

ZONING BOARD OF ADJUSTMENT

MINUTES

JANUARY 20, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, January 20, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Vice Chair, John Colbath; Jeana DeWitt; Andrew Chalmers; Alternate, Cynthia Briggs; Alternate, Dana Hysten; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

Mr. Colbath appointed Ms. Briggs and Mr. Hysten as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC** in regard to §147.13.16 of the Conway Zoning Ordinance **to place fill in 7,945 square feet of wetlands for the construction of an emergency access drive, parking spaces and a building** at 49 River Road, North Conway (PID 218-51.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2010.

Joe Berry and Sheila Duane of the River Run Company and Burr Phillips of Civil Solutions appeared before the Board. Pat Preece, North Conway Fire Chief, was in the audience. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Phillips gave the Board members copies of letters from the North Conway Country Club and the Conway Scenic Railroad in support of the applications.

Mr. Phillips reviewed the projects via slide show. Mr. Phillips stated that NHDES and the Army Corps of Engineers have issued permits. Mr. Phillips stated that the building will have 10-units and be similar to the Whitaker House Suites. Mr. Phillips stated that he believes this project is within the spirit of the Master Plan. Mr. Phillips reviewed the requirements to grant a variance. Mr. Colbath asked for Board comments; there was none. Mr. Colbath asked for Town comment; there was none.

Mr. Chalmers asked Mr. Preece if all his emergency vehicles could use the proposed emergency access. Mr. Preece answered in the affirmative and stated that this provides a key essential route for us to leave the station and serve people on the West Side Road. Mr. Preece stated that it will be gated and only used for emergency services and not to be used as a bypass.

Mr. Colbath asked for public comment; Joe Berry asked if the Board had received letters from the abutters. Mr. Colbath answered in the affirmative. Mr. Berry stated that they have been working on this project for about five years and have a strong endorsement from the abutters. Mr. Berry stated that this is a tiny speck at the base of the hill and we are not dealing with pristine wetlands; they are mostly man made. Mr. Chalmers stated that the wetlands are being mitigated. Mr. Phillips stated that it is not a 1:1 mitigation; it is an off-set. Mr. Colbath closed public comment at 8:05 pm.

Mr. Colbath read item 1.a. **Mr. Hysten made a motion, seconded by Ms. Briggs, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

**Adopted: February 17, 2010 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JANUARY 20 2010**

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

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

Mr. Hylan made a motion, seconded by Ms. DeWitt, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

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

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

Mr. Hylan made a motion, seconded by Ms. DeWitt, that, based on the forgoing findings of fact, the variance from §147.13.16 of the Town of Conway Zoning Ordinance to place fill in 7,945 square feet of wetlands for the construction of an emergency access drive, parking spaces and a building be granted. Motion unanimously carried.

A public hearing was opened at 8:09 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC** in regard to §147.13.16 of the Conway Zoning Ordinance **to temporarily disturb the other wetland areas along the edge of the emergency access drive and parking** at 49 River Road, North Conway (PID 218-51.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2010.

Joe Berry and Sheila Duane of the River Run Company and Burr Phillips of Civil Solutions appeared before the Board. Pat Preece, North Conway Fire Chief, was in the audience. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Colbath read item 1.a. **Mr. Chalmers made a motion, seconded by Ms. Briggs, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Colbath 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Chalmers made a motion, seconded by Ms. DeWitt, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Chalmers made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.16 of the Town of Conway Zoning Ordinance to temporarily disturb the other wetland areas along the edge of the emergency access drive and parking be granted. Motion unanimously carried.

A public hearing was opened at 8:11pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC** in regard to §147.13.16.4 of the Conway Zoning Ordinance **to disturb the wetland buffers for the construction of an emergency access drive, parking lot and building** at 49 River Road, North Conway (PID 218-51.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2010.

Joe Berry and Sheila Duane of the River Run Company and Burr Phillips of Civil Solutions appeared before the Board. Pat Preece, North Conway Fire Chief, was in the audience. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Colbath read item 1.a. **Ms. Briggs made a motion, seconded by Ms. 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Ms. Briggs made a motion, seconded by Mr. Hylen, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

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

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

Ms. Briggs made a motion, seconded by Ms. DeWitt, that, based on the forgoing findings of fact, the variance from §147.13.16.4 of the Town of Conway Zoning Ordinance to disturb the wetland buffers for the construction of an emergency access drive, parking lot and building be granted. **Motion unanimously carried.**

A public hearing was opened at 8:15 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC** in regard to §147.13.14 of the Conway Zoning Ordinance **to place 113 cubic yards of fill and construct a driveway within the Floodplain Conservation District** at 49 River Road, North Conway (PID 218-51.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2010.

Joe Berry and Sheila Duane of the River Run Company and Burr Phillips of Civil Solutions appeared before the Board. Pat Preece, North Conway Fire Chief, was in the audience. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Colbath read item 1.a. Ms. DeWitt made a motion, seconded by Ms. Briggs, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Colbath read item 1.b. **Ms. DeWitt 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. DeWitt made a motion, seconded by Mr. Hylen, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath read item 3. **Ms. DeWitt made a motion, seconded by Mr. Hylen, 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.** Mr. Colbath asked for Board comment; there was one. **Motion unanimously carried.**

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

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

Ms. DeWitt made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to place 113 cubic yards of fill and construct a driveway within the Floodplain Conservation District be granted. **Motion unanimously carried.**

A public hearing was opened at 8:17 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC** in regard to §147.13.16.3 of the Conway Zoning Ordinance **to permit a portion of the proposed structure to encroach within the 75-foot post development wetland setback** at 49 River Road, North Conway (PID 218-51.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2010.

Joe Berry and Sheila Duane of the River Run Company and Burr Phillips of Civil Solutions appeared before the Board. Pat Preece, North Conway Fire Chief, was in the audience. Mr. Colbath read the application and the applicable section of the ordinance.

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

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Mr. Colbath read item 1.b. **Mr. Hylen 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Hylen made a motion, seconded by Ms. Briggs, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath read item 3. **Mr. Hylen 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Hylen made a motion, seconded by Ms. DeWitt, that, based on the forgoing findings of fact, the variance from §147.13.16.3 of the Town of Conway Zoning Ordinance to permit a portion of the proposed structure to encroach within the 75-foot post development wetland setback be granted. **Motion unanimously carried.**

A public hearing was opened at 8:21 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC** in regard to §147.13.16.4 of the Conway Zoning Ordinance **to permit an emergency access drive and parking spaces to encroach within the post-development wetland buffer** at 49 River Road, North Conway (PID 218-51.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 8, 2010.

Joe Berry and Sheila Duane of the River Run Company and Burr Phillips of Civil Solutions appeared before the Board. Pat Preece, North Conway Fire Chief, was in the audience. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Colbath read item 1.a. **Mr. Chalmers made a motion, seconded by Mr. Hylen, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Chalmers made a motion, seconded by Mr. Hylen, 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Chalmers made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.16.4 of the Town of Conway Zoning Ordinance to permit an emergency access drive and parking spaces to encroach within the post-development wetland buffer be granted. **Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Ms. Briggs, to approve the Minutes of December 16, 2009 as written. Motion carried with Ms. DeWitt and Mr. Hylen abstaining from voting.

Meeting adjourned at 8:27 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant