

ZONING BOARD OF ADJUSTMENT

MINUTES

DECEMBER 14, 2011

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 14, 2011 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Acting Chair, Andrew Chalmers; Dana Hylan; Sheila Duane; Alternate, Cynthia Briggs; Alternate, Luigi Bartolomeo; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Also in attendance were: Earl Sires, Town Manager; Peter Malia, Town Council; Thomas Holmes, Tax Assessor; David Pandora, Building Inspector; and James Yeager, Code Enforcement Officer.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Chalmers appointed Ms. Briggs and Mr. Bartolomeo as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **LUKE FX IRA LLC/LUKE PICKETT** in regard to §147.13.7.2.5.1 of the Conway Zoning Ordinance **to allow a second residential unit in the existing building** at 69 Mechanic Street, North Conway (PID 218-90). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Luke Pickett and Wes Smith of Thaddeus Thorne Surveys appeared before the Board. Mr. Chalmers stated that he has done an inspection some time ago for Mr. Pickett, but he does not believe there is a conflict. Mr. Pickett agreed. Mr. Chalmers read the application and the applicable section of the ordinance.

Ms. Duane asked if they would consider swinging the parking to the back of the building to maintain the greenspace by the road. Mr. Pickett stated that he would like to maintain the yard as a recreational area for the tenants. Mr. Smith stated that there would still be the gravel travel way. Ms. Duane stated that you could change the entrance. Mr. Irving stated that special exceptions have criteria's set out, so if they meet the criteria's they should be granted the special exception. Mr. Irving asked if this is a suggestion. Ms. Duane answered in the affirmative. Mr. Pickett stated that they plan to retire to this house, so they will look into the landscaping. Mr. Chalmers asked for public comment; there was none.

Mr. Chalmers read item 1. **Ms. Duane made a motion, seconded by Mr. Hylan, that substantially all of the structure is at least fifty (50) years old.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated in regards to this requirement, the 50 years old should be changed to a specific date. Mr. Irving stated that he would suggest that to the Planning Board, but it will not be on this year's Town Warrant. **Motion unanimously carried.**

Mr. Chalmers read item 2. **Ms. Briggs made a motion, seconded by Mr. Hylen, that modification of the interior does not exceed four (4) units.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers read item 3. **Ms. Duane made a motion, seconded by Mr. Hylen, that no significant changes to the exterior lines or architectural detail are made, which would diminish the historical or architectural heritage of the structure.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers read item 4. **Ms. Briggs made a motion, seconded by Ms. Duane that adequate area is available for parking and sewage disposal.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers read item 5. **Mr. Bartolomeo made a motion, seconded by Mr. Hylen, that item 5 is not applicable.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Duane made a motion, seconded by Mr. Hylen, that, based on the foregoing finding of facts, the Special Exception pursuant to §147.13.7.2.5.1 of the Conway Zoning Ordinance to allow a second residential unit in the existing building be granted. Motion unanimously carried.

A public hearing was opened at 7:45 pm to consider a **SPECIAL EXCEPTION** requested by **WILLIAM HOUNSELL** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 120 Thompson Road, North Conway (PID 219-251). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

William Hounsell appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Hounsell stated that he would like to construct another structure on this site for an accessory apartment. Mr. Chalmers asked for public comment; there was none.

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

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

Mr. Chalmers read item 3. **Ms. Duane made a motion, seconded by Mr. Hylen, that the apartment is architecturally compatibility with the neighborhood.** Mr. Chalmers asked for

Adopted: January 18, 2012 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – DECEMBER 14, 2011

Board comment; Mr. Bartolomeo asked what the structure will look like. Mr. Hounsell stated it is going to be similar to the structure there, with clapboard. Mr. Bartolomeo asked if it would be some sort of horizontal wood siding. Mr. Hounsell agreed. **Motion unanimously carried.**

Mr. Chalmers read item 4. **Mr. Chalmers made a motion, seconded by Ms. Duane, that sufficient parking is located on site.** Mr. Chalmers asked for Board comment; Mr. Hounsell stated that there will be a separate driveway to this structure that will accommodate two vehicles. **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 be granted. Motion unanimously carried.

A public hearing was opened at 7:50 pm to consider a **VARIANCE** requested by **LARRY BLANEY AND SUSAN WILSON** in regard to §147.13.14 of the Conway Zoning Ordinance to **allow existing structures to remain in the Floodplain Conservation District** at 23 E Road, Conway (PID 251-87). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Ms. Briggs made a motion, seconded by Ms. Duane, to continue the public hearing for Larry Blaney and Susan Wilson-Blaney until March 21, 2012 at 7:00 pm. Motion unanimously carried.

A public hearing was opened at 7:52 pm to consider a **VARIANCE** requested by **EUGENE AND STEFFANY DUGGAN** in regard to §147.13.14 of the Conway Zoning Ordinance to **allow existing structures to remain in the Floodplain Conservation District** at 58 Beach Way, Conway (PID 251-54). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Mr. Chalmers read the application and the applicable section of the ordinance. Laura Maloney appeared before the Board and submitted and a letter of authorization from the Duggan's for her to represent them.

Ms. Maloney stated that they are asking for the pavilion anchored at grade level, and was legal as they were being taxed on it, to be allowed to remain. Mr. Chalmers asked when the structure was erected. Ms. Maloney stated that they purchased the property in 2007. Ms. Briggs stated that it was not erected prior to when the floodplain ordinance went into effect. Ms. Maloney stated that they are paying taxes on this structure.

Mr. Holmes stated that the property tax requirement is to be taxed at market value, not whether it is legal or up to code, but that it is being taxed at market value. Mr. Holmes stated that the

numbers are the same numbers as what people were paying for those improvements and that is what is required under New Hampshire law. Mr. Chalmers asked for public comment; there was none.

Mr. Chalmers read item 1. **Ms. Briggs made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated that it is a public safety issue that puts the first responders at risk. Ms. Briggs stated that it is against the ordinance and puts the floodplain insurance at risk. **Motion unanimously defeated.**

Mr. Chalmers read item 2. **Ms. Duane made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated that it is definitely contrary to the letter of the ordinance as well as the spirit of the ordinance. **Motion unanimously defeated.**

Mr. Chalmers read item 3. **Ms. Duane made a motion, seconded by Mr. Hylen, that substantial justice is done.** Mr. Chalmers asked for Board comment; Mr. Hylen stated that this is not in the spirit of the ordinance and it does not conform to the ordinance. **Motion unanimously defeated.**

Mr. Chalmers read item 4. **Ms. Duane made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo asked if it survived the flood. Ms. Maloney answered in the affirmative. Mr. Irving stated if structures are permitted in the floodway there is the chance that FEMA will review the variances granted by the Town and take steps toward not participating in the program. Ms. Maloney stated that they are anchored down and don't go anywhere. Mr. Chalmers stated properties that are not able to participate in the FEMA program would be diminished in value. **Motion defeated with Ms. Briggs, Ms. Duane, Mr. Hylen and Mr. Chalmers voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Mr. Chalmers read item 5.a.i. **Ms. Duane made a motion, seconded by Mr. Hylen, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Chalmers asked for Board comment; Mr. Hylen stated there isn't anything that distinguishes this property from other properties. **Motion defeated unanimously.**

Mr. Chalmers read item 5.a. ii. **Ms. Duane made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Mr. Chalmers asked for Board comment; Mr. Hylen stated structures in the floodway are not reasonable. **Motion defeated unanimously.**

Ms. Duane made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Chalmers asked for Board comment; Ms. Briggs stated that the floodplain ordinance went into effect in 1979 and this property did not have this structure on it at that time. Ms. Briggs stated the structures were not legally constructed. **Motion unanimously defeated.**

Mr. Chalmers read item 5.b. **Ms. Duane made a motion, seconded by Mr. Hylen, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated that there is nothing about this property that distinguishes it from other properties. **Motion unanimously defeated.**

Mr. Chalmers read item 6. **Ms. Duane made a motion, seconded by Ms. Briggs, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated that this has to do with the testimony of FEMA last time and any structure swept away becomes dangerous. Ms. Briggs stated that this has already caused extraordinary public expense. **Motion unanimously defeated.**

Mr. Chalmers read item 7. **Ms. Duane made a motion, seconded by Mr. Hylen, that the requested variance is for activity within the designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo asked if it applies as this is not an activity, but a structure. Mr. Irving stated that the structure is the activity. **Motion unanimously defeated.**

Mr. Chalmers read item 8. **Ms. Duane made a motion, seconded by Ms. Briggs, that the variance is necessary, considering the flood hazard, to afford relief.** Mr. Chalmers asked for Board comment; Mr. Hylen asked for an explanation. Mr. Irving stated to grant the variance it has to be the minimum necessary to let that use take place. Mr. Irving stated in this case it was a structure erected without permits or approvals within the floodway. **Motion unanimously defeated.**

Ms. Duane 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 allow existing structures to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

Mr. Chalmers reviewed the appeal process.

A public hearing was opened at 8:15 pm to consider a **VARIANCE** requested by **BRETT MASOTTA** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** at 48 B Road, Conway (PID 251-44). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Ms. Duane made a motion, seconded by Mr. Hylen, to continue the public hearing for Brett Masotta until March 21, 2012 at 7:05 pm. Motion unanimously carried.

