

CONWAY ZONING BOARD
OF ADJUSTMENT

MINUTES

OCTOBER 24, 2007

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 24, 2007 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Alternate, Sheila Duane; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Duane as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:34 pm to consider a **VARIANCE** requested by **FRANCIS DEFEO** in regard to §147.13.1.5.1 of the Conway Zoning Ordinance to allow a 100-foot monopole to install a sky stream residential wind turbine for generation of power at 1564 Brownfield Road (PID 283-28). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007. This hearing was continued from September 26, 2007.

Francis DeFeo appeared before the Board. Mr. Irving stated that a balloon test was conducted on Saturday, October 6, 2007. Mr. Irving stated that he could not see the balloons from any public ways. Mr. Irving stated that Tom Bryant, an abutter, was able to see the balloons from his property.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Tom Bryant stated that he did see the balloon on that day. Mr. Bryant stated that he is not crazy about being able to see the white balloons, but his main concern is the setback and he would like the tower to be 115-feet from his property line. Ms. Sherman stated that one of the provisions of the Board was if the tower was to fall over it would stay on the applicant's property. Mr. DeFeo stated that it would be 150-feet from the property lines. Mr. Chalmers asked if there is a plan. Mr. Irving stated there is an aerial photo in the file.

Mr. Bartolomeo asked Mr. DeFeo if power would be generated. Mr. DeFeo answered in the affirmative. Mr. Bartolomeo stated that he reviewed the definition of structure height and he thinks this could be considered a utility pole, which is clearly exempt from the structure height. Mr. Irving stated that he would disagree. Ms. Sherman stated this would be the same as cellular towers. Mr. Bartolomeo stated that cell towers have their own section in the ordinance. Mr. Irving stated unless it is under 55-feet it would be treated like any other structure.

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Ms. Sherman asked if Mr. Bryant's concern was the color. Mr. Bryant answered in the affirmative and stated as well as the setback. Ms. Sherman stated that the Board would be addressing the setback. Mr. Chalmers asked what about decommissioning and who would be responsible to have it removed. Mr. DeFeo stated that he and the company would be responsible for removing the tower; however, he is not having it installed to have it removed. Mr. Bartolomeo asked what it would be generating. Mr. DeFeo answered 4 to 6 kilowatts. Mr. Bartolomeo asked if he would be back feeding. Mr. DeFeo answered in the affirmative.

Mr. Irving asked the Board what is the minimum setback. Ms. Sherman answered 115-feet for the minimum setback. The Board agreed. Mr. Irving asked what the overall height with blades is. The Board agreed to 110-feet. Mr. Irving asked if there is a specific color. Mr. DeFeo stated that it would be gray. The Board agreed to gray. Mr. Irving asked the generator color. Mr. DeFeo stated that it would be gray. Mr. Irving asked the blade color. Mr. DeFeo stated that the two options are white and gray and that he would go with gray. Mr. Irving asked if the Board would require a decommissioning bond. Mr. Colbath stated that it would be better not to go there. Mr. Bartolomeo stated that he would stay away from bonding, but if it becomes non-functioning it should be removed. Mr. Irving stated that it is the understanding that this pole is to be used only for a wind turbine. The Board agreed.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if there was discussion at the last hearing regarding why this height. Mr. DeFeo stated the height proposed is because of the trees. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it would generate power. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.1.5.1 of the Town of Conway Zoning Ordinance to allow a 100-foot monopole to install a sky stream residential wind turbine for generation of power be granted conditionally upon the maximum structure height including the blades does not exceed 110-feet; the monopole is to be set back at least 115-feet from all property lines; and the monopole, turbine and the blades are to be gray in color. Motion unanimously carried.

A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **BRIAN AND ALYSSA HUSSEY** in regard to §147.13.14 of the Conway Zoning Ordinance to allow a well, underground waterline, underground conduits and access road within the floodway at 1314 West Side Road, North Conway (PID 231-106). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Ms. Duane stepped down at this time. Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there are only four members present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the hearings until a five-member Board is present. Mr. Bergeron agreed to proceed with four-members.

Mr. Pendleton stated that there is an issue with a lot of record that has been brought to our attention that was not indicated on the Town tax maps. Mr. Pendleton stated that his client would like to proceed with what is before the Board now and then come back before the Board with an application for the new lot that was recently discovered. Mr. Pendleton stated that his client would like to proceed with the applications that are before the Board tonight due to the urgency.

Mr. Colbath asked if there might be an additional owner whose lot has to go through this same process. Mr. Pendleton answered in the affirmative and stated that Brian Hussey has a right-of-way over the mystery lot, which is part of the Hussey Estate and is in probate. Mr. Pendleton stated that he spoke to the Attorney's office that is dealing with the probate as well as the Town's Council, Peter Malia. Mr. Bartolomeo asked what was Town Council's opinion regarding the noticing. Mr. Pendleton stated that he did not have an

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opinion. Mr. Irving stated that he has not spoken with Town Council. Mr. Pendleton stated that Mr. Malia would not make an opinion until he spoke to the Board.

Mr. Bergeron stated during the probate process for the Hussey Estate it was discovered that there is another lot between the lots owned by the Tarberry Company and Brian Hussey. Mr. Bergeron stated that this lot is not shown on the Conway tax maps and the owner of the parcel has not, other than a phone conversation this afternoon with Justin Hussey, been notified. Mr. Irving stated it is his current understanding that we are not dealing with two lots, but three lots. Mr. Irving stated that we do not have an application for the center lot. Mr. Bergeron stated they do have, at least by deed, from the West Side Road through the Tarberry Company onto PID 231-106, the rights for installation of utilities in the right-of-way. Mr. Bergeron stated that the only issue is the mystery property and abutter notification.

Mr. Bartolomeo asked does the Board need to make a finding of fact to proceed before the Board hears the case. Mr. Bartolomeo stated that it is a technicality. Ms. Sherman stated that it is a reason that a decision could be overturned. Mr. Pendleton stated that the Board could notice the mystery parcel for the next meeting and at that time re-address and reaffirm the decisions so the applicant can at least start work on the Hussey property. Mr. Irving stated that he is not aware of any reason why the Board cannot address the applications before them this evening. Mr. Irving stated that the missing link in the chain would need to be addressed at some time.

Mr. Bartolomeo asked when a right-of-way is just a right for utilities. Mr. Irving stated that a special exception is still needed for whoever is putting in the utilities. Ms. Sherman stated utilities could be installed across a right of way, but if it is a private utility do you need the owner's permission. Mr. Pendleton stated because they have the right-of-way they could install the utilities even if it is privately owned. Mr. Irving stated there is the right to run the utility line, but regardless of who runs the utility a special exception is required. Mr. Bergeron stated that the applicant does need to submit an application for the mystery parcel, but the applicant would like to go forth with the applications before the Board this evening.

Mr. Boisvert stated his company would like to proceed with the applications this evening because there are 140 customers who have experienced poor water quality. Mr. Boisvert stated there is no standby power and the system is substandard. Mr. Boisvert stated there is a series of six wells that are sitting on a single lot that has no well radius, that has septic systems in close proximity and one well sits close to the surface water. Mr. Boisvert stated that his company initially approached the North Conway Water Precinct, but the precinct voters denied an interconnection in April. Mr. Boisvert stated that his company had to look for an alternative and the Hussey property happened to be for sale. Mr. Boisvert stated that the Hussey property allows protection and it is undeveloped.

Mr. Boisvert stated in the interim his company began renegotiations with the North Conway Water Precinct again and they may be able to secure a connection. Mr. Boisvert stated that there would be a vote of the precinct voters on November 15, 2007. Mr. Boisvert stated that there were 14-cases of giardiasis, which required his company to shut

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down the main well. Mr. Boisvert stated that his company is hopeful for the interconnection, but the construction needs to begin now. Mr. Boisvert stated that the urgency is for public safety.

Mr. Bergeron stated that this variance relates to the two wells as it has been determined that this parcel is in the Floodplain Conservation District and the floodway. Mr. Bergeron stated that it is Mr. Irving's opinion that wells are structures and the only way to place a well in the floodway is by a variance. Mr. Irving stated that there is a special exception for the floodplain, but it specifically states "except in the floodway". Mr. Bergeron stated that the use is a reasonable use. Mr. Irving read a statement submitted to the Board by Selectmen Mark Hounsell entitled "Informational Purposes only".

Mr. Irving read a list of possible conditions if the Board should grant the variance. There was a lengthy discussion regarding a berm, fill and diverter around the wells that was not part of the application and the concern of creating a dyke and flooding at a higher elevation upstream. Mr. Irving stated that new information has been provided by the applicant which the Town was not aware of that would require another application.

