

## ZONING BOARD OF ADJUSTMENT

### MINUTES

NOVEMBER 20, 2019

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

#### APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Ms. Sherman as a voting member.

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **DRYKI, LLC/CEDAR STUMP, LLC** in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to allow the construction of an access road within the Wetland and Watershed Protection Overlay District** at 170 Industrial Drive, Center Conway (PID 244-16 & 17). Notice was published in the Conway Daily Sun and certified notices were mailed on Friday, November 8, 2019.

Stephen LaFrance of Horizons Engineering appeared before the Board. Mr. Colbath stated there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if they would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. LaFrance agreed to proceed with four members. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. LaFrance stated that the pit is busy; they would like to change the access to make a more direct route to the lower part of the pit for safety. Mr. LaFrance stated this change cuts the distance by two-thirds. Mr. LaFrance stated changing the access road will allow the owners to access phase II of the pit. Mr. LaFrance stated this change makes more sense economically since they buy material by weight and this is more of a straight shot from the scale to the pit.

Mr. LaFrance stated the existing road has been in place for many years. Mr. LaFrance stated they chose this alignment to cross the wetland area at the minimal point and there is already a culvert there. Mr. LaFrance stated there are three wetland impacts; the logging crossing, a drainage ditch, and an existing pond with two, 12” pipes that will need to be widened and the culverts extended, which is a wetland impact. Mr. LaFrance stated there is no wetland within the pit.

Mr. Colbath asked for Board comment; Mr. Colbath asked if this is the best area to put a road to minimally affect the wetlands. Mr. LaFrance answered in the affirmative. Mr. Irving stated the Town inspected the property yesterday; we were impressed, they run a tight ship. 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. Steiner, that the use is essential to the productive use of land not in the District.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 3. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, 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. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that a site plan review approval shall be required prior to construction.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Ms. Sherman 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 the construction of an access road within the Wetland and Watershed Protection Overlay District be granted. Motion carried unanimously.**

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A public hearing was opened at 7:19 pm to consider a **SPECIAL EXCEPTION** requested by **CMR PROPERTIES, LLC** in regards to §190-24.K.(6) of the Conway Zoning Ordinance **to allow the construction of a resort hotel in the Recreational Resort District** at 165 Skimobile Road, North Conway (PID 214-84.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 8, 2019.

Christopher Meier of Cooper Cargill Chant appeared before the Board. Ben Wilcox of CMR Properties, LLC and Russell Thibeault of Applied Economic Research were in attendance. Mr. Colbath stated there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if they would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Meier agreed to proceed with four members. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Meier stated the property has 814 acres and is located within the Recreational Resort District. Mr. Meier stated the proposed resort hotel is smaller than the existing fitness center. Mr. Meier stated a traffic study and an appraisal have been submitted. Mr. Meier stated we have worked with Town Staff with the development of this application. Mr. Meier stated this project will require site plan approval.

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Mr. Meier reviewed his memo [in file] in regard to a Special Exception under §190-24.(K)(6) [no date] with the Board. Mr. Meier read items #1, #2, #3, #3.a., #3.b. and #3.c. Mr. Meier stated under item #3.c.iii. there is one piece of additional information they need to provide to the Board and he would ask that it be a condition of approval. Mr. Meier read item #3.d., #3.e., #3.f., #3.g, #3.h., #3.i., #3.j., #4; and #5. Mr. Meier stated they are asking for a conditional approval upon satisfying items under #3.c., traffic, and #5, site plan approval.

Mr. Irving stated if the Board is considering approving the Special Exception, he would suggest the following conditions; precedent to final approval the applicant submit a revised traffic study report that demonstrates compliance with items #3.c.iii, iv, and v., and subsequent to final approval acquire site plan review approval. There was a brief discussion regarding the level of service at the signalized intersections.

