

ZONING BOARD OF ADJUSTMENT

MINUTES

MARCH 21, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 21, 2012 at the Conway Town Office in Center Conway, NH, beginning at 7:10 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Sheila Duane; Alternate, Luigi Bartolomeo; Planning Director, Thomas Irving; Town Council, Peter Malia; and Planning Assistant, Holly Meserve. Dale Schofield, Assistant Assessor; and James Yeager, Code Enforcement Officer, were in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Mr. Bartolomeo as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:10 pm to consider a **VARIANCE** requested by **LARRY BLANEY AND SUSAN WILSON-BLANEY** 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. This hearing was continued from December 14, 2011.

Susan Wilson-Blaney and Larry Blaney appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated an 8' x 35' manufactured home was on the site in 1977; in 1981 a cottage roof had been added to the mobile home; and in 1994 the original mobile home was falling apart and a 12' x 47' manufactured home was installed with a 6' x 14' deck and 7' x 8' shed. Mr. Bartolomeo asked if the original mobile home was removed in 1994. Ms. Wilson-Blaney answered in the affirmative. Ms. Duane joined the Board at this time [Mr. Bartolomeo stayed as a voting member for this application].

Ms. Wilson-Blaney asked to submit information to the Board this evening. After a brief discussion, Mr. Malia suggested accepting the notebooks, hearing the presentation and then continuing the hearing. Mr. Malia stated since this is someone's home he would like to take a closer look at it before a decision is made. Ms. Wilson-Blaney submitted the notebooks to the Board. Ms. Wilson-Blaney read from a prepared statement [a copy is in the file].

Ms. Wilson-Blaney stated even though they are requesting a variance, for the record, we are in no way admitting any wrong doing. Ms. Wilson-Blaney stated that the original home was damaged in 1987; the waters moved it from where it was to its current location. Mr. Bartolomeo asked if the original structure is still there. Ms. Wilson-Blaney answered in the negative. Ms. Wilson-Blaney stated a new mobile home was placed on the site within one year of the 1987 flood.

Adopted: April 18, 2012 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 21, 2012

Ms. Wilson-Blaney stated in April 2000 they purchased two lots. Ms. Wilson-Blaney stated one of the lots had a 12' x 47' somewhat raised structure and a destroyed porch that ran along the entire side of the mobile home. Ms. Wilson-Blaney stated the intent was to refurbish. Ms. Wilson-Blaney stated that they found debris that was once a deck [see photo #4]. Ms. Wilson-Blaney stated she was told by the Town that if the work was less than \$1500 and the size was not increased then a permit was not required.

Ms. Wilson-Blaney stated in 2002 we received a stop build order. Ms. Wilson-Blaney stated that the denial letter asked for proof that it was under \$1,500 and to submit an affidavit that it existed. Ms. Wilson-Blaney stated that the paperwork was submitted. Ms. Wilson-Blaney stated that we never heard from anyone again so we thought we did everything under the regulations.

Ms. Wilson-Blaney stated that they did raise the mobile home and they did not look at the ordinance for that; they are sorry for that. Ms. Wilson-Blaney stated that the 100-year flood plain was 460' and they used these grades to insure we would be out of the floodplain. Ms. Wilson-Blaney stated that they did not know we needed a building permit to raise the home.

Ms. Wilson-Blaney stated in 2004 the Town took pictures and assigned 911 numbers. Ms. Wilson-Blaney stated at that time the Town indicated that our home doubled in size; however, we enclosed a deck. Ms. Wilson-Blaney stated after some unfortunate family events, they moved there permanently. Ms. Wilson-Blaney stated that they have used their Transvale Acres address to register to vote and to register their vehicles; no one indicated at the Town that we could not use this as our permanent home.

Ms. Wilson-Blaney stated each year we pay our taxes, we are registered voters, and attend town meetings. Ms. Wilson-Blaney stated that they take care of their property. Ms. Wilson-Blaney stated that we are located in the middle section; the lower section being on the river. Ms. Wilson-Blaney stated that the middle section does not normally go under water. Ms. Wilson-Blaney stated that the other two sections have only had three major floods; 1972, 1987 and 2011. Ms. Wilson-Blaney stated that we had two significant rains after Hurricane Irene which did not cause flooding in the upper two sections. Ms. Wilson-Blaney stated that we did not have significant damage and we do not qualify for the buy-out plan.

Ms. Wilson-Blaney stated that the columns under their home are eight feet into the ground. Ms. Wilson-Blaney stated that the floodway goes through their house and our first floor level remains above the floodplain level. Ms. Wilson-Blaney stated that their home meets FEMA guidelines and does not impede the flood waters. Ms. Wilson-Blaney stated that they heat by wood so there is no propane or oil.

Ms. Wilson-Blaney stated that this would not be contrary to the public interest; on December 14, 2011 FEMA issued them an insurance policy. Ms. Wilson-Blaney stated that FEMA paid for it and it expires on November 2, 2014. Ms. Wilson-Blaney stated from that date on they will have to pay for it.

Adopted: April 18, 2012 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 21, 2012

Ms. Wilson-Blaney stated that the spirit of the ordinance is observed. Ms. Wilson-Blaney stated that the location of the home does not impact the height of the river, effect the natural surroundings and they do not have debris leaving their home. Ms. Wilson-Blaney stated that they built their home properly; the water from Hurricane Irene never entered their home.

Ms. Wilson-Blaney stated in regard to substantial justice, they constructed their home with safety in mind; it is a home they own and cannot afford another housing situation.

Ms. Wilson-Blaney stated in regard to diminishing the value of surrounding properties, it is built to FEMA standards. Ms. Wilson-Blaney stated that the insurance rate premiums will not be modified by granting a variance. Ms. Wilson-Blaney stated that their presence would keep the property values up as they watch the neighborhood.

Ms. Wilson-Blaney stated in regard to unnecessary hardship, you would be depriving us our right to the reasonable use of our home and land if the variance were denied. Ms. Wilson-Blaney stated denying the variance would leave them land that they cannot use. Ms. Wilson-Blaney stated that we believe we have shown that special conditions exist and we have lived here for over seven years.

Mr. Bartolomeo stated the original home was replaced by a 12'x 47' structure and in spite of everything stated; this is the core of what we have to deal with. Ms. Wilson-Blaney stated construction was started in 1987 and the rules did not stipulate that it had to be the exact same size. Ms. Wilson-Blaney stated that is when the concrete was started.

Ms. Wilson-Blaney stated in 1987 it was okay and it was stated in the meetings of 1991. Ms. Wilson-Blaney stated that she thought in good conscience they had done what they were supposed to do; we thought we were following the rules.

Mr. Colbath made a motion, seconded by Mr. Hylen, to continue the public hearing for Susan Wilson-Blaney and Larry Blaney until April 18, 2012 at 7:10 pm. Motion unanimously carried.

A public hearing was opened at 7:48 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. This hearing was continued from December 14, 2011

Mr. Bartolomeo left at this time and Ms. Duane became a voting member. Brett Masotta appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Adopted: April 18, 2012 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 21, 2012

Ms. Sherman stated according to the tax assessor's records in 1978 it was assessed as a vacant lot. Ms. Sherman stated in 1979 the floodplain ordinance was enacted; in 1980 a travel trailer and shed were assessed; in 2003 a warranty deed conveyed the lots to Mr. Masotta; in 2004 the shed was slightly elevated; and in 2008 a concrete slab and a canopy were constructed without a building permit.

Mr. Masotta stated there has been a shed on the property since about 1967, but it has been rebuilt. Mr. Colbath asked if the reconstructed shed was the same size and shape of the original shed. Mr. Masotta answered not exactly. Ms. Sherman asked how much larger. Mr. Masotta stated he does not know the size of the original shed. Ms. Sherman asked when the concrete was poured. Mr. Masotta answered early 2000's. Mr. Masotta stated the shed was constructed in 2003 and was put on pillars. Mr. Masotta stated there have been no problems since, not even with Hurricane Irene. Mr. Masotta stated that pavilion was constructed without a permit in 2004 and the slab was installed in the fall of 2003.

Ms. Sherman asked if he was not aware he needed a permit. Mr. Masotta stated he didn't think about it; it wasn't a house. Mr. Masotta stated that he didn't realize he needed a permit for a shed. Mr. Masotta stated his neighbor received a permit in 1991 for the same thing, but it had to be engineered. Mr. Masotta stated that he would like to do the same thing and if it is determined not to be solid he would take it down. Mr. Masotta stated he has a picture of the original shed in 1967 [a copy was not given for the record]. The Board reviewed it.

Ms. Sherman asked if this property is located in the floodway. Mr. Masotta answered in the affirmative. Mr. Malia stated the Town is using 1979 as the effective date for the floodplain ordinance. Mr. Malia stated if you think there was a structure there prior to 1979, you should submit photos to Town staff to review for grandfathering. Mr. Malia stated there is a difference between an appeal from administrative decision and a variance. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Ms. Duane stated allowing structures to remain would create a public safety issue that could put first responders at risk and structures in the floodway would be subject to damage with resulting debris impeding flow in the floodway causing higher elevations and debris washing up on down street properties. Mr. Chalmers stated that it would affect Conway's ability to participate in the Flood Insurance Program. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Hylen stated that structures are not allowed in this district. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the benefit to the applicant is outweighed by the added risk to the public safety. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Mr. Hylan stated the inability to participate in the National Floodplain Insurance program could diminish property values. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, 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.** Ms. Sherman asked for Board comment; Mr. Colbath stated there are no conditions to this property that distinguishes it from other properties. **Motion unanimously defeated.**

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

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

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Duane, 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.** Ms. Sherman asked for Board comment; Mr. Hylan stated there is nothing that distinguishes this property from other properties and it can be used for another reasonable use. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Ms. Sherman asked for Board comment; Mr. Chalmers stated this has not been demonstrated by the applicant. **Motion unanimously defeated.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Ms. Duane, that the requested variance is for activity within the designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Ms. Sherman asked for Board comment; Mr. Hylan stated this has not been demonstrated by the applicant. **Motion unanimously defeated.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Mr. Colbath stated having the property affords no relief. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Duane, 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.

A public hearing was opened at 8:15 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. This hearing was continued from December 14, 2011.

James and Jayne MacInnis appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. MacInnis stated that they received a violation notice and asked the legality of the 1979 floodplain ordinance. Ms. MacInnis stated having a Board of Selectmen vote does not make it law; it has to go through a Town meeting and that did not happen until 1982.

Ms. MacInnis stated we are the third owners of this property since 1979. Ms. MacInnis stated that they don't have photos and most of the previous owners are now deceased. Ms. MacInnis stated that their land was developed the same time as the Stone's and the Duggan's and there tax records show vacant land, but they were able to provide photos.

Mr. Malia stated that he researched and determined that 1979 was defensible for the effective date of the ordinance for grandfathering. Mr. Malia stated that everyone has been held to that date; this Board does not have the authority to change it. Mr. Malia stated if you want to challenge it, it has to be done in Superior Court.

Mr. Hylan asked if the applicant has any proof to submit. Ms. Sherman asked if they have any proof on what was on the property in 1979. Ms. MacInnis stated they did not own the property then. Mr. Irving reviewed Mr. Yeager's history sheet. Mr. Irving stated there was not sufficient evidence for the town to determine the property was grandfathered.

Ms. Schofield stated that a re-evaluation company estimated a date for assessing purposes. Ms. Schofield stated that it was a good faith estimate, but may not be the actual. Mr. Irving stated in 1980 the property was owned by the Duggan's and was assessed for land only and the property was owned by someone else in 1979. Mr. Irving stated a recent photograph of the concrete slab has the name Duggan in it. Mr. Irving submitted a photograph of the slab. Ms. Sherman asked for public comment; there was none.

Mr. Hylan made a motion, seconded by Mr. Colbath, to uphold the Administrative Decision. Motion unanimously carried.

A public hearing was opened at 8:31 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. This hearing was continued from December 14, 2011.

James and Jayne MacInnis appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if there is any new information. Ms. Sherman stated in 1981 assessing picked up a shed. Ms. Sherman asked if there was any evidence that there was anything there in 1979. Ms. MacInnis answered in the negative and stated that she did not know affidavits would be considered. Ms. MacInnis stated that she thought the date of the Floodplain ordinance could be discussed tonight.

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

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Ms. Duane stated allowing structures to remain would create a public safety issue that could put first responders at risk and structures in the floodway would be subject to damage with resulting debris impeding flow in the floodway causing higher elevations and debris washing up on down street properties. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Colbath stated that structures are not allowed in the Floodplain Conservation District. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the benefit to the applicant is outweighed by the added risk to the public safety. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Mr. Hylan stated the values of surrounding properties good decrease if the Town's participation in the National Floodplain Insurance Program was compromised. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, 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.** Ms. Sherman asked for Board comment; Mr. Colbath stated there are no conditions of this property that distinguish it from other properties in the area. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Mr. Hylen stated that it is not reasonable to have a structure in the floodplain. **Motion unanimously defeated.**

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

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that if the criteria is 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.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that the property can be reasonably used. Ms. Duane stated that there is nothing that distinguishes this property from other properties and the lot can be used for temporary camping as originally intended. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Ms. Sherman asked for Board comment; Mr. Colbath stated there was no evidence presented. **Motion unanimously defeated.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Ms. Duane, that the requested variance is for activity within the designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that the applicant has not provided this information. Ms. Duane stated that the applicant has not demonstrated that the flood heights would not increase. **Motion unanimously defeated.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Duane, 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.

A public hearing was opened at 8:45 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

Adopted: April 18, 2012 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 21, 2012

Conway Daily Sun and certified notices were mailed to abutters on Friday, December 2, 2011. This hearing was continued from December 14, 2011.

Mr. Irving stated that Mr. Thurrell has withdrawn his application.

Mr. Malia, Ms. Schofield and Mr. Yeager left at this time.

MOTION FOR REHEARINGS

A public meeting was opened at 8:46 pm to consider a **MOTION FOR REHEARING** requested by **DEBORAH DUGGAN** 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 361 Transvale Road, Conway (PID 251-51). Notice was published in the Conway Daily Sun on Friday, March 9, 2012.

Mr. Malia asked the Board if they had had the information submitted when the decision was made, would you have arrived at a different decision. **Mr. Colbath made a motion, seconded by Ms. Duane, to grant the Motion for Rehearing for Deborah Duggan. Motion defeated with Ms. Duane, Mr. Chalmers and Mr. Hylen voting in the negative and Ms. Sherman and Mr. Colbath voting in the affirmative.**

A public meeting was opened at 8:50 pm to consider a **MOTION FOR REHEARING** requested by **THOMAS DUGGAN, JR** 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 78 B Road, Conway (PID 251-40). Notice was published in the Conway Daily Sun on Friday, March 9, 2012.

Mr. Colbath made a motion, seconded by Ms. Duane, to grant the Motion for Rehearing for Thomas Duggan, Jr. Motion unanimously defeated.

PUBLIC HEARINGS CONTINUED

A public hearing was opened at 9:00 pm to consider a **VARIANCE** requested by **C & C THIBODEAU PROPERTIES LLC AND WEST MAIN RECREATION CORP** in regards to §147.13.16 of the Conway Zoning Ordinance to **fill 2,330 square feet of wetland, to construct 30 additional parking spaces and to allow 4,610 square feet of existing fill to remain in the wetlands** at 71 Hobbs Street and 87 West Main Street, Conway (PID 277-136, 137 & 138). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 9, 2012.

Burr Phillips of Civil Solutions and Barry Keith, Wetland Scientist, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Phillips stated this is the old Yield House site on Hobbs Street. Mr. Phillips stated the intent is to construct

Adopted: April 18, 2012 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 21, 2012

additional parking spaces as there is insufficient parking for the site. Mr. Phillips stated 117 parking spaces exist and the site requires 176 parking spaces. Mr. Phillips stated the applicant is proposing to construct an additional 30 spaces.

Mr. Phillips stated the new parking spaces will be along the outside edge of the existing parking lot. Mr. Phillips stated there is a rain garden proposed in the middle of the parking area that will treat the water before it goes into Pequawket Pond. Mr. Phillips stated that these are not pristine wetlands; however, they are off-setting the wetland and floodplain filling. Mr. Phillips stated this is the Industrial -1 District and this use is consistent with the uses around it.

Mr. Keith stated that they met with the Conway Conservation Commission and we have an approval from the State. Mr. Colbath asked if there was anything in writing the Conway Conservation Commission. Mr. Phillips stated they do not. Mr. Keith stated they were notified and had to respond to the State application.

Mr. Colbath asked if it will have an impact on any of the abutting properties. Mr. Phillips answered in the negative since they will be excavating down. Mr. Keith stated that the flow will be towards Pequawket Pond. Mr. Irving stated the Ham Arena is an applicant to this application. Mr. Irving stated this will improve treatment of the run off; it is going to enhance and improve the wetlands; and it is going to improve and increase floodplain capacity. Mr. Irving stated that this will go to the Planning Board.

Ms. Sherman asked for public comment; Richard Caruthers asked how many trees will be cut to do the fill and to put reasonable fill you will have to dredge the topsoil to get satisfactory level for fill. Mr. Caruthers stated there seems like the fill is larger than what is being requested. Mr. Phillips stated the top soil will be removed for the parking lot. Mr. Keith stated only 6 to 8 inches will be removed and it will be reused in the restoration areas. Mr. Phillips stated square feet should be cubic yards.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Adopted: April 18, 2012 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MARCH 21, 2012

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Hylan, 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.** Ms. Sherman asked for Board comment; Mr. Hylan asked for a clarification on this. Mr. Irving stated for the general public the ordinance is to protect and enhance. Mr. Irving stated the applicant has demonstrated that the expansion will improve the quality of the environmental impacts by pretreating the run-off.

Mr. Irving stated by not allowing them to do this might be contrary to the ordinance. Mr. Irving stated as far as the distinguishing characteristics, which is more consistent with part B and might not have to be addressed. Mr. Irving stated if you applied it as written you would not get the improved wetland. Mr. Colbath stated that it is already a parking lot; the special condition already exists and they want to expand it. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that item 5.b. is not necessary for this application. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.16 of the Town of Conway Zoning Ordinance to fill 2,330 square feet of wetland, to construct 30 additional parking spaces and to allow 4,610 square feet of existing fill to remain in the wetlands be granted. Motion unanimously carried.

A public hearing was opened at 9:30 pm to consider a **VARIANCE** requested by **C & C THIBODEAU PROPERTIES LLC AND WEST MAIN RECREATION CORP** in regards to §147.13.16.4 of the Conway Zoning Ordinance **to allow 30 additional parking spaces and travel aisles to be located within the Wetland and Watershed Protection Overlay District buffer** at 71 Hobbs Street and 87 West Main Street, Conway (PID 277-136, 137 & 138). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 9, 2012.

Burr Phillips of Civil Solutions and Barry Keith, Wetland Scientist, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, 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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that item 5.b. is not necessary for this application.** **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.16.4 of the Town of Conway Zoning Ordinance to allow 30 additional parking spaces and travel aisles to be located within the Wetland and Watershed Protection Overlay District buffer be granted. **Motion unanimously carried.**

A public hearing was opened at 9:32 pm to consider a **SPECIAL EXCEPTION** requested by **C & C THIBODEAU PROPERTIES LLC AND WEST MAIN RECREATION CORP** in regards to §147.13.14.3.6 of the Conway Zoning Ordinance **to fill 51 cubic yards of floodplain to allow the construction of 30 additional parking spaces** at 71 Hobbs Street and 87 West Main Street, Conway (PID 277-136, 137 & 138). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 9, 2012.

Burr Phillips of Civil Solutions appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. The Board determined that item 2 was not applicable to this application.

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.4 of the Town of Conway Zoning Ordinance to fill 51 cubic yards of floodplain to allow the construction of 30 additional parking spaces be granted. Motion unanimously carried.

A public hearing was opened at 9:34 pm to consider a **SPECIAL EXCEPTION** requested by **C & C THIBODEAU PROPERTIES LLC AND WEST MAIN RECREATION CORP** in regards to §147.13.14.3.11 of the Conway Zoning Ordinance **to allow temporary work roads needed to access wetland restoration areas and to allow parking spaces to be situated in the 100-year floodplain** at 71 Hobbs Street and 87 West Main Street, Conway (PID 277-136, 137 & 138). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 9, 2012.

Burr Phillips of Civil Solutions appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that in the area around Pequawket Pond between the one-hundred-year and the ten-year-flood level [464.6 feet to 461.5 feet], as shown on the maps described herein, development, substantial improvements and building, provided that it is serviced by precinct water and sewerage and the lowest floor is above the one-hundred-year-flood level.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.11 of the Town of Conway Zoning Ordinance to allow temporary work roads needed to access wetland restoration areas and to allow parking spaces to be situated in the 100-year floodplain be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Ms. Duane, to approve the Minutes of February 15, 2012 as written. Motion unanimously carried.

Meeting adjourned at 9:38 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant