

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**DECEMBER 21, 2016**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 21, 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; Andrew Chalmers; Luigi Bartolomeo; Dana Hylan; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Town Attorney, Peter Malia; Board of Selectmen Attorney, Karyn Forbes; and Building Inspector, David Pandora, were in attendance.

**PUBLIC HEARINGS**

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **THOMAS AND CAROL STAPINSKI** in regards to §147.15.2 of the Conway Zoning Ordinance **to allow an accessory apartment greater than 800 square feet** at 188 Mechanic Street, North Conway (PID 219-19). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 9, 2016.

Thomas Stapinski appeared before the board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Stapinski stated he is constructing a garage and would like to construct an accessory apartment above it. Mr. Stapinski stated the garage is 28' x 32'; the stairwell is 56 square feet so he is requesting a variance for 40 square feet.

Ms. Sherman stated the reason for the 800-square foot limit is to provide affordable housing. Mr. Colbath asked if there is a plan of the interior. Mr. Stapinski answered in the negative. Mr. Bartolomeo stated the interior of the building is most likely 27' x 31' and minus the stairwell it would be less than 800 square feet. The Board and applicant agreed to continue the hearing to confirm the actual size of the apartment.

**Mr. Colbath made a motion, seconded by Mr. Chalmers, to continue the hearing for the variance requested by Thomas Stapinski until January 18, 2017 at 7:00 pm.** Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 7:10 pm to consider a **SPECIAL EXCEPTION** requested by **THOMAS AND CAROL STAPINSKI** in regards to §147.13.4.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 188 Mechanic Street, North Conway (PID 219-19). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 9, 2016.

Thomas Stapinski appeared before the board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if this was owner-occupied. Mr. Stapinski answered in the affirmative and stated he lives in the main house. Ms. Sherman asked if the apartment is no less than 300 square feet and no more than 800 square feet. Mr. Stapinski answered in the affirmative.

Ms. Sherman asked if the accessory apartment is located above the garage. Mr. Stapinski answered in the affirmative. Ms. Sherman stated it is being constructed in a garage so would assume it is architecturally compatible with the neighborhood. Mr. Stapinski agreed. Mr. Colbath asked how many parking spaces are there. Mr. Stapinski answered four.

Mr. Irving asked if this was for short term rentals or will it be for monthly or longer rentals. Mr. Stapinski stated he is not sure. Mr. Irving stated if it ends up being for short term rentals a site plan review will be required; if the rental is for 30 days or greater it does not. Mr. Irving stated if there is any other use other than residential, a site plan approval will be required.

Ms. Sherman asked for public comment; David Bernier, North Conway Water Precinct Superintendent, stated the North Conway Water Precinct does require \$2,880 to hook up to the municipal water and sewer.

Ms. Sherman read item 1. **Mr. Colbath 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. **Mr. Colbath 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. **Mr. Colbath 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. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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.**

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A public hearing was opened at 7:18 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **ETHAN AND SHANNON MCKENNEY** in regards to §147.13.16.3.1 and §147.13.16.4 of the Conway Zoning Ordinance **to waive the 75-foot setback restriction and allow the existing structure encroachment and existing buffer encroachment within the Wetland and Watershed Protection Overlay District** at 2163 East Conway Road, Center Conway (PID 255-10.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 9, 2016.

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. Shannon McKenney was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Smith stated the applicant had a survey done of the property for a unit subdivision and it was discovered that the existing house is located within the Wetland and Watershed Protection Overlay District.

Mr. Smith stated the building has been in existence since 2005; the original building permit was issued for a barn; in 2009 a building permit was issued for a living unit on the second floor of the barn; and then in 2014 the structure was converted fully to a residential unit.

Mr. Smith stated the structure has existed for more than ten years. Mr. Smith stated the existing structure will not diminish the value of surrounding properties and the cost of the correction would heavily outweigh any public gain.

Mr. Bartolomeo stated the first building permit issued in 2005 was for a barn. Mr. Smith answered in the affirmative and stated the wetland buffer was not indicated on the application. Mr. Bartolomeo asked when the wetland was discovered. Mr. Smith answered 2016 when a survey was done to determine if the lot had 2-acres for a subdivision. Mr. Smith stated the problem stems from previous owners; the wetland is not on their property, it is at the toe of the land.

