. Mr. Colbath stated if she is allowed to make comments, he is making an exception because he closed public comment. Mr. Colbath stated he can make an exception as Chair as long as everyone understands they don't get a chance to speak as she was out of the room. Mr. Colbath asked if everyone is in agreement; there was no disagreement from the audience.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

Ms. Lockwood stated her back yard is already a swamp. Ms. Lockwood asked what about the traffic coming from the proposed site for the elderly and what about the words “may” and “anticipated” as those put up red flags. Ms. Lockwood stated it is like anything can be changed to anything. Mr. Colbath stated that is traffic and design which would be taken into consideration at the phase when it goes to the Planning Board, and is not germane to this discussion. Mr. Colbath stated this is only about crossing the wetlands and buffers for driveways and roads. Ms. Lockwood asked about the elderly community. Mr. Colbath stated that has nothing to do with this application.

Mr. Colbath asked for Board comment; Mr. Chalmers stated it seems kind of vague as we don't really know as there might be some fill, so how can we say there is no other better alternative. Mr. McAllister stated the no better alternative is that there is no other alternative for a location for this crossing, this is the least impactful alternative that has been analyzed. Mr. McAllister stated the crossing to lot 4 is where the impact is if that culvert needs to be upgraded, but the alignment of that road is the least impactful alignment. Mr. McAllister stated that culvert would be upgraded only to improve the drainage situation there.

Mr. McAllister stated the road going north, where it is close to the wetlands is immediately in the vicinity of the north side of the Russo property where it is as far away from the wetlands as possible. Mr. McAllister stated right as it exits Russo's that is where the potential wetlands impacts are, if the design ends up getting there. Mr. McAllister stated the alignments that are chosen are the alternatives that are the least impactful because they are already impacted.

Mr. Chalmers stated north of Russo's lot where he had brought up moving that road that is the closest spot that you actually come to the wetland. Mr. McAllister answered in the affirmative. Mr. Chalmers asked if that is where you are talking about putting the fill. Mr. McAllister answered in the affirmative and stated the right side of that road if you were looking north would be the portion where there may be fill. Mr. McAllister stated we are at schematic design not detailed design at this point, you are not at final design when you submit to the ZBA due to timing. Mr. McAllister stated the alignment that they have proposed, in his opinion, is the best alignment they can come up with as far as least impactful without taking all design consideration at this time. **Motion carried unanimously.**

Mr. Colbath read item 4. Mr. Irving stated a subdivision review will be required, this particular condition is not an applicable condition because to create a subdivision a site plan review is not required. Mr. Irving stated a site plan review would only be required if there was anything to be constructed on any of the resultant lots that was multi-family or non-residential. **Mr. Steiner made a motion, seconded by Mr. Chalmers, that criteria 4 is not applicable for this application.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-28.I.(4) of the Town of Conway Zoning Ordinance to allow a wetland and/or stream crossing for proposed access and utilities in the Wetlands and Watershed Protection Overlay District be granted. Motion carried unanimously.

Adopted: April 17, 2019 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 20, 2019

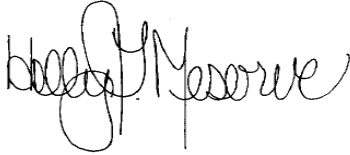
Mr. Irving stated should anyone disagree with this decision and wish to appeal this decision they have 30 days to submit a request to appeal the decision to the ZBA and include the reasons why the Board should rehear this application. Mr. Colbath stated there are only two criteria to rehear, either a technical error has been made or there is information pertinent to this specific applicant that was not available at this time. Mr. Colbath stated because you disagree with the decision is not a reason to ask for a rehearing.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the minutes of January 16, 2019 as written. Motion carried with Mr. Colbath abstaining from voting.

Meeting adjourned at 8:11 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant