

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**JUNE 25, 2008**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 25, 2008 at the Conway Town Office in Center Conway, NH, beginning at 7:35 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Alternate, Cynthia Briggs; Alternate, Sheila Duane; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**APPOINTMENT OF ALTERNATE MEMBERS**

Ms. Sherman appointed Ms. Duane and Ms. Briggs as voting members.

**PUBLIC HEARINGS**

A public hearing was opened at 7:35 pm to consider a **VARIANCE** requested by **SIDNEY DEWITT** in regard to §147.13.14.3.1 of the Conway Zoning Ordinance **to allow a 12' x 20' shed within the Floodplain Conservation Overlay District** at 334 Eaton Road, Conway (PID 276-96). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008.

Sidney DeWitt appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four members were present and the applicant is entitled to five members. Ms. Sherman asked if the applicant would like to proceed with four members or continue until there is a five-member Board. Mr. DeWitt stated he would like to wait. **Ms. Sherman made a motion, seconded by Mr. Chalmers, to continue the Variance requested by Sidney DeWitt until July 23, 2008 at 7:30 pm. Motion unanimously carried.**

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A public hearing was opened at 7:40 pm to consider a **VARIANCE** requested by **SIDNEY DEWITT** in regard to §147.13.16.3.1 and §147.13.16.4 of the Conway Zoning Ordinance **to allow a 12' x 20' shed within the Wetland and Watershed Protection Overlay District** at 334 Eaton Road, Conway (PID 276-96). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008.

Sidney DeWitt appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four members were present and the applicant is entitled to five members. Ms. Sherman asked if the applicant would like to proceed with four members or continue until there is a five-member Board. Mr. DeWitt stated he would like to wait. **Ms. Sherman made a motion, seconded by Mr. Chalmers, to continue the Variance requested by Sidney DeWitt until July 23, 2008 at 7:30 pm. Motion unanimously carried.**

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A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **HAROLD WHITAKER AND THOMAS FADDEN** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance **to allow a roadway to cross a wetland and wetland buffer** off East Conway Road, Conway (PID 243-12). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008.

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four members were present and the applicant is entitled to five members. Ms. Sherman asked if the applicant would like to proceed with four members or continue until there is a five-member Board. Mr. Burnell agreed to proceed with four members.

Mr. Burnell stated that the applicant would like to move the road eight-feet. Mr. Burnell stated that this change diminishes the impact to the wetland with the removal of the connecting drive to the abutter's property. Mr. Burnell stated that the State of New Hampshire requires at least 50-feet between the subdivision road and the abutter's driveway.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Chris Meier, of Cooper Cargill Chant representing abutter Sharon Johnston, stated that his client objects to the road coming in next to her driveway. Mr. Meier stated that the applicant has to prove there are no other accesses and that crossing the wetland is the only option. Mr. Meier stated that this is phase 3 and 4 of a larger subdivision. Mr. Meier submitted a map of the larger subdivision to the Board.

Mr. Meier stated there is a right-of-way over lots 4 and 5 of the Southview Loop subdivision that comes into the middle of this property. Mr. Meier stated that there are two other potential accesses to this property. Mr. Meier stated that the applicant could purchase land to access this subdivision; it would reduce the number of lots, but it would still be a productive use of the property.

Mr. Meier stated even if the original developers gave away their right-of-way, it was through their own fault that they created the lot. Mr. Meier asked the Board to not grant an approval or continue the public hearing so he can do a full title search. Mr. Meier stated that this has been before this Board before and he is not sure if his client was here or not.

Ms. Sherman stated under the original Shaw Subdivision [Southview Loop] a second access was required by the Planning Board, but this was many years ago. Ms. Sherman stated it was one piece of property and this property is being accessed from the road that is presently developed and required by the Planning Board as a second access for emergency purposes. Ms. Sherman asked if this existing road is along the same line with the original development. Mr. Meier answered in the negative and stated that it was further down East Conway Road.

Ms. Duane asked if there is a logging road next to the abutter's property now. Sharon Johnston answered in the affirmative. Ms. Duane stated that the applicant is just updating the logging road. Mr. Burnell stated that they conducted their own research and there not rights-of-ways, but

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woods roads. Mr. Burnell stated that the back portion of the Southview Loop Subdivision was sold to the Gilmore's and when they developed the property there was an access to connect to the rest of the land, but it was eliminated by the Planning Board. Mr. Burnell stated that there is no longer another access or other rights-of-ways that exist. Mr. Burnell stated that the Society for Protection of NH Forests purchased a right-of-way through the Mason property because there was no access.

Mr. Burnell stated that the first phases were developed only and the rest of the land was foreclosed. Ms. Sherman stated that she thought there had to be a second entrance. Mr. Burnell stated that it came out in the same location in which they are proposing now. Mr. Meier stated he is not sure if the applicant has explored buying another access and the applicant should investigate to see if they could purchase another piece of land. Mr. Meier stated that they created their own problem. Ms. Sherman stated if the second access to the property was proposed in the same location as it is proposed now, then that is where the Planning Board required the second access.

Ms. Sherman stated that one of the arguments was that they did not want a single access because if anything happened at that intersection there would be no emergency access. Mr. Meier stated now you don't have two accesses. Mr. Burnell stated that there is a regulation that allows 35 lots on a dead end road. Mr. Meier stated that there may not have been wetland regulations when the phased subdivision was first proposed. Mr. Meier stated that the applicant has to show that they don't have any other access to this property. Mr. Meier stated that he would like to have time to research the deeds.

Ms. Briggs stated they would still need a second entrance if they connected to Southview Loop because they would go over 35 lots. Mr. Meier stated that they don't need to go over the 35 lots. Mr. Meier stated that the ordinance states "productive use of the land", which doesn't mean maximum lots, but just some lots. Ms. Duane stated that the Board should be neighborly and give them the 30-days. Mr. Burnell stated that this the third time before this Board and the continuance would not be fair to the applicant.

Mr. Chalmers stated that this has been before the Board twice before and this application is to just shift the road over a bit and it would be decreasing the impact on the wetland. Mr. Chalmers stated that he assumes the abutter was noticed for each meeting. Ms. Sherman stated that the abutter has been present for the meetings. Ms. Johnston agreed with Ms. Sherman. Mr. Chalmers stated that we're going backwards and it's not fair to the developer to hinder them when the abutter has had ample time to prepare their defense.

Ms. Sherman asked for any other public comment; Sharon Johnston stated she was present at the other meetings and voiced the same concerns and issues. Ms. Johnston stated that the traffic on that road would amount to approximately 264 trips a day. Ms. Johnston stated that she has objected at every meeting she has been to and it's not the homes it's the traffic going by her home that is her concern. Mr. Meier stated that the applicant has not looked hard enough for another access. Ms. Sherman stated even if they access through the Southview Loop subdivision it would be the only access. Mr. Meier agreed. Ms. Sherman asked if Southview Loop was a private road. Mr. Irving answered in the affirmative.

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Mr. Meier stated that since it was the same owner at one point in time they should have the right to cross. Mr. Meier stated that the owner created their own problem. Mr. Burnell stated that it was not created by this owner, but some other owner at another time. Ms. Sherman asked if this Board or any other Board has the right to tell a private ownership that they have to use their road. Mr. Meier stated since it was owned together at one point they should have the right to access. Mr. Meier stated that this Board doesn't have the right to grant a Special Exception.

Mr. Irving stated that this was conditionally approved through the Planning Board, but there were a few issues that got it hung up. Mr. Burnell stated to say they have a legal right to access is not true as it was lost due to foreclosure. Mr. Burnell stated that they tried to loop because there would have been more lots, but the access right-of-away was removed by the Planning Board. Mr. Meier stated that the applicant could buy other land. Mr. Burnell stated that it would be unfair to have to go buy other land when the lot already has road frontage.

Ms. Sherman asked for Board comments; Ms. Duane suggested continuing the public hearing until the next meeting to give the abutter the chance to do some research. **Ms. Duane made a motion, seconded by Ms. Briggs, to continue the public hearing for Harold Whitaker and Thomas Fadden until July 23, 2008 at 7:45 pm. Motion unanimously carried.**

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A public hearing was opened at 8:25 pm to consider a **VARIANCE** requested by **STEPHEN AND OLGA MORRILL/BRUCE DAVID/BRAD AND MARGARET MORRILL/GARY AND CAROLINE FOLLMER** in regard to §147.13.1.3 of the Conway Zoning Ordinance to **allow a lot with no qualified road frontage** on Stritch Road, Conway (PID 260-58). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008.

Steve Morrill appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four members were present and the applicant is entitled to five members. Ms. Sherman asked if the applicant would like to proceed with four members or continue until there is a five-member Board. Mr. Morrill stated that he would proceed.

Ms. Sherman asked if Stritch Road was a class 6 road. Mr. Irving stated that it is a private road. Mr. Morrill stated the State of New Hampshire took about 48 acres of his property for the bypass corridor. Mr. Morrill stated when the bypass is constructed a portion of Stritch Road will move. Mr. Morrill stated there are approximately 3 acres of land that will be bounded by the Bypass right-of-way, Route 302 and Stritch Road. Mr. Morrill stated once all the setbacks are met there is approximately a one acre building lot.

Mr. Morrill stated that they wanted to have a driveway on Route 302, which would qualify as road frontage, but there is limited access and those limited accesses are Stritch Road and some that were taken by the State. Mr. Morrill stated when the State took land for the Bypass corridor they also took the accesses from Route 302 to the proposed lot. Mr. Morrill stated from a safety standpoint he would prefer to see a new driveway off Stritch Road even if a driveway permit could be issued for Route 302.

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Ms. Sherman stated that the applicant is looking to have a driveway off Stritch road. Mr. Irving stated that Stritch Road is not constructed to town standards and to be considered qualified road frontage it has to be a State, Town or private road constructed to town standards. Mr. Irving stated if 150-feet of the road were constructed to Town standards the zoning restrictions would be satisfied.

Ms. Duane asked if the road was constructed to town standards then there would be no need for a variance. Mr. Irving agreed and stated that the applicant is seeking relief from the 150-foot road frontage requirement. Mr. Irving stated that the applicant is proposing to create an additional lot on this road without upgrading the road. Mr. Irving stated other people who own property on this road have been required to merge lots so there was no net increase of lots or bring the road up to town standards. Mr. Irving stated that the applicant is fortunate that he is at the beginning of the road.

Mr. Irving stated the proposed lot is part of the parent lot and not a lot today. Mr. Irving stated that the applicant wants to create a new lot of record. Ms. Sherman asked if the proposed lot has any other accesses. Mr. Irving answered in the negative. Mr. Irving read a letter from NHDOT dated May 19, 2008 denying another access. Mr. Morrill stated that he would rather access the proposed lot off Stritch Road for safety reasons.

Ms. Sherman asked for public comment; George Ellison stated the last few tenths of the road before it reaches Route 302 is curvy, has large stones and is a one-way road. Mr. Ellison stated that there needs to be improvements to the road. Mr. Ellison stated that the driveway should not be across from his brother's driveway. Mr. Chalmers asked Mr. Morrill if he had researched the cost to bring the road up to Town standards. Mr. Morrill answered \$400 a foot. Mr. Ellison asked the location of the proposed driveway. Mr. Irving answered approximately 130-feet past Brad Morrill's driveway.

Ms. Sherman stated even if the first 150-feet was improved to meet Town regulations it wouldn't do anything for the rest of the residences. Mr. Ellison stated that some residences were promised that the road would never change. Mr. Morrill stated when the State took the land for the bypass he had to speak with the Town Engineer. Mr. Ellison stated when the Association voted on the road it was agreed it would remain gravel. Mr. Irving stated the frontage requirement, even if denied, whether tarred or gravel, is a decision for the Planning Board.

Beth Campbell asked exactly what this meeting is for. Mr. Irving stated that it is for relief from the 150-feet of road frontage requirement. Ms. Campbell stated she was under the impression, over the past few years, for more house lots to be created improvements to the road had to be made. Mr. Irving stated this lot is at the beginning of the road and the road would have to be improved for this lot. Mr. Ellison asked if the road would have to be improved just for this lot or further down the road. Mr. Irving answered just for this lot. Ms. Sherman asked for Board comment; there was none.