Mr. Smith stated they are up on a plateau; the previous owners may not even have known it could be an issue when applying for a building permit. Mr. Bartolomeo stated the encroachment is 24.5 feet. Mr. Smith stated that is how far they are within the setback; there are also loam piles which now have substantial trees and would request to leave them undisturbed. Mr. Bartolomeo stated leaving them would do less damage than removing them. Mr. Smith stated that it correct; they don't want to impact it anymore. Mr. Smith stated the existing owners purchased the property in August 2015.

Mr. Smith stated unless a survey was done or a wetland scientist went out to the property they would not have known. Mr. Colbath asked if there has been any disturbance to the actual wetland. Mr. Smith answered in the negative and stated it is not on their property, but the Deschambeault property. Mr. Colbath stated to the best of your knowledge there has been no disturbance to the wetland. Mr. Smith stated there has been no disturbance of the wetland.

Ms. Sherman stated this came about because of a proposed subdivision. Mr. Smith answered in the affirmative and stated they have submitted an application for a two-unit subdivision. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** 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 violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** 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. Hylen, that in lieu of the findings required by the board under subparagraphs 1. and 2. (above), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.** 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 the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Hylen, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** 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 equitable waiver from §147.13.16.3.1 and §147.13.16.4 of the Town of Conway Zoning Ordinance to waive the 75-foot setback restriction and allow the existing structure encroachment and existing buffer encroachment within the Wetland and Watershed Protection Overlay District be granted. Motion unanimously carried.**

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A public hearing was opened at 7:34 pm to consider a **VARIANCE** requested by **ETHAN AND SHANNON MCKENNEY** in regards to §147.13.16.3.1 and §147.13.16.4 of the Conway Zoning Ordinance **to allow the existing structure encroachment and existing buffer encroachment within the Wetland and Watershed Protection Overlay District** at 2163 East Conway Road, Center Conway (PID 255-10.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 9, 2016.

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. Mr. Smith withdrew the request for a variance.

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A public hearing was opened at 7:34 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **CHRISTOPHER MEIER** in regards to §147.13.1.3.1; §147.13.16.3.1; and other **to appeal the issuance of a building permit to Sherri Bernier on PID 202-100** on Wyman Avenue, North Conway (PID 202-100). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, December 9, 2016.

Chris Meier appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Colbath stepped down at this time. Ms. Sherman appointed Mr. Steiner as a voting member.

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Chris Meier stated he owns PID 202-101, which abuts the subject lot. Mr. Meier stated he has three concerns which he raised in his appeal. Mr. Meier stated he did receive the brief from Town Counsel and he will respond to those issues. Mr. Meier submitted enlarged maps and copies of his deed and Sherri Bernier's deed to the Board.

Mr. Meier stated the Town took the subject property for taxes back in 1999 for about \$2,000; instead of selling the lot at auction the Town held onto the lot for almost 16 years. Mr. Meier stated in 2015 they changed how they sell tax deeded lots and took the position that they could sell tax deeded lots outside of the auction process. Mr. Meier stated he believes that is wrong, but he is not going to get into that this evening. Mr. Meier stated it is not the purview of the Board, just some background.

Mr. Meier stated the first issue he brings up in his appeal is the frontage; the town requires 150-foot of frontage. Mr. Meier stated one of the maps that he submitted is a map that the water precinct generated that shows lot 100 outlined in yellow. Mr. Meier stated the map shows the abutting lot, which is on the opposite side of the subject lot, and is owned by Scott and Christina Lees. Mr. Meier stated the map shows that the Lee's driveway, which was constructed in 2001, was actually built on lot 100, the subject lot.

Mr. Meier stated that he asserts that this allowed the shrinkage of the subject lots frontage below the 150-foot requirement; the Town of Conway Zoning Ordinance indicates that no one can take any act that reduces the non-conformity of a lot and this did by reducing the frontage to below what is required by the ordinance.

Mr. Bartolomeo asked if the driveway was built entirely on lot 99, would it then have 150-foot of frontage. Mr. Meier answered he thinks it would, but at the time the driveway was built the Town of Conway owned lot 100. Mr. Meier stated the Town allowed the driveway to be built on their own lot, inspected it and approved it on their own lot. Mr. Bartolomeo asked if it was allowed to be built without an easement. Mr. Meier answered in the affirmative.

Mr. Bartolomeo asked how does the existence of a driveway reduce the frontage. Mr. Meier stated frontage is for safety, it is for access, it is for fire vehicles; the purpose of frontage is having that frontage to the classified road for the use of the lot for which it is intended. Mr. Meier stated by allowing a driveway on a subsequent lot to be placed on that frontage of lot 100 it effectively reduces the frontage on that lot.

