

ZONING BOARD OF ADJUSTMENT

MINUTES

JUNE 17, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 17, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Jeana Hale-DeWitt; Sheila Duane; Alternate, Cynthia Briggs; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **ROBERT SCHOR AND MARNI MADNICK REGARDING PETER RATTAY REVOCABLE TRUST OF 2001** in regard to §147.14 of the Conway Zoning Ordinance that the Stonehurst Manor's February 13, 2009 Site Plan constitute a permissible expansion of a nonconforming use at 3351 White Mountain Highway, North Conway (PID 202-182 & 186). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 8, 2009. This hearing was continued from May 20, 2009.

Ms. Duane stepped down at this time. Mr. Irving stated that the applicant has requested a continuance as there was not going to be a five-member Board this evening. **Ms. Tobin made a motion, seconded by Ms. Hale-DeWitt, to continue the public hearing for Rober Schor and Marni Madnick until July 15, 2009 at 7:45 pm. Motion unanimously carried.**

Ms. Duane rejoined the Board at this time.

APPOINTMENT OF ALTERNATE MEMBER

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

ELECTION OF OFFICERS

Ms. Briggs made a motion, seconded by Ms. Duane, to nominate Ms. Sherman as Chair. Motion carried with Ms. Sherman abstaining from voting.

Ms. Briggs made a motion, seconded by Ms. Duane, to nominate John Colbath as Vice Chair. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, to approve the Minutes of May 20, 2009 as written. Motion unanimously carried.

PUBLIC HEARINGS CONTINUED

A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **MARK GUERRINGUE** in regard to §147.13.1.4 of the Conway Zoning Ordinance to allow the construction of a 280 square foot addition within the front setback at 61 Morrill Lane, Conway (PID 267-26). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 8, 2009. This was continued from May 20, 2009.

Shawn Bergeron of Bergeron Technical Services and Mark Guerringue appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron reviewed the submitted surveyed plan. Mr. Bergeron stated that the Board granted variances on PID 274-4 as it was an unbuildable lot. Mr. Bergeron stated that they would like to increase the area of non-conformity by 172 square feet and the existing non-conformity is 243 square feet. Mr. Bergeron stated that the element the ordinance is trying to protect is Conway Lake which this property does not directly front; this is minimal with what else is going on in the neighborhood.

Ms. Sherman asked how many properties are there below him that uses Morrill Lane. Mr. Guerringue stated that the right-of-way ends in front of his house. Mr. Guerringue stated that Morrill Lane is not a through way and the property owner at the end of Morrill Lane has another access to Morrill Lane that they use. Mr. Irving asked who maintains the road. Mr. Guerringue stated that there is a Dollof Cove Association. Mr. Irving stated if the Association wanted to bring the road up to Town road standards this would add to the difficulties.

Mr. Bergeron read an email from June Locke and a letter from David and Karen Parker. Ms. Sherman asked for Board comment; Ms. Tobin asked if there was any input from the Speaks. Mr. Irving stated that he did not hear anything from them. Mr. Bergeron stated that this was continued from the last hearing and his office sent letters to abutters to let them know they were going to ask for a continuance and he did not hear from them.

Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, 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. **Ms. Duane made a motion, seconded by Ms. Briggs, 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.**

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Ms. Hale-DeWitt made a motion, seconded by Ms. Duane, 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. **Ms. Tobin made a motion, seconded by Ms. Duane, 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. **Ms. Hale-DeWitt 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; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Ms. Duane, 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. **Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for 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 variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow the construction of a 280 square foot addition within the front setback be granted. Motion unanimously carried.

A public hearing was opened at 8:00 pm to consider a **SPECIAL EXCEPTION** requested by **JAMES GEMMITI** in regard to §147.14.1.2 of the Conway Zoning Ordinance to change the existing non-conforming use, a photo gallery, to a single family home resulting in two, detached single family homes at 66 Intervale Crossroad, North Conway (PID 202-41). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 5, 2009.

James Gemmiti appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated that he would like to change one non-conforming use to another non-conforming use. Mr. Irving stated that he would like to give up the commercial structure for a residential structure. Ms. Sherman stated that you would assume it would have a lesser impact changing from commercial to residential. Ms. Briggs asked if part of the building is within the railroad right-of-way. Mr. Gemmiti answered apparently.

Ms. Duane stated there is a corner store, a motel and the post office is this area so this would not be an impact. Ms. Briggs stated that it would be less of an impact. Ms. Briggs asked if he was going to rent it. Mr. Gemmiti stated that he would live in the studio and rent the house. Mr.

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Irving stated if you change this to residential and if you wanted to change it back to commercial, you would have to come back to this Board to change it back and they might find it to have more of an impact. Mr. Irving stated if approved to change back to commercial then it might have to have a site plan review. Mr. Gemmiti stated that he was aware of that.

Ms. Hale-DeWitt asked if municipal sewer has been constructed in this area yet. Mr. Gemmiti stated that it was installed last week. Ms. Sherman asked for public comment there was none.

Ms. Sherman read item 1. **Ms. Duane made a motion, seconded by Ms. Briggs, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** 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 the proposed has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Ms. Briggs that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. Duane made a motion, seconded by Ms. Briggs, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Ms. Duane made a motion, seconded by Ms. Briggs, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Ms. Duane made a motion, seconded by Ms. Briggs, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to noise.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 7. **Ms. Duane made a motion, seconded by Ms. Tobin, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance nighttime lighting.** Ms. Sherman asked for 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 §147.14.1.2 of the Town of Conway Zoning Ordinance to change the existing non-conforming use, a photo gallery, to a single family home resulting in two, detached single family homes be granted. Motion unanimously carried.

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A public hearing was opened at 8:09 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **PAULINE B. MACLEAN REVOCABLE TRUST** in regard to §147.13.1.4 of the Conway Zoning Ordinance to allow a 0.35 of a foot encroachment within the 15-foot setback and a 1.25-foot encroachment within the 15-foot setback for the existing single-family home at 303 Birch Hill Road, North Conway (PID 234-38). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 5, 2009.

Allan and Pauline Maclean appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Maclean stated when they returned from Florida their neighbors told them there was a problem with the location of their house. Mr. Maclean stated that Dave Douglass [of Thaddeus Thorne Surveys] surveyed a property for Wylie Apte and it was discovered that our house violated the town's setbacks in two different places. Mr. Maclean stated the lot is very steep and there was a lot of blasting to locate the house.

Mr. Maclean stated that Steve Cheney built the house and the setbacks were checked several times, but one post was knocked over so there were two encroachments. Mr. Maclean stated that this was a surprise to us, we knew things were close, even the builder was surprised. Mr. Maclean stated that this was done unintentionally and they feel bad that it happened, but they cannot undo it. Mr. Maclean stated that they feel they meet the requirements for an equitable waiver.

Ms. Hale-DeWitt stated that her business partner, Margie MacDonald, has the Maclean's house listed for sale, but she does not know the Maclean's. Ms. Hale-DeWitt asked if she should step down. No one had an issue with Ms. Hale-DeWitt sitting on this application.

Mr. Irving stated that they actually came to us to tell us of the violation; they came to the Town and the building inspector went to the site to check the setbacks during construction, they made a reasonable attempt.

Ms. Sherman asked for public comment; John Hively stated the Town was notified by himself that there might be a problem, but they were unwilling to check it again. Ms. Tobin asked how it affects Mr. Hively. Mr. Hively stated that it would change his setback. Mr. Irving stated that it would not change Mr. Hively's setback. Mr. Hively asked if this moves his property line. Mr. Irving answered in the negative.

Wylie Apte stated the reason for the survey had nothing to do to determine anyone's lines it was for a project on his property. Mr. Apte stated that he would be amendable to sell the Maclean's any amount of land needed, if he wanted to buy land to meet this requirement. Ms. Sherman stated that would help the 1.25-foot encroachment, but not for the other encroachment. Mr. Apte stated that there was no intent to cause any disturbance. Mr. Maclean stated that they did look into possibly purchasing a piece before they knew of the violation but was told it would cost \$6,000 to \$8,000 for a boundary line adjustment.

Ms. Sherman read item 1. **Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, that the violation was not noticed or discovered by any owner, former owner, owner's agent or**

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representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value. Ms. Sherman asked for Board comment; Ms. Briggs stated that according to Mr. Hively he called the Town. Mr. Irving stated that the building inspector inspected the property at least twice. **Motion unanimously carried.**

Ms. Sherman read item 2. **Ms. Duane made a motion, seconded by Ms. Briggs, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Ms. Briggs, that item 3 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. Briggs made a motion, seconded by Ms. Duane, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminishes the value of other property in the area, nor interferes with or adversely affects any present or permissible future uses of any such property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Ms. Briggs made a motion, seconded by Ms. Duane, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Ms. Sherman asked for 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 equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow a 0.35 of a foot encroachment within the 15-foot setback and a 1.25-foot encroachment within the 15-foot setback for the existing single-family home be granted. Motion unanimously carried.

A public hearing was opened at 8:25 pm to consider a **VARIANCE** requested by **ONE BEACH ROAD REALTY CORPORATION** in regard to §147.13.14.6.1 of the Conway Zoning Ordinance to expand an existing non-conforming structure by constructing an attached 24'x70' open shelter within the Floodplain Conservation District at 584 White Mountain Highway, Conway (PID 262-63). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 5, 2009.

Paul Tabacco appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Tabacco stated that this is to put an open shelter over existing

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picnic tables. Ms. Tobin asked if this was visible from the road or the river. Mr. Tabacco answered in the negative. Ms. Briggs stated she is concerned if this were to be further expanded with walls and suggested adding a condition to the approval if this request were granted that this is not to be enclosed. Mr. Irving stated that the Board would only be approving what the applicant has asked for and enclosing it is not what this Board is approving. Mr. Irving asked if this is just a roof with no walls. Mr. Tabacco agreed. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, 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 Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, 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; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.c. **Ms. Tobin made a motion, seconded by Ms. Duane, 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.**

Ms. Tobin 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. Tobin made a motion, seconded by Ms. Duane, 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. **Ms. Duane made a motion, seconded by Ms. Hale-DeWitt, 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. **Ms. Tobin made a motion, seconded by Ms. Duane, 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. **Ms. Tobin made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Tobin made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.14.6.1 of the Town of Conway Zoning Ordinance to expand an existing non-conforming structure by constructing an attached 24'x70' open shelter within the Floodplain Conservation District be granted. Motion unanimously carried.

A public hearing was opened at 8:42 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY** in regard to §147.13.1.6.5 of the Conway Zoning Ordinance to allow a 9 square foot wall sign for the resale shop at 223 East Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 5, 2009.

Virginia Moore appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Hale-DeWitt asked if this was just granted a variance for a clinic. Ms. Moore stated that they never exercised that variance and the house has remained the Resale Shop.

Ms. Sherman read item 1.a. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, 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. **Ms. Hale-DeWitt made a motion, seconded by Ms. Duane, 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.**

Ms. Tobin made a motion, seconded by Ms. Duane, 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. **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; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Ms. Duane made a motion, seconded by Ms. Tobin, 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. **Ms. Tobin made a motion, seconded by Ms. Briggs, 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.**

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

Ms. Tobin made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.1.6.5 of the Town of Conway Zoning Ordinance to allow a 9 square foot wall sign for the Resale Shop be granted. Motion unanimously carried.

Meeting adjourned at 8:47 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Planning Assistant