Ms. Sherman read item 1.a. **Ms. Briggs made a motion, seconded by Ms. Duane, that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.** Ms. Sherman asked for

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Board comment; Mr. Irving stated that there is nothing particularly unique about this property or the environment that would prevent the construction of a qualified town road along the frontage of the proposed lot. Ms. Sherman stated there is nothing unique to the land. Ms. Duane stated that this is a choice. **Motion unanimously defeated.**

Ms. Sherman read item 1.b. **Mr. Chalmers made a motion, seconded by Ms. Briggs, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman asked for Board comment; Mr. Irving stated that the purpose and intent of the zoning ordinance is to ensure that adequate infrastructure is provided for each lot that is created. Mr. Irving stated that this includes not only emergency access, but also ensuring that the infrastructure is constructed in a manner that is durable and maintainable.

Mr. Irving stated that the existing substandard road already serves 10 times the number of lots that would require construction to town standards (4 lots or units). Mr. Irving stated adding more lots without at least improving the road frontage for the new lot would exacerbate the current situation. Mr. Irving stated there is a fair and substantial relationship between the general purpose of the zoning ordinance and the specific restriction on this property. **Motion unanimously defeated.**

Ms. Sherman read item 1.c. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; Mr. Irving stated that adding more traffic to an already deficient road would increase the cost and risk to the lots that are currently served by the substandard infrastructure. Mr. Irving stated that the public and private rights to safe reliable and durable infrastructure would be compromised by allowing more lots without at least improving the road frontage for the new lot. **Motion unanimously defeated.**

**Ms. Briggs made a motion, seconded by Ms. Duane, 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. **Ms. Duane made a motion, seconded by Ms. Briggs, 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; Ms. Briggs stated adding more traffic would increase the probability for more accidents and difficulty for emergency vehicle access. Ms. Duane stated that the road needs to be safe. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Chalmers made a motion, seconded by Ms. Briggs, 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; Mr. Chalmers stated that the purpose of the ordinance is to create safe roads for those living on the road and constructing the road to the standards is for safe travel. **Motion unanimously defeated.**

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Ms. Sherman read item 4. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; Ms. Briggs stated that it would adversely affect the public interest as safety is within the public interest. **Motion unanimously defeated.**

Ms. Sherman read item 5. **Ms. Duane 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 defeated.**

**Ms. Briggs made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.1.3 of the Town of Conway Zoning Ordinance to allow a lot with no qualified road frontage be granted. Motion unanimously defeated.**

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A public hearing was opened at 9:10 pm to consider a **SPECIAL EXCEPTION** requested by **MARIE ODILE MEUNIER-BOUCHARD** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment above a garage to be constructed** at 102 Echo Acres Road, North Conway (PID 235-30). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008.

Marie Meunier-Bouchard and Andrew Narducci appeared before the Board. Ms. Sherman stated that only four members were present and the applicant is entitled to five members. Ms. Sherman asked if the applicant would like to proceed with four members or continue until there is a five-member Board. Ms. Meunier-Bouchard agreed to proceed with four members.

Ms. Sherman asked if the site is serviced by municipal water and sewer. Mr. Meunier-Bouchard stated that it is serviced by municipal water and they are waiting for municipal sewer. Mr. Irving stated that they are anticipating an approved State of New Hampshire septic system. Ms. Duane asked if Ms. Meunier-Bouchard would be living in one of the units. Ms. Meunier-Bouchard answered in the affirmative.

Ms. Sherman read item. 1. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked of Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Meunier-Bouchard stated that the accessory apartment is 800 square feet. Ms. Sherman asked of Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Mr. Chalmers, that the subject property is serviced by precinct water and sewer or that the New Hampshire Department of Environmental Services has issued a permit for construction for sewerage or waste disposal system.** Ms. Sherman asked of Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 4. **Ms. Duane made a motion, seconded by Ms. Briggs, that the apartment is architecturally compatibility with the neighborhood.** Ms. Sherman asked of Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Ms. Duane made a motion, seconded by Mr. Chalmers, that sufficient parking is located on site.** Ms. Sherman asked of Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Ms. Duane made a motion, seconded by Mr. Chalmers, that an Accessory Apartment Application was submitted for the ZBA review.** Ms. Sherman asked of Board comment; there was none. **Motion unanimously carried.**

**Ms. Duane made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment above a garage to be constructed be granted. Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Ms. Duane made a motion, seconded by Mr. Chalmers, to approve the Minutes of May 28, 2008 as written. Motion unanimously carried.**

Meeting adjourned at 9:25 pm.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant