

ZONING BOARD OF ADJUSTMENT

MINUTES

FEBRUARY 17, 2016

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 17, 2016 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Dana Hylan; Alternate, Martha Tobin; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER(S)

Ms. Sherman appointed Ms. Tobin and Mr. Steiner as voting members. Mr. Hylan and Mr. Colbath are not voting members at this time.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **RYAN BURKE** in regards to §147.13.4.4 of the Conway Zoning Ordinance **to allow the construction of an addition and two-story garage within the side setback** at 171 Kearsarge Road, North Conway (PID 219-54). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, November 25, 2015. This hearing was continued from December 16, 2015 and January 20, 2016.

Shawn Bergeron of Bergeron Technical appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron stated since the December 16, 2015 meeting there have been some significant changes from the original proposal. Mr. Bergeron stated they have taken the proposed garage and moved it back on the property; the request now is for 37 square feet of additional non-compliant space. Mr. Bergeron stated there is currently 267 square feet of non-conformity and the proposed non-conformity is 304 square feet which includes the roof overhang.

Ms. Sherman asked for Board comment; Mr. Chalmers asked the reason for the additional 37 square feet. Mr. Bergeron stated it is a narrow parcel; and would like the building to be 28-feet. Mr. Bartolomeo asked if that additional square footage includes the eave overhang. Mr. Bergeron answered in the affirmative. Ms. Sherman asked if it includes the roofing over the doorway entrance. Mr. Bergeron answered in the affirmative.

Mr. Steiner asked about the front building addition and if it was constructed after zoning. Mr. Irving stated it was prior to zoning; it has been the same footprint since 1978. Mr. Irving stated he found no evidence to support the claim that it was not grandfathered. Ms. Sherman asked how far from the side line is the garage; it was proposed to be two-feet on the previous plan. Mr. Bergeron answered it will be approximately 6-feet at the closest point which includes the roof overhang; the existing home is 3-feet on one end and about 2-1/2 feet at the other end.

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Mr. Chalmers asked how this apartment was going to be occupied; would it be work-force housing. Mr. Bergeron stated there are two potential occupants; work force housing or her parents. Mr. Chalmers asked if this would be an Air BNB. Mr. Bergeron answered in the negative.

Ms. Sherman asked for public comment; Sheila Duane representing the Tarberry Company asked about the parking as they are concerned with overflow parking on their lot. Mr. Bergeron stated there is 26-feet east to west and 32-feet in depth; they will be able to keep all of their cars and anyone associated with the apartment in the driveway. Mr. Bergeron stated plus two cars can be parked in the garage.

Mr. Chalmers asked Ms. Duane if they are currently getting overflow parking now. Ms. Duane answered in the affirmative and stated they want to make sure the overflow parking can be satisfied on their lot. Ms. Duane stated if they can support their own parking, we are happy with the additional square footage. Mr. Bergeron stated it becomes a neighbor issue to deal with; and he will pass that on to his client. Mr. Colbath asked Ms. Duane if the lot is posted. Ms. Duane answered in the negative and stated that we just ask them to move.

Mr. Chalmers asked if the awning over the door is part of the existing footprint. Mr. Bergeron stated it is in the calculation. Ms. Duane asked the location of the entrance to apartment. Mr. Bergeron stated it is on the west side. Mr. Steiner asked how will they park. Mr. Bergeron answered head on to the garage. Mr. Bartolomeo stated it is good to note that the encroachment is less than the existing house; think you did a very good job with the site.

Ms. Sherman read item 1. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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. **Ms. Tobin made a motion, seconded by Mr. Steiner, 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. **Ms. Tobin made a motion, seconded by Mr. Steiner, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Mr. Chalmers, 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. Chalmers made a motion, seconded by Mr. Steiner, 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. Bartolomeo stated the Town is full of these old substandard village lots; the Board has been accommodating to these conditions. Mr. Chalmers stated it is a single-family home already and there is nothing to preclude this from being a single-

family home. Mr. Chalmers stated there is no requirement to have a garage so there is no hardship. **Motion carried with Ms. Tobin and Mr. Chalmers voting in the negative.**

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

Mr. Chalmers made a motion, seconded by Mr. Steiner, 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 carried with Ms. Tobin and Mr. Chalmers voting in the negative.**

Ms. Tobin made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.13.4.4 of the Town of Conway Zoning Ordinance to allow the construction of an addition and two-story garage within the side setback be granted. Motion unanimously carried.

