

ZONING BOARD OF ADJUSTMENT

MINUTES

AUGUST 15, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 15, 2012 at the Conway Town Office in Center Conway, NH, beginning at 7:04 pm. Those present were: Chair, Phyllis Sherman; Andrew Chalmers; Dana Hysten; Alternate, Luigi Bartolomeo; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Recording Secretary, Karen Hallowell. Town Counsel, Peter Malia was also in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Martha Tobin and Luigi Bartolomeo as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:05 pm to consider a **VARIANCE** requested by **DONALD AND CHRISTINE BOWDEN** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation Overlay District** at 95 Brookview Road, Conway (PID 250-180). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

Donald and Christine Bowden were not present and it was agreed to hold this matter until later in the meeting to give them additional time to appear.

A public hearing was opened at 7:06 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **KENNETH FECTEAU** 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 110 Transvale Road, Conway (PID 250-192). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 3, 2012.

Mr. Irving advised this matter has been reversed and no action is needed on this application.

A public hearing was opened at 7:10 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **BRETT MASOTTA** 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 48 B Road, Conway (PID 251-44). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 3, 2012.

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Brett Masotta appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman questioned if Mr. Masotta had any pictures of the property. Mr. Masotta stated that he provided them to Jim Yeager. Mr. Irving presented the original photos provided by Mr. Masotta to the Board for review (there were three photos). Mr. Masotta stated he did not have a lot of photos and these were retrieved from his grandmother's attic.

Mr. Bartolomeo asked if Mr. Masotta claims the structure was on the property before 1979. Mr. Masotta stated 1968. Mr. Bartolomeo asked if the shed had been replaced. Mr. Masotta replied that the shed had been replaced. Mr. Bartolomeo questioned if the shed had been lifted up. Mr. Masotta advised he got it off the ground three or four feet. Mr. Bartolomeo questioned if when the shed was lifted up if it was put on sonar tubes. Mr. Masotta stated that it was not on sonar tubes originally, he lifted it and rebuilt it with sonar tubes.

Mr. Bartolomeo asked about what appears in the tax records. Mr. Irving reviewed the tax records with the Board and Mr. Masotta. Ms. Tobin questioned when Mr. Masotta put in the sonar tubes. Mr. Masotta advised 2004 or 2006, he is not sure. Mr. Irving questioned if he got a permit. Mr. Masotta responded in the negative.

Mr. Bartolomeo clarified if it showed as a vacant lot in 1978 and then something showed up on it in 1980. Mr. Irving responded in the affirmative. Mr. Masotta advised that his family put a shed on the property in the late 1960's and it was wiped out and then put up another in the 1970's and this was wiped out by flooding again. He is not sure when they got wiped out but feels it must have been before 1978. Mr. Bartolomeo questioned if when it was wiped out –was it replaced in the same location and with the same size. Mr. Masotta replied that he did not know as he was only six years old at the time. Mr. Masotta next advised that another shed also got wiped out in 1986 or 1987 and then he bought the property and put the shed where it originally was and just raised it up.

Mr. Irving next showed a picture of the property to Mr. Masotta and asked if this was his property. Mr. Masotta verified that it was his property. Mr. Irving questioned what is in the shed on the property. Mr. Masotta replied "a bunch of crap". Mr. Irving questioned if there is any plumbing. Mr. Masotta replied in the affirmative. Mr. Irving questioned if there is waste disposal. Mr. Masotta responded in the negative. Mr. Masotta next advised they do have water for a shower. Mr. Irving questioned if it is plumbed for showers and electricity. Mr. Masotta replied in the affirmative.

Mr. Irving questioned if it was damaged in the storm. Mr. Masotta responded in the negative. Mr. Irving stated that we have pictures that show differently. Mr. Irving displayed a picture of the shed and explained it appears to have moved. Mr. Irving next stated that it appears that the shed is now set up for showers, etc. Mr. Masotta agreed. Mr. Irving questioned if Mr. Masotta has a NHDES permit for this. Mr. Masotta responded in the negative. Mr. Irving next questioned if in the 1978-79-80 time period was the shed plumbed. Mr. Masotta stated that he did not know. Mr. Irving questioned if Mr. Masotta installed plumbing. Mr. Masotta stated yes

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he put the plumbing in in 2004. Mr. Irving clarified there was none before the shed was built. Mr. Masotta stated no, just an old tank.