Mr. Colbath asked for public comment; Joan Wilson stated there is a 90-degree turn on Kearsarge Road that is confusing and people don't know what to do there, and Mechanic Street's entry onto Kearsarge Road is dicey and not very safe. Ms. Wilson stated at times the intersection of Whitaker Lane and Kearsarge Road and the entrance into Whitaker Woods is very unsafe. Ms. Wilson stated her concern is safety and the increase in traffic; the roads are very narrow residential streets.

Mr. Meier stated the traffic study indicates the traffic counts, and people who come to resort tend to stay at the resort more than another type of hotel. Mr. Meier stated the fitness center traffic is also going away. Mr. Meier stated we have worked with Town officials so it wouldn't have an impact on abutters.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the resort hotel is constructed on and in conjunction with a commercial golf facility or with another recreational/resort use on the supporting acreage.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the minimum lot size for the lot supporting the combined commercial golf course and resort hotel shall be two hundred (200) acres, exclusive of that acreage that falls within the Wetlands Conservation District.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3.a. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has dedicated a specific parcel(s) to the proposed facility, which shall not be used for residential density.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3.b.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has presented information by a certified appraiser indicating that there will be no negative impact on abutting properties as a result of the proposed special exception.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Steiner voting in the negative.**

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Mr. Colbath read item 3.c.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that no traffic hazard will be created and traffic access will not alter the character of the neighborhood.** Mr. Colbath asked for Board comment; Ms. Sherman stated the applicant has not demonstrated this. Mr. Meier stated traffic hazard and altering the character of the neighborhood is significantly different from having a traffic impact.

Mr. Meier stated the traffic study that was submitted shows that the traffic impact will be minimal. Mr. Meier stated what we haven't shown and will be bringing back is a traffic study to show the town the impact on the signalized intersections both at Route 16 and Pine Street and Route 16 and Keasarge Road. Mr. Meier stated those are significantly farther away from the proposed project than what we are talking about here.

Mr. Meier stated if the Board prefers, all of the traffic study could be part of the condition. Mr. Meier stated we have a traffic study that shows that the impact on the surrounding neighborhoods is not significant or substantial, especially with the reduction in traffic by the removal of the fitness center.

Mr. Steiner stated you cannot put in a 20-million-dollar hotel in a residential area and not effect the neighborhood. Mr. Irving stated the criteria the Board is voting on is that this does not create a traffic hazard and traffic access does not alter the neighborhood. Mr. Irving reviewed the traffic counts with the Board. Ms. Sherman stated she is concerned with the total traffic situation. **Motion carried with Mr. Steiner voting in the negative.**

Mr. Colbath read item 3.c.ii. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that the applicant has demonstrated that the main access point will be from an arterial or collector and not from neighborhood streets.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that relative to items 3.c.iii, iv and v. a condition precedent to the ZBA granting the special exception that the applicant demonstrates to the Board that these conditions have been satisfied. Motion carried unanimously.**

Mr. Colbath read item 3.d.i. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that the applicant has demonstrated that the operation of the development, including noise, odors, and any hazards associated with the use and location shall be mitigated and will not exceed those customarily found in a residential neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Steiner voting in the negative.**

Mr. Colbath read item 3.e.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the proposed facilities, including drainage, sewer/septic, water, electric and other utilities, are adequate provisions to meet the needs of the proposed development.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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Mr. Colbath read item 3.f.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the design and architecture of the proposed structure is compatible with abutting residential structures.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3.g.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the lighting plan will result in no direct glare and that the parking area and walkway luminaires are so hooded or shielded as to not exceed significantly beyond the parking and walkway areas.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Steiner voting in the negative.**

Mr. Colbath read item 3.h.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the hours of operation are appropriate as it does not interfere with the abutting residential neighborhood by means of excess traffic in off-peak hours, unscreened lighting that disturbs residential uses and other factors that make the facility different from a residential neighborhood.** Mr. Colbath asked for Board comment; Mr. Steiner stated there will be people coming in and out of there all night long, it is a bad situation for the neighbors. **Motion carried with Mr. Steiner voting in the negative.**

Mr. Colbath read item 3.i.i. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner that the applicant has demonstrated that a perimeter buffer area adjacent to all abutting properties has been left undisturbed if wooded, and if open, has been planted with dense evergreen plantings.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3.j.i. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that a site plan approval by the Planning Board be a condition subsequent to granting the special exception.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item k. Mr. Irving stated the traffic issue is also a part of this. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that item k be satisfied precedent to granting the special exception.** **Motion carried unanimously.**

Mr. Colbath read item 4. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that in addition to the buffer area required for commercial golf courses, the resort hotel building(s) shall be setback no closer than one hundred (100) feet from the boundary line of any other unaffiliated lot (an “unaffiliated lot or roadway” is a lot or roadway not owned or controlled by the applicant or its principals).** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the number of guest rooms complies with the requirement that the number of guest rooms in the resort hotel will be dependent upon the acreage allocated to the combined facility/resort hotel lot, on a ratio of two acres per guest room.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-24.K.(6) of the Town of Conway Zoning Ordinance to allow the construction of a resort hotel in the Recreational Resort District be granted conditionally upon precedent to final approval the applicant must submit a revised traffic study report that demonstrates compliance with items 3.c.iii, iv and v on the special exception worksheet relative to §190-24.K.(5)(a)[2] of the Conway Zoning Ordinance, and the applicant must satisfy item 3.j. on the special exception worksheet relative to §190-24.K.(6)(c) of the Conway Zoning Ordinance; and subsequent to final approval a site plan review approval be acquired from the Planning Board. Motion carried ~~unanimously~~ with Mr. Bartolomeo, Ms. Sherman and Mr. Colbath voting in the affirmative and Mr. Steiner voting in the negative.

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A public hearing was opened at 8:30 pm to consider a **SPECIAL EXCEPTION** requested by **CMR PROPERTIES, LLC** in regards to §190-28.I.(6) of the Conway Zoning Ordinance to **allow pavement within the wetland buffer** at 165 Skimobile Road, North Conway (PID 214-84.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 8, 2019.

Christopher Meier of Cooper Cargill Chant appeared before the Board. Ben Wilcox of CMR Properties, LLC and Russell Thibeault of Applied Economic Research were in attendance. Mr. Colbath stated there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if they would like to proceed with four-members or continue the hearing until there is a five-member Board. Mr. Meier agreed to proceed with four members. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Meier stated this site is located within the Wetland and Watershed Protection Overlay District. Mr. Meier stated the proposed hotel is not located within the WWPOD, but some of the parking impacts the wetland buffer. Mr. Meier stated they are improving and increasing the vegetation on the parcel. Mr. Meier stated they conducted a site walk with the NRCS and their report concludes that this will reduce the impact on the wetland source.

Mr. Colbath asked for public comment; Mr. Wilcox stated this will be an improvement as it is integrating more greenspace and improving the site.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the proposed use will not conflict with the purpose and intent of the district; the applicant has provided proper written evidence, which was accompanied by the findings of a review by the United States Natural Resources Conservation Service.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the use is permitted in the underlying zoning district.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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Mr. Colbath read item 3. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, 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. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that a site plan approval by the Planning Board be a condition subsequent to granting the special exception. Motion carried unanimously.**

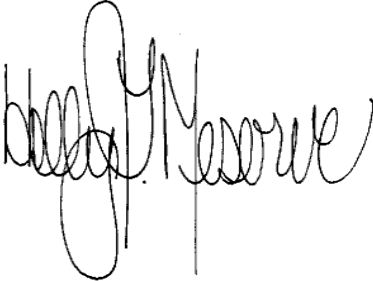
**Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-28.(I)(6) of the Town of Conway Zoning Ordinance to allow pavement within the wetland buffer be granted conditionally upon precedent to final approval the granting of final approval of special exception [File #19-32] per §190-24.K.(6) and subsequent to final approval a site plan approval acquired from the Planning Board. Motion carried unanimously.**

**REVIEW AND ACCEPTANCE OF MINUTES**

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

Meeting adjourned at 8:44 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive, flowing style.

Holly L. Meserve  
Planning Assistant