A public hearing was opened at 7:20 pm to consider a **SPECIAL EXCEPTION** requested by **RYAN BURKE** in regards to §147.13.4.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 171 Kearsarge Road, North Conway (PID 219-54). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, November 25, 2015. This hearing was continued from December 16, 2015.

Shawn Bergeron of Bergeron Technical appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bartolomeo asked the square footage of the apartment. Mr. Bergeron answered 770 square feet. Ms. Sherman asked for public comment; Sheila Duane representing the Tarberry Company stated that it comes down to the parking, that is our concern.

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

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

Ms. Sherman read item 3. **Ms. Tobin made a motion, seconded by Mr. Chalmers, that the apartment is architecturally compatible with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Ms. Tobin made a motion, seconded by Mr. Steiner, that sufficient parking is located on site as presented.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Tobin made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.4.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

VOTING MEMBERS

Mr. Hylen and Mr. Colbath became voting members at this time; Ms. Tobin and Mr. Steiner became non-voting members at this time.

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **JANE SEAVEY** in regards to §147.13.4.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 29 Oak Street, North Conway (PID 219-10). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, February 4, 2016.

Jane Seavey appeared before the Board at this time. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if this is a single-family home. Ms. Seavey answered in the affirmative. Ms. Sherman asked if Ms. Seavey occupies the other side. Ms. Seavey answered in the affirmative. Ms. Sherman asked if there is sufficient parking. Ms. Seavey answered in the affirmative and stated there is a large yard. Mr. Bartolomeo stated the apartment may be slightly larger, but it has been there for a long time. Ms. Seavey stated since 1954, it is a family home.

Ms. Sherman asked for public comment; Robert Nelson stated he knows the house and no one would know any different.

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

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

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the apartment is architecturally compatible with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.4.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

A public hearing was opened at 7:33 pm to consider a **VARIANCE** requested by **ROBERT W. NELSON** in regards to §147.13.8.4 of the Conway Zoning Ordinance **to allow an electrical meter panel to remain within the front setback** at 24 Emery Lane, Conway (PID 265-157.1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, February 4, 2016.

Wes Smith of Thaddeus Thorne Surveys and Robert Nelson appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked how long has it been in its present location. Mr. Nelson answered since June 2014; it is a service disconnect as well. Mr. Nelson submitted a photo to the Board. Mr. Bartolomeo asked if it is meter reader height. Mr. Nelson answered in the affirmative and stated it was the spot designated by Eversource.

Mr. Bartolomeo asked if they were not aware of the setback. Mr. Smith stated there was no disconnect; it was to go directly from the pole to the building, but when they came to the site the disconnect was discussed and located, not knowing there was necessary relief needed for the location chosen.

Mr. Bartolomeo stated they are usually on the building. Mr. Nelson stated at that time there wasn't a building there. Mr. Irving stated in 2012 there was to be underground utilities from the pole to the building; it was not constructed per the approved site plan. Mr. Irving stated a subsequent site plan approval indicated that it would be moved out of the setback. Mr. Nelson stated we had to do that to get the site plan to go through. Mr. Nelson stated it was discussed with the power company that it would be safety factor to have the disconnect away from the building.

Mr. Chalmers asked what will be in the building. Mr. Nelson answered it would be for equipment. Mr. Chalmers stated a remote disconnect is not a bad idea. Mr. Chalmers asked if the utility company placed this. Mr. Nelson stated the utility company and the electrician chose this location. Mr. Smith stated on the site plan there was no disconnect; that came after the building permit was issued and not knowing it was required to be in a certain place. Mr. Nelson stated we did not know it was considered a structure. Mr. Nelson stated when the shrubbery grows it will be hidden.

Ms. Sherman asked how much is the encroachment. Mr. Smith answered 10-feet from the right-of-way line. Mr. Irving stated it encroaches 15-feet within the setback. Ms. Sherman asked why was it not put underground. Mr. Nelson stated it is a meter enclosure and a disconnect. Mr. Smith stated everything else is underground; that is why we are asking this to be allowed to remain.

Mr. Bartolomeo stated the Planning Board asked for it to be moved, and now you are before this Board; don't want to step on another Board's toes. Mr. Irving stated the location is a violation of the zoning ordinance and because of where they put it, the Planning Board would not have been able to consider the application if it remained because they cannot act on a zoning issue. Mr. Irving stated they could have come here at that time. Mr. Irving stated the Planning Board has

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buffer requirements as well and this location would have required a waiver from that requirement. Mr. Bartolomeo stated the location violated both the Site Plan Regulations and the Zoning Ordinance. Mr. Smith stated he was not aware that the electrical disconnect was a structure; only discovered when we came back to the Planning Board.

Mr. Steiner stated this can be changed pretty easily. Mr. Nelson stated since then he has done some research, and he would like an education on why this is a violation and considered a structure. Mr. Irving stated there is a definition of structure in the Zoning Ordinance. Mr. Bartolomeo read the definition of a structure in the Zoning Ordinance.

Mr. Colbath asked if we were to approve this it has to go back to the Planning Board. Mr. Irving answered in the affirmative and stated they would have to seek a waiver to allow it to remain within the buffer. Mr. Colbath asked if the Planning Board cannot consider until this Board approves. Mr. Irving stated they need permission to allow it to remain under zoning.

Mr. Steiner stated to fix it he doesn't think it is a big deal; if it cost \$1,000 that is not a big deal. Mr. Nelson stated if it is moved to the proposed location will likely lose a big oak tree. Mr. Irving stated there is an approved site plan where they addressed this issue; if that new location is found to be too close to a tree they can move it over as long as it does not violate the regulations.

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

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated the variance would allow them relief from the zoning ordinance and there is enough room on the property. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Ms. Sherman stated the setbacks are in place for a good reason. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; Ms. Sherman stated upholding the ordinance is not outweighed by any justice to the public. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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 Mr. Chalmers, 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; Ms. Sherman stated there is obviously mitigation that can be done by removing the structure from its present location and moving it back. **Motion unanimously defeated.**

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

Mr. Colbath 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 comment; there was none. **Motion unanimously defeated.**

Ms. Sherman read 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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; there was none. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.8.4 of the Town of Conway Zoning Ordinance to allow an electrical meter panel to remain within the front setback be granted. Motion unanimously defeated.

Ms. Sherman stated the applicant has 30-days to ask for a rehearing; a rehearing can be granted if there was a technical error made or new information that has become available that was not available for this hearing. Mr. Nelson asked why are the setbacks in place. Mr. Colbath stated setbacks are meant to buffer abutting properties and from rights-of-ways for plowing to protect your property and abutting property. Mr. Colbath stated they are also for aesthetics. Ms. Tobin left at this time.

A public hearing was opened at 8:04 pm to consider a **VARIANCE** requested by **SCRC, LLC/PETER GAGNE** in regards to §147.13.14.3 of the Conway Zoning Ordinance **to allow structures, including a wooden deck and a removable dock, within the floodplain and the floodway** at 558 White Mountain Highway, Conway (PID 262-60). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, February 4, 2016.

Wes Smith of Thaddeus Thorne Surveys and Peter Gagne appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if the deck and dock already exist. Mr. Gagne answered in the affirmative. Mr. Gagne stated he purchased the former Ye Garden Centre property in 2012; the property has had canoes and kayaks since 1994 and ran continuously until 2004-2005.

Mr. Gagne stated when he purchased the property in 2012 he started making improvements. Mr. Gagne stated he hired Great Northern Docks in 2014 for easier access and to be able to remove it easily. Mr. Gagne stated the path was created by the State of New Hampshire in 2012 when they needed access for rip rap and is approximately 8-foot wide. Mr. Smith stated the State put gravel down for their equipment.

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Mr. Gagne stated there is a platform and two ramps, 12-feet and 8-feet wide to get to the river. Mr. Gagne stated guests can safely get to and out of the river. Mr. Bartolomeo asked how they were getting in and out of the river before they were installed. Mr. Gagne stated they would be coming up the hill. Mr. Bartolomeo asked if the wooden part is over the original crushed gravel. Mr. Gagne answered in the affirmative. Mr. Gagne stated as far as the ramp, the platform can be taken out in under an hour and we monitor the river all the time. Mr. Gagne stated the water will reach the platform at approximately 16-feet. Mr. Chalmers asked when the river rises you have removed it. Mr. Gagne answered in the affirmative.

Mr. Steiner asked how much have you invested. Mr. Gagne answered \$8,700. Mr. Steiner stated so there is an incentive to remove it. Mr. Gagne agreed. Mr. Gagne stated 100 to 200 people use it on a daily basis. Mr. Steiner asked how deep is the water. Mr. Gagne stated in this section it is pretty deep, but there are a couple of rocks at the base and there is an eddy that is about ankle deep. Mr. Gagne stated this is much safer because the platform is not as steep and with the handrail it is easier to walk up and down.

Mr. Bartolomeo asked when you engaged Great Northern Docks did they mention you needed a permit. Mr. Gagne answered in the negative and stated he didn't think he needed one because it is so moveable. Mr. Bartolomeo stated it's just another thing that comes to us after it is constructed.

Ms. Sherman asked how many feet in length is this structure. Mr. Gagne stated it is 46'x 5'; 230 square feet. Mr. Colbath asked if the mat system is a structure. Mr. Gagne stated it is used for erosion control. Mr. Colbath asked if it can be rolled up and removed. Mr. Gagne answered in the affirmative and stated the reason for the wood is when people are walking on the rocks, even though he requires some sort of footwear, it hurts their feet. Mr. Gagne stated he has no objection to changing to the other surface. Mr. Smith stated they would like to keep it removable. Mr. Bartolomeo stated it is a good looking product, it is easily removable and it helps with erosion.

Mr. Irving stated this is not exclusively used by their clients, if anyone wants to get off the river this gives them a safe place to do so. Mr. Bartolomeo asked the material. Mr. Gagne stated it is pressure-treated for the walkway and cedar for the ramp. Ms. Sherman asked how many times have you had to take it out. Mr. Gagne stated the bottom two sections are the only ones he's had to take out and usually twice a summer. Mr. Colbath asked if it is removed at the end of the season. Mr. Gagne answered in the affirmative. Ms. Sherman asked if the only thing permanent is the railing and whatever the deck sets on. Mr. Gagne agreed and stated there are six posts.

Mr. Irving read an email from Paul Tabacco, President of Eastern Slope Camping Area. Mr. Irving stated that a plan and a deed had also been dropped off. Mr. Irving stated whether or not there is a civil agreement between them it is just that a civil agreement. Mr. Irving stated at this time this Board is not approving any parking or a parking lot. Mr. Colbath stated it is not germane to this application. Mr. Bartolomeo stated he is more concerned about the right-of-way than with the structures before us. Mr. Irving agreed.

Mr. Smith stated none of the structures are within the 33-foot right-of-way. Mr. Smith stated the walkway is in the right-of-way, but there is nothing impeding the right-of-way. Mr. Irving stated

any right-of-way questions is a civil matter. Mr. Irving stated what this Board is addressing are the structures and they are not within that right-of-way. Ms. Sherman stated there are no structures within that right-of-way. Mr. Smith stated that is correct.

Ms. Sherman asked for public comment; Robert Nelson stated it is a much better system to walk on. Mr. Chalmers asked you didn't think you needed permits. Mr. Gagne answered in the negative and stated because they are removable; and he thought it was a safety issue.

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

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Chalmers stated there are no structures in this area. **Motion carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Hylen voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Hylen voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Hylen voting in the negative.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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. Chalmers stated he doesn't see anything that distinguishes this property from other properties in the area. **Motion carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Hylen voting in the negative.**

Ms. Sherman read item 5.a.ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Mr. Hylen asked what is the use and is it a reasonable use within the floodplain. Mr. Bartolomeo stated it has potential for a public rescue landing. Ms. Sherman stated the proposed use is a structure, not a use. Mr. Irving stated the use is accessing the river and the structure allows you access to the river. Ms. Sherman stated the use is permitted by special exception. Mr. Irving stated the question is, is it a reasonable use. **Motion unanimously carried.**

Mr. Colbath 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 comment; there was none. **Motion carried with Mr.**

Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Hylen voting in the negative.

Ms. Sherman read item 6. **Mr. Colbath 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. Bartolomeo stated if he removes it, that would address this. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Ms. Sherman asked for Board comment; Mr. Chalmers stated there is testimony that he removes it during a flood. **Motion unanimously carried.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Mr. Bartolomeo asked when it is higher than a certain flow rate you don't allow anyone down there. Mr. Gagne agreed and stated at five-feet; at seven feet we remove it and at nine feet it floods. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.14.3 of the Town of Conway Zoning Ordinance to allow structures, including a wooden deck and a removable dock, within the floodplain and the floodway be granted. Motion unanimously carried.

A public hearing was opened at 8:48 pm to consider a **VARIANCE** requested by **SCRC, LLC/PETER GAGNE** in regards to §147.13.16.3.1; §147.13.1.4; and §147.13.8.4 of the Conway Zoning Ordinance **to allow structures, including a wooden deck and a removable dock, within the wetland setback and the side setbacks** at 558 White Mountain Highway, Conway (PID 262-60). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, February 4, 2016.

Wes Smith of Thaddeus Thorne Surveys and Peter Gagne appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if they are located on the property line. Mr. Gagne answered in the affirmative. Ms. Sherman asked what is the setback. Mr. Irving answered 75-feet from the wetland, 10-feet from the property line in the Highway Commercial District, and 15-feet from the property line in the Residential Agricultural District.

Ms. Sherman stated the only thing permanent within the setback is the railing and the posts in which the decking rests. Mr. Smith agreed. Mr. Gagne stated it has been where the existing path has been since 1994. Mr. Smith stated this is the most reasonable access due to the existing path and it is less steep.

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Mr. Chalmers asked if there is no reasonable way to comply with the setbacks. Mr. Gagne stated it could be reengineered for the center of the property, but it is steeper and would require more stairs. Mr. Gagne stated the existing path was already cut in. Mr. Smith stated it is more stable at the present location. Mr. Gagne stated just to the left of the handrail in the southwest corner there is a 4-foot berm and then the State of New Hampshire culvert, it could be shifted about two-feet.

Mr. Bartolomeo stated no matter where you put it you have to cross setbacks. Mr. Gagne stated that is correct. Ms. Sherman stated usually side setbacks are for access and not going to use it for that anyway. Mr. Gagne stated it is very steep to the left, toward the NH Works building. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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 Mr. Chalmers, 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 Mr. Chalmers, 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 Mr. Chalmers, 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 Mr. Chalmers, 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 carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Hylen voting in the negative.**

Ms. Sherman read item 5.a.ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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 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 comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers and Mr. Hylen voting in the negative.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.16.3.1; §147.13.1.4; and §147.13.8.4 of the Conway Zoning Ordinance to allow structures, including a wooden ramp and a removable dock, within the wetland setback and the side setbacks be granted. Motion unanimously carried.

APPOINTMENT OF AN ALTERNATE MEMBER

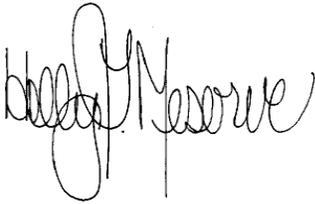
Ms. Sherman appointed Mr. Steiner as a voting member at this time; Mr. Hylen became a non-voting member.

REVIEW AND APPROVAL OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo to approve the Minutes of January 20, 2016 as written. Motion carried with Mr. Steiner, Mr. Bartolomeo, Mr. Chalmers and Ms. Sherman voting in the affirmative and Mr. Colbath abstaining from voting.

Meeting adjourned at 9:15 pm.

Respectfully Submitted,



Holly L. Meserve
Recording Secretary