Mr. Masotta next referred back to the shed shifting and stated he doesn't think the shed had shifted. Mr. Irving stated he can provide the pictures that show that it did. Mr. Chalmers stated that he went out and took a look and it appears to him to have shifted. Mr. Chalmers further stated there has been some movement there and, also, it does appear there is plumbing and gray water that dumps on the ground. Also, the shed certainly looks to be relatively new construction. Ms. Tobin stated in looking at the picture it does look as though the shed has shifted. Mr. Masotta reviewed the picture and agreed that yes he can see this and it looks like it shifted a little.

Mr. Chalmers next stated that in looking at the old photos in the assessing file, the shed looks considerably smaller than what is there now. There was next a review of the pictures and discussion by the Board and Mr. Masotta concerning the sizes of the buildings over the years. Mr. Bartolomeo stated that clearly to him in the old tax records the shed was a lot smaller than the structure there today.

Mr. Malia stated from the property history summary, Mr. Masotta acquired the property in 2003 from Carol Masotta and then put in a shed. He also heard Mr. Masotta say there hadn't been a shed there since the 1980's. Mr. Masotta stated he doesn't remember when, but it was taken out by flood in the 1980's. Ms. Sherman stated there was a flood in 1987. Mr. Malia stated that if the shed was wiped out in 1987 and rebuilt in 2003, six or seven years had gone by and this would be considered abandoned.

Ms. Sherman asked for public comments; there were none. Ms. Sherman asked for further comments from the Board; there were none.

Mr. Bartolomeo made a motion, seconded by Ms. Tobin to grant the appeal from the administrative decision relative to the grandfathered status of this structure. The motion failed unanimously.

Mr. Irving advised the applicant that he has thirty (30) days to file for rehearing. Mr. Masotta left the meeting at 7:33 pm

A public hearing was opened at 7:34 pm to consider a **VARIANCE** requested by **DONALD AND CHRISTINE BOWDEN** in regard to §147.13.14 of the Conway Zoning Ordinance to **allow existing structures to remain in the Floodplain Conservation Overlay District** at 95 Brookview Road, Conway (PID 250-180). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, May 1, 2012.

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This matter was held over from earlier in the meeting to provide more time for Donald and Christine Bowden to appear at the meeting. Mr. and Mrs. Bowden did not appear. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Irving reviewed the matter with the Board. Mr. Irving stated that if you look at the deck photos you will see the deck is perched over Moat Brook with the wetland setback and the wetland 50 foot buffer. Mr. Irving stated that unless they can demonstrate it was there before 1998 when the wetland and watershed protection overlay district came about.

Mr. Bartolomeo questioned if it is truly in the floodplain. Mr. Irving advised that it is in the floodplain according to the maps. Mr. Bartolomeo advised that he viewed the property and it is a good looking building and well kept. Mr. Irving advised that in this instance we are only talking about the deck. Ms. Sherman reviewed that this is a shed with a porch attached to a camp. Ms. Sherman questioned if the applicant claims this was there before 1978. Mr. Irving advised they didn't appeal claiming that it was grandfathered.

Ms. Sherman stated they enclosed an area making a 20' x 26' living space and there is still a shed and porch attached. Mr. Irving stated that the deck and shed were not found to be grandfathered from the floodplain restrictions and this is why they are seeking a variance.

Attorney Malia questioned if notices were sent to Donald and Christine Bowden. Mr. Irving advised this matter was scheduled for May and the Bowden's requested it be continued. There is no requirement to re-notice a continued hearing as it was done at their request. Mr. Irving stated that the only thing subject to violation on this property is the deck and the detached shed. Also, the Board needs to consider if this will jeopardize the flood insurance program with FEMA.

Richard Carruthers requested to speak. Ms. Sherman next asked for public comments; Mr. Carruthers stated that he has been in the building trade for 25 plus years. He knows grades, etc. Mr. Carruthers stated there may be a Letter of Map Amendment (LOMA) now. Their elevation would put them high enough for a LOMA. Ms. Sherman stated the Bowden's are not present today and if they had appeared they could have advised if they were going for a LOMA. Ms. Sherman advised the Bowden's will receive a Notice of Decision. Mr. Carruthers stated he just wanted to make the Board aware of this.

Ms. Sherman asked for further public comment; there were none.

Ms. Sherman read item 1. **Mr. Hylen made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Hylen advised he would be voting in the negative due to the fact this jeopardize the Town's participation in the Flood Insurance Program. Mr. Chalmers agreed. **The motion failed unanimously.**

Ms. Sherman read item 2. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Hylen commented that this goes directly against the spirit of the ordinance. **The motion failed unanimously.**

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Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Hylen, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Hylen stated there is no justice for the townspeople granting this application. **The motion failed unanimously.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Ms. Tobin stated values would be diminished if the Town is not able to participate in the National Flood Insurance Program. **The motion failed unanimously.**

Ms. Sherman read item 5.a.i. **Ms. Tobin 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.** Ms. Sherman asked for Board comment; Mr. Hylen stated he does not think there is anything that distinguishes this from other properties in the area. **The motion failed unanimously.**

Ms. Sherman read item 5.a. ii. **Mr. Hylen made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Mr. Hylen stated that he doesn't believe this is a reasonable use for construction in the floodplain. **The motion failed unanimously.**

Mr. Hylen made a motion, seconded by Mr. Chalmers, 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 comments; there were no comments from the Board. **The motion failed unanimously.**

Ms. Sherman read item 5.b. **Ms. Tobin made a motion, seconded by Mr. Hylen, 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. Hylen stated the property can still be used. **The motion failed unanimously.**

Ms. Sherman read item 6. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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. Hylen stated that the applicant has not shown anything to the contrary. **The motion failed unanimously.**

Ms. Sherman read item 7. **Ms. Tobin made a motion, seconded by Mr. Bartolomeo, that Item 7 was not applicable.** **The motion carried unanimously.**

Ms. Sherman read item 8. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Mr. Hylen stated that he would be voting no because granting a variance would afford no relief from flooding. **The motion failed unanimously.**

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Mr. Chalmers 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. The motion failed unanimously.

Mr. Irving advised that he will inform the applicants of the decision of the Board and advise them they have thirty (30) days for a rehearing. This matter concluded at 8:00 p.m.

OTHER BUSINESS

Ms. Tobin moved, seconded by Mr. Hylen, to adjust the agenda to take the matter regarding Eugene Duggan and Pamela Lamontagne out of order. The motion carried unanimously.

Eugene Duggan and Pamela Lamontagne (PID 251-63) to consider a Motion for Rehearing at 114 E Road, Conway (File #12-55): The Board reviewed the information. Ms. Sherman asked if the Board sees anything in the appeal that was information that they did not have at the time of the meeting. Mr. Irving explained no new testimony can be given; however, the Board can discuss the information. There was brief discussion by the Board.

Mr. Hylen made a motion, seconded by Mr. Bartolomeo, to grant the Motion for Rehearing requested by Eugene Duggan and Pamela Lamontagne. The motion carried 3-2-0 with Messrs. Hylen and Bartolomeo and Ms. Tobin voting in the affirmative and Mr. Chalmers and Ms. Sherman voting in the negative.

Mr. Irving advised Mr. Duggan that the Board granted his request for rehearing. Mr. Irving further advised Mr. Duggan that he now has to apply for a new appeal all over again. Mr. Irving suggested Mr. Duggan have his daughter contact the town as to how to apply.

Mr. Duggan questioned if he can do anything to the property now. Mr. Irving advised the property can be used to camp. Ms. Sherman asked Mr. Duggan if he understood the process. Mr. Duggan responded in the affirmative and advised that he will have his daughter contact the town and start the process. Mr. Duggan left the meeting at 8:10 p.m.

A public hearing was opened at 8:10 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **VIRGINIA TRAFFORD/CAMPING WORLD** in regard to §147.13.5.6.2.2 of the Conway Zoning Ordinance **to allow a 65 square foot wall sign** at 1571 East Main Street, Center Conway (PID 260-48). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 3, 2012.