Ms. Sherman asked for public comment; Charlene Browne asked how long would the wells be there. Mr. Boisvert stated a well is designed to last for 30 to 40 years. Ms. Browne stated that her husband has been here all his life and he has seen a lot of erosion. Rick Davis stated that he has his prediction and he has aerial photograph that were going to have the Saco River Channel just west of well 1 and 2. Ms. Browne stated that Mr. Davis does have a soil scientist background. Mr. Davis stated there is a berm just south of First River Bridge. Mr. Boisvert stated that he met with Mr. Davis for about an hour and discussed this, however, his company has done their research as well. Mr. Boisvert stated that we have a public health and safety issue. Ms. Browne asked if there were any other options. Mr. Boisvert stated that you have to go where there is water.

Mr. Bartolomeo asked Mr. Hounsell to clarify the Board of Selectmen's motion. Mr. Hounsell stated that he has a strong sense that the North Conway Water Precinct voters will approve the interconnection. Mr. Hounsell stated that a municipal entity should have ownership of the infrastructure and be in the hands of the people. Mr. Boisvert stated as a company they are looking at the bigger picture and looking outside of the Birch Hill area. Mr. Boisvert stated that it is a town issue and should be left in the ownership of the Town of Conway, North Conway Water Precinct or whomever. Mr. Hounsell stated this is an essential procedure and should go as far as it can even if it is interconnected. Mr. Hounsell stated that the first owner is a private entity and the conditions are not unreasonable if it is a well.

Mr. Colbath asked if the interconnect is approved would the wells still be constructed. Mr. Boisvert stated it depends how fast it takes us. Ms. Browne asked what type of safeguards would be in place for the abutters, such as monitoring surrounding wells for protection. Mr. Boisvert stated that it is a part of the permitting process. Ms. Browne asked what happens if the abutters discover that their wells are going dry. Mr. Boisvert stated if surrounding wells diminish or drop in level there is a mitigation requirement for large water withdrawals to mitigate those wells. Ms. Browne asked if there is a limit to the

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amount of water that can be withdrawn. Mr. Boisvert stated the permit is written for the amount that is tested and if they start to exceed those numbers then they would be required to reapply to NHDES. Mr. Colbath stated that NHDES has a public hearing process. Mr. Boisvert stated that there are two hearings.

Mr. Pendleton reviewed his memorandum in regard to the five criteria's to grant a variance. Mr. Irving stated the conditions recommended is relative to the well and if there were an interconnection then this variance would still stand for the underground waterline and underground conduits. Mr. Boisvert stated if the interconnection goes through there is no reason for his company to subject their customers to an increased charge on something that is not needed. Mr. Irving stated he was under the impression that it was going to be one or the other, but not both. Mr. Boisvert stated if the North Conway Water Precinct voters approve the interconnections, then there still needs to be negotiations between his company and the North Conway Water Precinct. Mr. Pendleton stated that the preference would be not to install the wells unless they are necessary.

Ms. Sherman stated that she is concerned with the protection of these wells and that they are not engineered at this time. Mr. Boisvert stated that it is not engineered at this time, but it will happen. Mr. Bergeron stated that the Town Engineer could approve it at the local level, which could be part of the conditional approval. Mr. Irving stated for a number of reasons, as there may be some additional structures, he is not recommending a conditional approval until the outstanding issues can be resolved. Mr. Bartolomeo stated this is a public health and safety issue. Ms. Sherman stated that the Board does not know what the applicant is going to do to protect the wells. Mr. Bergeron, Mr. Pendleton and Mr. Boisvert stepped from the room at this time.

Mr. Bergeron, Mr. Pendleton and Mr. Boisvert returned a few minutes later. Mr. Bergeron stated the applicant would like the Board to consider the applications in front of them tonight with a request that any consideration of the wells be addressed at the next meeting. Mr. Bergeron stated that the applicant would like the Board to reach a decision in regard to the underground utilities and the necessary work to upgrade the road. Mr. Irving asked if the applicant were requesting an approval for everything except the wells this evening and then the applicant would reapply for the wells. Mr. Bergeron agreed.

Mr. Bartolomeo stated given the fact that this is a public health and safety issue he is not willing to remove the well from the application. Mr. Bartolomeo stated that he wants to see this move expeditiously. Mr. Bergeron stated that he appreciates Mr. Bartolomeo's concern, but the applicant needs to move forward with the piping whether or not there is an interconnection. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to remove the well from consideration this evening. Motion unanimously carried.** Mr. Bartolomeo stated that he is only voting in the affirmative because the applicant does not mind. There was a brief discussion regarding the pipe size and whether or not an 8-inch pipe was sufficient.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the zoning restriction as applied interferes with a landowner's reasonable use of**

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the property, considering the unique setting of the property in its environment. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that no fair and substantial relationship exist between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that based on the findings of a, b, and c above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow underground waterline, underground conduits and access road within the floodway be granted with the condition that the Town Engineer confirm that the 8-inch pipe size is adequate. **Motion unanimously carried.**

A public hearing was opened at 9:55 pm to consider a **SPECIAL EXCEPTION** requested by **BRIAN AND ALYSSA HUSSEY** in regard to §147.13.14.3.4 of the Conway Zoning Ordinance to allow underground waterline and underground conduits within the floodplain at 1314 West Side Road, North Conway (PID 231-106). Notice was published in the

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Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if there would be zero fill. Mr. Bergeron answered in the affirmative. Ms. Sherman asked for Board comment; there was none.

Ms. Sherman read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Colbath, that item 1 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 2 is not applicable to this application.** Ms. Sherman asked for Board comment; there was one. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 underground waterline and underground conduits within the floodplain be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 10:02pm to consider a **SPECIAL EXCEPTION** requested by **BRIAN AND ALYSSA HUSSEY** in regard to §147.13.14.3.9 of the Conway Zoning Ordinance to upgrade an existing farm road within the floodplain at 1314 West Side Road, North Conway (PID 231-106). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 1 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 2 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.9 of the Town of Conway Zoning Ordinance to upgrade an existing farm road within the floodplain be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 10:05 pm to consider a **SPECIAL EXCEPTION** requested by **TARBERRY COMPANY, LLC** in regard to §147.13.14.3.4 of the Conway Zoning Ordinance to allow underground waterline and underground conduits within the floodplain at 2447 West Side Road, North Conway (PID 231-105). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 1 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 2 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 was none. **Motion unanimously carried.**

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 underground waterline and underground conduits within the floodplain be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 10:10 pm to consider a **SPECIAL EXCEPTION** requested by **TARBERRY COMPANY, LLC** in regard to §147.13.14.3.9 of the Conway

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Zoning Ordinance to upgrade an existing farm road within the floodplain at 2447 West Side Road, North Conway (PID 231-105). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 1 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 2 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.9 of the Town of Conway Zoning Ordinance to upgrade an existing farm road within the floodplain be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried**

A public hearing was opened at 10:15 pm to consider a **VARIANCE** requested by **JOSEPH AND KAREN SHEEHAN** in regard to §147.13.1.2.3 of the Conway Zoning Ordinance to allow the construction of a pump and water system control building as a second unit on an existing one-acre parcel at 2405 West Side Road, North Conway (PID 231-109). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Colbath stated that he doesn't like it, but there are no abutters in attendance.

Mr. Pendleton reviewed his memorandum in regard to the five criteria's to grant a variance. Mr. Chalmers asked if the pump house would be necessary without the wells. Mr. Boisvert answered in the affirmative. Mr. Chalmers asked if the pump house could be put on another lot. Mr. Bergeron stated that the slope is brutal. Mr. Boisvert stated that they want to chlorinate the water before it hits their first customer and there is a well that

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would have to be abandoned which cannot be done until the wells or the interconnection is complete.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that an area variance is needed to enable the applicant’s proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.1.2.3 of the Town of Conway Zoning Ordinance to allow the construction of a pump and water system control building as a second unit on an existing one-acre parcel be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 10:30 pm to consider a **SPECIAL EXCEPTION** requested by **JOSEPH AND KAREN SHEEHAN** in regard to §147.13.14.3.4 of the Conway Zoning Ordinance to allow underground waterline and underground conduits

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within the floodplain at 2405 West Side Road, North Conway (PID 231-109). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, October 17, 2007.

Shawn Bergeron of Bergeron Technical Services, John Pendleton of Dwyer, Donovan & Pendleton, Council for Pennichuck, and John Boisvert of Pennichuck appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 1 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 2 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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 underground waterline and underground conduits within the floodplain be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of September 26, 2007 should be amended as follows: page 2, 1st full paragraph, line 2 should read, "...approximately 40-~~decables~~ **decibels**. Mr. DeFeo...". **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of September 26, 2007 as amended. Motion unanimously carried.**

Meeting adjourned at 10:35 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant