

ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 18, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 18, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:35 pm. Those present were: Acting Chair, John Colbath; Sheila Duane; Alternate, Cynthia Briggs; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:35 pm to consider a **SPECIAL EXCEPTION** requested by **EARLE AND SARAH MACGILLIVRAY** in regard to §147.13.16.10.9 of the Conway Zoning Ordinance to allow 2,120 square feet of fill in the Wetland and Watershed Protection Overlay District for snow and equipment storage at 819 East Conway Road, Conway (PID 244-7). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 6, 2009.

Shawn Bergeron of Bergeron Technical Services and Barry Keith, Wetland Scientist, appeared before the Board. Curt Burke was in attendance. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that only three members of the Board were present and the applicant is entitled to a five member Board. Mr. Colbath asked if the applicant would like to proceed with three members or continue until a five member Board was present. Mr. Bergeron agreed to proceed with three members.

Mr. Bergeron stated that this is the filling in of a wetland area. Mr. Bergeron stated that the ordinance states it is to prevent a harmful filling of a wetland and filling of a wetland is acceptable if the use is allowed in the underlying zoning district. Mr. Bergeron stated that initially when the site was approved by the Planning Board the area where the filling took place was a steep embankment, ravine area.

Mr. Bergeron stated when the site became more developed the then owner, The Burke's, were looking for an outdoor area to store equipment and the ravine area was suitable. Mr. Bergeron stated that they added 25-feet of fill. Mr. Bergeron stated when the expansion of the site was being constructed it was discovered that the fill area had not been approved. Mr. Bergeron stated that it is about 2,100 square feet.

Mr. Bergeron stated that outdoor storage is a permitted use in the underlying district. Mr. Colbath asked when the last building was constructed. Mr. Bergeron stated approximately 2007. Mr. Burke stated that the fill was added about 5 years ago. Mr. Bergeron stated that the slope is stable and vegetated. Mr. Bergeron stated that they had to address the area with the NHDES and they have received an after the fact wetland permit.

Mr. Colbath asked how the fill was discovered. Mr. Irving stated that the new owner wanted to change the layout, he asked for a new drainage layout and had new plans submitted by HEB. Mr. Irving stated this was about five years ago and there were several steps to go through between the State and the Town. Mr. Bergeron stated that the fill was placed when it was owned by the Burke's and it was discovered when the expansion was being constructed by the MacGillivray's.

Adopted: March 18, 2009 – As written

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Ms. Briggs asked if the State would have approved it before it was done. Mr. Keith stated that the same test would have applied then as it does now. Ms. Briggs stated that it would probably cause more problems to remove the fill now then just to leave it. Mr. Keith stated that the site is determined to be stable and water quality has been addressed. Mr. Keith stated that he had to look for endangered species and habitats and there weren't any. Mr. Keith stated overall with the fill being stable and in its current condition he believes the applicant has met the conditions.

Mr. Irving stated in regard to the first condition the Town received a letter from the United States Natural Resources and Conservation Service and they were surprised to be in our ordinance. Mr. Irving stated that they have no desire to comment or participate in this project. Mr. Irving stated that the applicant has received their state permits. Mr. Keith stated that he met with the United States Natural Resource and Conservation Service and they wanted to know why they needed to look at this project if the State approvals were already in place.

Mr. Colbath read item 1. Ms. Duane made a motion, seconded by Ms. Briggs, that the proposed use will not conflict with the purpose and intent of the District. To support this claim, the applicant shall provide proper written evidence, which shall be accompanied by the finding of a review by the United States Natural Resources Conservation Service. Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none. Motion unanimously carried.

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

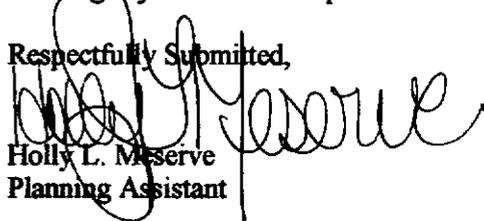
Ms. Briggs made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.9 of the Town of Conway Zoning Ordinance to allow 2,120 square feet of fill in the Wetland and Watershed Protection Overlay District for snow and equipment storage be granted. Motion unanimously carried.

A public hearing was opened at 7:55 pm to consider a VARIANCE requested by EARLE AND SARAH MACGILLIVRAY in regard to §147.13.16 of the Conway Zoning Ordinance to allow 2,120 square feet of fill in the Wetland and Watershed Protection Overlay District for snow and equipment storage at 819 East Conway Road, Conway (PID 244-7). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 6, 2009.

Shawn Bergeron of Bergeron Technical Services appeared before the Board. Mr. Bergeron withdrew the application.

Meeting adjourned at 7:56 pm.

Respectfully Submitted,


Holly L. Meserve
Planning Assistant