Adopted: January 18, 2012 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – DECEMBER 14, 2011

A public hearing was opened at 8:12 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **JAMES AND JAYNE MACINNIS** in regard to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** at 356 Transvale Road, Conway (PID 251-70). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

James and Jayne MacInnis appeared before the Board. Ms. MacInnis asked to submit new information to the Board. After a brief discussion, the Board agreed that new information had to be submitted seven days before the meeting. Therefore, **Mr. Bartolomeo made a motion, seconded by Ms. Duane, to continue the public hearing for James and Jayne MacInnis until March 21, 2012 at 7:10 pm. Motion unanimously carried.**

A public hearing was opened at 8:14 pm to consider a **VARIANCE** requested by **JAMES AND JAYNE MACINNIS** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** at 356 Transvale Road, Conway (PID 251-70). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

James and Jayne MacInnis appeared before the Board. Ms. MacInnis asked to submit new information to the Board. **Mr. Bartolomeo made a motion, seconded by Ms. Duane, to continue the public hearing for James and Jayne MacInnis until March 21, 2012 at 7:15 pm. Motion unanimously carried.**

A public hearing was opened at 8:20 pm to consider a **VARIANCE** requested by **ROGER THURRELL** in regard to §147.14.2.1.1 of the Conway Zoning Ordinance **to allow the expansion of a non-conforming structure to remain within the Floodplain Conservation Overlay District** at 43 Brookview Road, Conway (PID 250-176). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Roger Thurrell appeared before the Board. Mr. Thurrell stated that the enclosed area was constructed in 1974. Mr. Irving stated that we need something that proves when it was built. Mr. Thurrell asked how the Zoning Board allowed it to be constructed on a lot line. Mr. Irving stated according to the file it was never disclosed to the Board that it was straddling the property line.

There was discussion regarding a variance vs. an administrative decision. Mr. Holmes stated that we are not discussing the original home; as the only thing that requires a variance is the porch. Mr. Irving stated the porch was enclosed sometime between 1989 and 1994. Mr. Thurrell

Adopted: January 18, 2012 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – DECEMBER 14, 2011

stated that it was enclosed in 1974. Mr. Holmes stated there is a sketch from 1977 that shows just a rectangle for the structure with no additions off the rear and it was signed by the owner at the time.

Mr. Thurrell stated that he could provide information that proved it was enclosed in 1974 and asked for a continuance to provide that information. **Ms. Duane made a motion, seconded by Mr. Hylen, to continue the public hearing for Roger Thurrell until March 21, 2012 at 7:20 pm. Motion unanimously carried.**

A public hearing was opened at 8:40 pm to consider a **VARIANCE** requested by **DANIEL AND LAURA MALONEY** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** on Transvale Road, Conway (PID 251-71). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Daniel and Laura Maloney appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Maloney stated they have been using transvale for about 45 years. Mr. Maloney stated that they bought a piece of property in 2004 and the deed we received said we could have a building on it; so he constructed a pavilion and anchored it to concrete in the ground. Mr. Maloney stated that it is an open pavilion anchored at ground level. Mr. Maloney stated that it has eight posts so when the river floods the structure stays.

Mr. Maloney stated that we don't live there, but we use the property 10 to 12 weekends a year in the summer. Mr. Maloney stated that they belong to the association which the dues maintain the roads. Mr. Maloney stated when they purchased the property they thought it was a private campground, not residential.

Mr. Maloney stated that they use the river a lot to kayak and we always bring a bag of trash back with us from our kayaking trip. Mr. Maloney stated that they would like to keep using the pavilion and be able to park our trailer next to it. Mr. Maloney stated that this building did withstand tropical storm Irene and it doesn't affect the flow or the height of the river; this is no different than trees being there.

Mr. Irving stated that the definition of a structure for the Town of Conway does include pavilions and FEMA does not allow structures or development in the floodway. Mr. Bartolomeo asked if the variance is for just the pavilion. Mr. Maloney stated there is also a shed. Mr. Irving stated in 1978 it was assessed as a vacant lot. Mr. Irving stated that the variance is for the slab, pavilion and shed.

Mr. Chalmers asked for public comment; Richard Caruthers stated that he lives in Transvale and asked if the slab could be considered a sidewalk. Mr. Irving answered in the negative and stated that it does not allow for pedestrians. Jayne MacInnis asked if FEMA allows open pavilions. Mr. Irving stated that FEMA holds us to our ordinances and our definition includes pavilions.

**Adopted: January 18, 2012 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – DECEMBER 14, 2011**

Ms. MacInnis stated they cannot tell you they will take money away from you. Mr. Irving stated if FEMA chooses to review the variances granted by the Town and they think they were inappropriate, they could.

Mr. Maloney stated that no one cared about this property until Irene; we were not the ones that needed to be rescued. Mr. Maloney stated that we received a warning and we got out; we would have anyway. Ms. Maloney stated that we don't live there. Mr. Bartolomeo stated the point is well taken; it should have been dealt with years ago.

Mr. Chalmers read item 1. **Ms. Duane made a motion, seconded by Mr. Hylen, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated structures in the floodway are contrary to public interest. **Motion unanimously defeated.**

Mr. Chalmers read item 2. **Ms. Duane made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated it is directly contrary. **Motion unanimously defeated.**

Mr. Chalmers read item 3. **Ms. Duane made a motion, seconded by Mr. Hylen, that substantial justice is done.** Mr. Chalmers asked for Board comment; Mr. Hylen stated by granting a variance it would open the Town to the possibility of the flood insurance program being denied. **Motion unanimously defeated.**

Mr. Chalmers read item 4. **Ms. Duane made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Mr. Chalmers asked for Board comment; Mr. Hylen stated that the surrounding or neighboring properties could be denied flood insurance making it difficult to sell. **Motion unanimously defeated.**

Mr. Chalmers read item 5.a.i. **Ms. Duane made a motion, seconded by Ms. Briggs, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated there is definitely a direct fair and substantial relationship between the ordinance and this application. Mr. Hylen stated there is nothing to distinguish this property from other properties in the area. **Motion unanimously defeated.**

Mr. Chalmers read item 5.a. ii. **Ms. Duane made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Mr. Chalmers asked for Board comment; Mr. Hylen stated this property is in the floodway. Ms. Duane stated structures in the floodway are not a reasonable use. **Motion unanimously defeated.**

Ms. Duane made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Chalmers asked for Board comment; there was none. **Motion unanimously defeated.**

Mr. Chalmers read item 5.b. **Ms. Duane made a motion, seconded by Ms. Briggs, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated that this property is not any different from surrounding properties. Ms. Duane stated that this property can still be used. **Motion unanimously defeated.**

Mr. Chalmers read item 6. **Ms. Duane made a motion, seconded by Ms. Briggs, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Chalmers asked for Board comment; Mr. Hylen stated there was no evidence presented to prove that it would not increase flood heights, etc. Ms. Duane stated that in fact it has shown there is a threat to public safety. **Motion unanimously defeated.**

Mr. Chalmers read item 7. **Ms. Duane made a motion, seconded by Mr. Hylen, that the requested variance is for activity within the designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Mr. Chalmers asked for Board comment; Ms. Briggs stated the shed could increase the flood discharge. Ms. Duane stated that structures increase the flood discharge. **Motion unanimously carried.**

Mr. Chalmers read item 8. **Ms. Duane made a motion, seconded by Mr. Hylen, that the variance is necessary, considering the flood hazard, to afford relief.** Mr. Chalmers asked for Board comment; Ms. Duane stated they can use the property without a variance. Mr. Bartolomeo stated that it does not meet the minimum standard. **Motion unanimously defeated.**

Ms. Duane 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 allow existing structures to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

Mr. Chalmers reviewed appeal process.

A public hearing was opened at 9:03 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **DEUTSCHE BANK NATIONAL TRUST COMPANY** in regard to §147.13.1.4 of the Conway Zoning Ordinance **to allow a well to remain within the side setback** at 25 Odell Hill Road, Conway (PID 266-39). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011.

Doug Burnell appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Burnell stated that this property is receiving an FHA loan so they called to see if the septic and the well had the proper separation. Mr. Burnell stated that the well

was too close to the property line and a well is considered a structure. Mr. Burnell stated that this lot was created around 1940, so it is undersized, and the well was put in 1986.

Mr. Chalmers read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hylen, that the violation was not noticed or discovered by any owner, former owner, owner's agent or 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.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimous carried.**

Mr. Chalmers read item 2. **Mr. Hylen 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.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo asked if well drillers verify setbacks. Mr. Irving stated that this is the first time for this type of application because he could not prove that it was okay. Mr. Bartolomeo stated they applied the septic setback. Mr. Burnell stated that this was approved by the State. **Motion unanimously carried.**

Mr. Chalmers read item 3. **Ms. Duane made a motion, seconded by Mr. Chalmers, that item 3 was not applicable.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers 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 diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Mr. Chalmers asked for Board comment; Mr. Burnell stated there is a driveway that goes along the side of this property; therefore, there will not be a structure next to the well. **Motion unanimously carried.**

Mr. Chalmers read item 5. **Mr. Chalmers made a motion, seconded by Mr. Hylen, 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.** Mr. Chalmers asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Bartolomeo made a motion, seconded by Mr. Hylen, 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 well to remain within the side setback be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Mr. Hylan, to approve the Minutes of November 16, 2011 as written. Motion unanimously carried.

Meeting adjourned at 9:15 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