Bobby Reynolds from Camping World and Rob MacIntyre from New England Signs appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

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Mr. Reynolds distributed information to the Board for review as to why they feel they should be allowed a larger sign. Mr. Reynolds stated they have multiple locations, catalogue business, internet customers, etc. Mr. Reynolds stated they feel they need for their customers to see them as fast as they can. The customer base likes to spend money and this is good for everyone. They are asking to make the sign more visible so that customers can find them quicker. The extra square footage of signage would help to get their customers to them quicker and safer and this is good for everyone in the community.

Mr. MacIntyre stated that he came out to look at the area for the sign. He didn't notice the place until he was upon it. Mr. MacIntyre stated he feels you have to be on top of the store to see it. Also, the way the building sits back they have a knoll situation. The Fire Station has the luxury of a sign at the road and Camping World does not because of the knoll. An increase to the size of the letters on the sign would make for better visibility of the sign.

Ms. Sherman questioned how much increase they are asking for. Mr. MacIntyre advised they are asking for 65 feet. Mr. Bartolomeo advised that the allowable size is 45 feet. Mr. MacIntyre stated they would like to have the letters a foot higher than they have now.

Mr. Bartolomeo stated that letter size is related to speed and if you are on a highway you would need larger signage. You do not need this in Center Conway. Also, the parking lot of Camping World is full of RV's and the applicant is claiming it is hard to find and he does not understand this. Mr. Hylan stated he would like to second Mr. Bartolomeo's comments and added that you can't see sign because the campers are in the way. Also, the campers in front of the building would tell people where this place is as well. Mr. Reynolds stated there are other camping facilities on this road and they want to be able to identify themselves.

Mr. Irving reviewed this was original Plum Potters site. This is the Center Conway Village Commercial District which limits retail space to 3,000 square feet or less and this facility is 16,000 feet. When it came in for site plan review the engineers reviewed this site and gave it a perch and drainage and this enhances the visibility. If it had been lower, you may not have been able to see it. This was reviewed during Site Plan Review with the Planning Board and this allowed them to have, and they got a waiver for, more outdoor display space. During these discussions, there was never a discussion regarding coming to the ZBA for a variance for signage. It was the developer's choice to have their products up front.

Mr. Bartolomeo questioned if they really have people saying they are having trouble finding Camping World. Mr. Reynolds responded in the affirmative. Mr. Reynolds added that Camping World purchased the dealership from the original owner and brought in more stock and expanded their line. History has shown us from the customer base, the better the signage they can have, the better off their customers are to find it.

Ms. Sherman pointed out that the Ordinance is in place to eliminate competition for more and bigger signs.

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Ms. Tobin stated when the applicant came to the Planning Board; this is what they wanted regarding location, set up, etc. Ms. Tobin next stated that the building is flat with letters. Ms. Tobin asked with larger letters how this will increase the visibility from the road. Mr. MacIntyre stated the issue is visibility on that part of the wall. The size of the letters now restricts visibility. By enlarging them one foot it will increase the visibility. Every foot increases visibility 400 feet.

Ms. Sherman asked for public comments; there were none and there were no further comments from the Board.

Ms. Sherman read item 1. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Ms. Tobin stated this would be contrary to public interest. **The motion failed unanimously.**

Ms. Sherman read item 2. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Ms. Tobin stated she would be voting in the negative as the ordinance is intended to keep signs as small and limited as possible. **The motion failed unanimously.**

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Hylen, that substantial justice is done.** Ms. Sherman asked for Board comment; Ms. Tobin stated she does not see how increasing the sign will be justice. **The motion failed unanimously.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Ms. Sherman stated that she does not think that any of the discussion has any bearing on values of the surrounding properties and, also, if the sign is enlarged, some of the other properties may feel they are disadvantaged. Mr. Hylen agreed. **The motion failed 1-4-0 with Ms. Tobin voting in the affirmative and Ms. Sherman and Messrs. Bartolomeo, Chalmers and Hylen voting in the negative.**

Ms. Sherman read item 5.a.i. **Ms. Tobin 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.** Ms. Sherman asked for Board comment; the Board agreed they did not think there was anything that distinguished this from the other properties in the area. **The motion failed unanimously.**

Ms. Sherman read item 5.a. ii. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Ms. Sherman stated she will vote in the negative and the reason is that they have adequate signage as far as other businesses in town. Ms. Tobin stated that she didn't feel it was unreasonable to ask. **The motion failed 1-4-0 with Ms. Tobin voting in the affirmative and Ms. Sherman and Messrs. Bartolomeo, Chalmers and Hylen voting in the negative.**

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Ms. Tobin 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. Ms. Sherman asked for Board comment; it was agreed there is no hardship. The motion failed unanimously.

Ms. Sherman read item 5.b. **Ms. Tobin made a motion, seconded by Mr. Hylen, 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; Ms. Tobin advised she would be voting no because they created a lot of their own special conditions at the site. **The motion failed unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo that, based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow a 65 square foot wall sign be granted. The motion failed unanimously.

Mr. Irving advised the applicant they have thirty (30) days to request a rehearing and if that request is not granted they can, if they choose, take the matter to the Superior Court. This matter concluded at 8:32 p.m.

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **WHITEHORSE LEDGE RETAIL PROPERTY MANAGEMENT, LLC/NORTH COUNTRY FAIR JEWELERS** in regard to §147.13.16.3.1 of the Conway Zoning Ordinance **to allow the construction of an 8' x 19' deck and exterior stairs within Wetland and Watershed Protection Overlay District setback** at 2448 White Mountain Highway, North Conway (PID 219-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters Friday, August 3, 2012.

Shawn Bergeron of Bergeron Technical Services appeared before the Board on behalf of the applicant. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Bergeron advised they are looking for a variance for the property where North County Fair Jewelers is located. What they are trying to accomplish is a small deck and another means of egress from the second floor. This will not have any effect on the wetlands. We have to provide 50 feet of vegetative bugger and this will not encroach.

Mr. Bartolomeo questioned the use of the second floor. Mr. Bergeron advised it is 643 square feet of business space. Mr. Bartolomeo questioned who requested the second egress as the second story was not an issue before when the building held the Observatory. Mr. Bergeron explained that life safety codes have changed and would not require a second means of egress.

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The owners have an issue with their insurance company and, also, the owner is not comfortable with the situation.

Mr. Bergeron next reviewed the proposed 8' x 19' foot deck with the Board. Mr. Bartolomeo questioned how high the deck is above grade. Mr. Bergeron explained that because of where the deck would sit it is probably about 40 feet. Mr. Bergeron next reviewed the stairs. Mr. Chalmers asked about the proposed second story addition. Mr. Bergeron explained they have to raise the area to get it higher to get a doorway. Mr. Irving questioned if there is any reason why the dormer won't protect the stairs. Mr. Bergeron explained he does not really know why it was designed this way; however life safety codes state for it to be considered a second means of egress it has to be shoveled or covered.

Ms. Sherman asked for questions or comments from the public; there were none. Ms. Sherman asked if there were any further questions from the Board; there were none.

Ms. Sherman read item 1. **Mr. Hylen made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 2. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Hylen, that substantial justice is done.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 5.a.i. **Ms. Tobin 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.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 5.a. ii. **Ms. Tobin made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

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Ms. Tobin 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. Ms. Sherman asked for Board comment; there were no comments. Motion carried unanimously.

Mr. Chalmers made a motion, seconded by Ms. Tobin that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to allow the construction of an 8' x 19' foot deck and exterior stairs within the Wetland and Watershed Protection Overlay District setback be granted. Mr. Bartolomeo commented that he supports the variance due to life safety issues. Motion carried unanimously.

Mr. Bergeron left the meeting at 8:49 pm.

A public hearing was opened at 8:50 pm to consider a **SPECIAL EXCEPTION** requested by **H. CAROL LYNCH** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance **to construct a town standard road within the Wetland and Watershed Protection Overlay District buffer** at 539 Intervale Crossroads, North Conway (PID 214-42.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 3, 2012.

Josh McAllister of H.E. Bergeron Engineers appeared before the Board representing Carol Lynch. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. McAllister advised that previously they received a special exception for a driveway. The ordinances in the Town of Conway have now changed for property frontage. They are looking to supersede the previous approval to construct a driveway on these lots and they would like to construct a town standard road. This is a 30 acre family owned lot and will probably be subdivided in the future. Mr. McAllister next stated that on the lot is a barn used for business and the whole property has grandfathered commercial use.

Mr. Bartolomeo questioned if the four lots showing are not subdivided. Mr. McAllister stated they are not subdivided. Mr. Irving explained they need to first get relief to encroach within the buffer and also need to get this Board's blessing to get a driveway through the lot to serve the proposed two furthest lots. Then, after they get the zoning issues settled, will go to the Planning Board for site plan review to separate the lots.

The Board next further reviewed the plans. Ms. Sherman asked for public comment; there were no public comments.

Ms. Sherman asked for further Board questions; Mr. Hylen stated that he did not feel educated enough to know if doing this would harm the environment. He didn't feel he had enough information to make a good decision on this and if it should be allowed to disturb the wetlands. Mr. McAllister explained the road is not impacting the wetland and it crosses the buffer. If it did

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go through wetlands they would have to go to the NHDES. The proposal right now is to put the road where the buffer and setbacks are located. Mr. Irving pointed out that when this gets to the Planning Board for site plan review, the Town Engineer, Paul DegliAngeli, will review this matter for runoff, drainage, etc. There were no further questions from the Board.

Ms. Sherman read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 2. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there were no comments. **Motion carried unanimously.**

Ms. Sherman read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that Item 4 is not applicable. The motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to construct a town standard road within the Wetland and Watershed Protection Overlay buffer be granted. The motion carried unanimously.

A public hearing was opened at 9:03 pm to consider a **SPECIAL EXCEPTION** requested by **H. CAROL LYNCH** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance **to construct a driveway within the Wetland and Watershed Protection Overlay District** at 539 Intervale Crossroads, North Conway (PID 214-42.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 3, 2012.

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. McAllister reviewed the lot with the Board and advised that there are strands of wetland. Mr. McAllister next advised that this is easiest place to put a driveway with the least impact.

Ms. Sherman asked for public comments; there were none. Ms. Sherman asked for any further Board questions or comments; there were none.

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Ms. Sherman read item 1. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there were no comments. **The motion carried unanimously.**

Ms. Sherman read item 2. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there were no comments. **The motion carried unanimously.**

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; Mr. Bartolomeo complimented the applicant on the good job of laying this out in order to minimize wetland crossings. **The motion carried unanimously.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Mr. Hylen, that Item 4 is not applicable.** **The motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Ms. Tobin that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to construct a driveway within the Wetland and Watershed Protection Overlay be granted. **The motion carried unanimously.**

This matter concluded at 9:07 p.m.

OTHER BUSINESS

Claude and Dorothy Boisvert (PID 251-47) to consider a Motion for Rehearing at 14 & 18 B Road, Conway (File #12-56): The Board reviewed the information. Ms. Sherman asked if the Board sees anything in the appeal that was information that they did not have at the time of the meeting.

Mr. Irving and Mr. Bartolommeo stated there has been no new information. Mr. Irving questioned if anyone found anything that alluded to a technical error. Ms. Sherman stated there is nothing she can see that looks like an argument against the decision made in this matter. Mr. Irving questioned if anyone on the Board thinks there is anything in the request for rehearing that might result in a different outcome. The Board agreed there was not anything that might result in a different outcome.

Mr. Bartolomeo made a motion, seconded by Ms. Tobin, to make a finding of fact that the appeal for rehearing did not provide new information that was not available at the time of the hearing, that the applicant did not convince the Board that there was a technical error, nor did they present anything that would like alter the outcome of the original hearing. **The motion carried unanimously.**

ADOPTED: September 19, 2012 – As Written
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Mr. Chalmers made a motion, seconded by Ms. Tobin, to grant the Motion for Rehearing requested by Claude and Dorothy Boisvert. Motion failed unanimously.

There was next brief discussion on the number of variance requests regarding Transvale. Mr. Irving advised they are tapering off. There was further brief discussion of cleaning up the area, water issues, etc.

At 9:27 p.m. Ms. Tobin, seconded by Mr. Hylan, to adjourn the meeting. The motion carried unanimously.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Karen J. Hallowell", with a long horizontal flourish extending to the right.

Karen J. Hallowell
Recording Secretary