Mr. Meier stated he's seen the Town take a position in Birch Hill where a driveway went across another lot and actually say that it was a defacto boundary line adjustment. Mr. Meier stated he is not arguing that fact, but it does reduce the available frontage of lot 100.

Mr. Bartolomeo stated that the survey plan measures from property corner to property corner and his guess is that you have ignored that plan; gross corner to corner dimension. Mr. Meier stated he asserts that that is not frontage; if you create a boundary line adjustment because of that driveway then the surveyor cannot ignore that because the Town of Conway owned that lot at the time the driveway was permitted. Ms. Sherman asked when the lot was created. Mr. Meier answered 1967. Ms. Sherman stated prior to zoning. Mr. Meier answered that is correct. Ms. Sherman stated that it was a lot of record. Mr. Meier answered that is correct.

Mr. Meier referred to exhibit C of the Town's brief and stated to get that 150-feet of frontage he would suggest that the surveyor took significant liberties. Mr. Meier stated if you compare his deed and the Bernier deed from the Town the line between his property and the subject property is supposed to be 84 degrees west; the course the surveyor uses is 82 degrees 44-feet 11-inches. Mr. Meier stated you lose a degree and a half of footage three and a half of arc over the 271 feet that's supposed to be from that back pin.

Mr. Meier stated so instead of locating the pin where the surveyor has it, it would be approximately 10-feet north of that; that reduces the frontage below 150-feet to 140- or 141-feet. Mr. Meier stated it gets worse when you look at the back line, the line approaching the Lee's property, which is off by a whole 10 degrees. Mr. Meier stated if you look at the deed from the Town to the Bernier's that course is supposed to be 64 degrees west it's 53 degrees west; it's 11 degrees off. Mr. Meier stated that significantly moves the boundary line.

Mr. Meier stated that is his first concern with the lot, it does not have the frontage required if an emergency vehicle has to park in front of the lot, that is what frontage is for; it needs to be dedicated frontage for this lot.

Ms. Sherman stated she will ask again, when was this lot created. Mr. Meier answered 1967. Ms. Sherman stated it is a lot of record. Mr. Meier stated that is correct if it existed as it was, but when a property owner takes actions which increased the nonconformity of the lot after it was created that does away with the grandfathering. Mr. Meier stated that he agrees the lot was created before zoning and it was a lot of record; if nothing else happened then it would be buildable.

Ms. Sherman asked if he is claiming that the driveway is what makes it non-conforming. Mr. Meier answered in the affirmative and stated the Town approved and inspected the driveway. Mr. Meier stated it is a unique situation as the Town owned the property when it took away the grandfathering on its own lot. Mr. Meier stated if somebody else owned the property he would not be here arguing that, but the Town owned the lot and was the one that reduced the frontage and increased the nonconformity.

Mr. Bartolomeo stated you are maintaining that the encroaching driveway constitutes a defacto boundary line adjustment. Mr. Meier answered in the affirmative and stated or just reduces the frontage of that lot, one of the two. Mr. Meier stated the defacto boundary line adjustment will certainly reduce the frontage, but he would say, even if you don't have the boundary line adjustment, that it reduces the frontage as well.

Mr. Meier stated the second argument is the wetlands on this property. Mr. Meier stated the precinct plan has these wetlands entirely on his property, but whether they are on his property or the subject parcel, the Conway ordinance states that you cannot have a structure within 75-feet of the wetland. Mr. Meier stated if you take 75-feet off that wetland it almost encompasses the whole lot, it certainly encompasses the structure that has been applied for.

Mr. Meier stated the argument in Town Counsel's brief is that this does not constitute as part of the wetland protection district. Mr. Meier stated essentially Town Counsel's argument from what he can gather is that you don't need to be 75-feet back from the wetland if you are not within the wetland protection district.

Mr. Meier stated he would ask the Board to look at our zoning ordinance as it is written. Mr. Meier stated §147.13.16.1 defines the district boundaries of the Wetland and Watershed Protection Overlay District. Mr. Meier stated that section has seven different categories.

Mr. Meier stated this is an undelineated wetland. Mr. Meier stated he hired Greg Howard to look at the wetlands and a map was attached to his appeal. Mr. Meier stated these are wetlands.

Mr. Meier stated what Town Counsel is trying to do is take the more stringent requirement for the inclusion in the district, three or more contiguous acres, from subsection 3 and apply it to subsection 7. Mr. Meier stated he would assert that you cannot do that, you cannot take the most restrictive criteria from one of the subsections and apply it to another subsection where it is not included.

Mr. Meier stated if in drafting the Conway ordinance the drafters wanted the 3-acre requirement into the boundaries of all seven subsections they could have included that 3-acre minimum requirement in the header in 16.1 rather than in just 16.1.3. Mr. Meier stated it does not apply outside of 16.1.3 because it is not included in the other subcategories. Mr. Meier stated if they wanted to have that 3-acres included it would have been included in 7 itself or in subsection 1 that applies to all of them.

Mr. Meier stated if he was to take Town Counsel's argument to its ultimate conclusion that you could take these pieces and apply to everywhere you could say that the restriction that structures have a 75-foot setback minimum applies across all the districts, across just residential as it is, but that is not the intent. Mr. Meier stated if it is supposed to apply within the subsections it should be in that subsection itself; you cannot take the language that is most appropriate for your argument from another subsection and apply it to the subsection you want to.

Mr. Meier stated as a general rule, Conway is a permissive ordinance meaning if it is not permitted by the ordinance it is disallowed. Mr. Meier stated it specifically states in §147.5 as per the interpretation that the most restrictive, which includes the higher standard, which means even if it was unclear whether this was to be applied to the disputed or incorrectly delineated wetland section or just subsection 3, you have to interpret the zoning ordinance in a manner that is most restrictive so that it protects what the ordinance was created for.

Mr. Meier stated the third argument applies to the history of this lot, the Town held it for 16 years and did not sell it at any tax sale including when the abutters were asking whether if it was going to be sold. Mr. Meier stated they then changed the rules of the game after we had asked to buy this abutting lot and sold outside of the auction process.

Mr. Meier stated, however, after receiving Town Counsel's brief he looked through the entire zoning ordinance and he did not see anything that requires an applicant to show that they are the lawful and rightful owner of the property. Mr. Meier stated he cannot argue that point, but the other two issues, the frontage and the wetland, he can stand on. Mr. Meier stated that it hasn't been built on in 16 years and it shouldn't be.

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

Karen Forbes of Shaheen & Gordon stated that she was retained by the Conway Board of Selectmen to represent David Pandora who issued the building permit. Ms. Forbes stated that she will review her brief and address the issues raised by Mr. Meier. Ms. Forbes stated Attorney Meier has conceded that his third grounds for appeal is not the purview of the Board.

Ms. Forbes stated on the survey plan, that was done by Ms. Bernier who is the owner of the property by quick claim deed from the Selectmen, you will see that it has a surveyor's stamp on it, you will see that the frontage is 150-feet on the survey, you will see to the North the Lee's lot and you will see that the driveway does not at all come onto the surveyed lot.

Ms. Forbes stated again it is 150-feet between HEB rebar to be set and HEB rebar to be set. Ms. Forbes stated with all due respect to Attorney Meier, he is not a surveyor and the Board needs to rely on the survey which has been stamped by Seth Burnell and was recently done in response to this application. Ms. Forbes stated the surveyor was fully aware of the allegations made by Mr. Meier.

Ms. Forbes stated even if there was not a survey that was stamped by a surveyor that showed 150-feet this is a legally existing nonconforming lot that is protected by the ordinance, that is protected by State law and is protected by the State Constitution. Ms. Forbes stated the reason that it is protected is that zoning ordinances cannot take away people's vested property rights. Ms. Forbes stated this lot has been in existence and referred to a 1966 Worcester Hill subdivision plan which shows 150-feet of frontage and the deed from the Town conveys 150-feet along Wyman Avenue.

Ms. Forbes stated we have also provided the Board with exhibits from the ordinance; the zoning ordinance was enacted in 1980, and then there were subsequent changes to require 50-feet of frontage and then 150-feet of frontage. Ms. Forbes stated that the dates are indicated in her memo.

Ms. Forbes stated in response to some of the arguments made by Attorney Meier, he tried to claim that a driveway effects frontage; if you look at the ordinance, in particular §147.13.1.3, it does not say at any point that a driveway effects frontage. Ms. Forbes stated that she would say to the Board that he is incorrect when he says that a driveway effects frontage. Ms. Forbes stated the definition in the zoning ordinance does not say anything about reducing frontage upon a driveway.

Ms. Forbes stated Attorney Meier tried to argue that somehow this was a defacto boundary line adjustment, it is not a defacto boundary line adjustment because, first of all the driveway is here [Ms. Forbes pointed to the driveway on the Lee's lot] and second, a boundary line adjustment requires a surveyed recorded plan and revised deeds. Ms. Forbes stated that there is a 150-feet of frontage, we have a stamped survey, and it is a legal existing lot of record and have the right to build on it.

Ms. Forbes stated in regard to the Wetland and Watershed Protection Overlay District the district has very distinct boundaries. Ms. Forbes stated what Mr. Meier did was obtain an expert who did not have consent from the Town to flag, actually flag on Town property, wetlands.

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Ms. Forbes stated most of these wetlands are located, or a portion of one of these wetlands, is located on the Meier's lot; and one is approximately 2.5-feet x 5-feet or something like that as it is difficult to read.

Ms. Forbes stated let's look at whether these wetlands that he has delineated fall within the Wetland and Watershed Protection Overlay District under the Town's ordinance. Ms. Forbes read §147.13.16.1.1 and stated that they are certainly not waterbodies. Ms. Forbes stated that Mr. Meier's expert described one as a small wood swamp located in a depression and one as a swale for surface water or culvert, neither are a great body.

Ms. Forbes read §147.13.16.1.2 and stated that this is not a watercourse. Ms. Forbes read §147.13.16.1.3 and stated that it is not three or more contiguous acres. Ms. Forbes read §147.13.16.1.4 and stated there are no water bodies identified near that property. Ms. Forbes read §147.13.16.1.5 and stated according to the Survey of Carroll County and to the plan this is in the Berkshire area. Mr. Bartolomeo asked if Berkshire is non-hydric. Ms. Forbes stated it is well-drained soil; the slope to 3-8% so it is Berkshire B.

Ms. Forbes read §147.13.16.1.6 and stated again this is not identified on the Wetland Conservation Map. Ms. Forbes stated that she does not understand Mr. Meier's argument regarding §147.13.16.1.7 and stated that it does not affect anything that we have talked about. Ms. Forbes stated that this property does not fall within the district, therefore, the 75-foot setback is not required.

Ms. Sherman asked for public comment; David Bernier stated to clarify the survey, the original overlay that was done by the survey firm that the precinct hired to do the plan before you tonight overlaid the tax map and the tax map is incorrect. Mr. Bernier stated it is incorrect because for lot 100 the tax map shows 165-feet, the actual frontage of the lot according to the deed and according to the survey before the Board this evening is 150-feet.

Mr. Bernier stated there is no encroachment of the driveway; there would have been an assumed encroachment had the lot actually been 165-feet of frontage, but it is completely moot and not germane.

Mr. Bernier stated in regard to the wetland, on the day that we were putting in the water line for the lot it rained all day and he observed the run-off from Wyman Avenue running into a low natural depression which is what Mr. Meier's soil scientist considered a wetland.

Mr. Bernier stated it is actually run-off coming off the street going into a natural depression and the water would not sit there if Mr. Meier's driveway was not super imposed. Mr. Bernier stated his driveway acts like a dam preventing the water from running into the low spot. Mr. Bernier stated when the lot is developed the ability for the water to run through the lot to go into this small impression will no longer be the case.

Mr. Bernier stated the alleged wetlands that was done by Mr. Meier's soil scientist is all within the 25-foot setback required by the Kearsarge Lighting Precinct which is more restrictive than the Town of Conway. Mr. Bernier stated we would not be able to build in that area if in fact it were a natural wetland.

Mr. Bernier stated when you hire someone and you trespass onto a property in hopes of finding a wetland your giving the order to that someone to find wetlands and make them as large as possible so hopefully this lot next door to you is an unbuildable wooded lot so that I can purchase it from the Town for \$1,000 like I did the other adjacent lot.

Mr. Bernier stated there are reasons behind what gets done and how things are explained. Mr. Bernier stated he's sure he could hire his own soil scientist and say once the water is bermed on the street preventing it from getting onto the property, that there is no wetland. Mr. Bernier stated he is a New Hampshire licensed septic system installer and his degree is in Natural Resources Management and he never would have had his wife spend our hard-earned money to buy a lot that had wetlands.

Mr. Bernier stated he knows this is a buildable lot, it is a beautiful lot of record and one of the few lots that are available in Kearsarge for building. Mr. Bernier stated he takes exception to Mr. Meier's comments; Mr. Meier has tried this argument before with the Kearsarge Lighting Precinct. Mr. Bernier stated he doesn't know when we can see an end to this, but he is putting himself in the good graces of the Board and hopes the Board does the common-sense thing here.

Mr. Bartolomeo asked Mr. Bernier if he works for the North Conway Water Precinct. Mr. Bernier answered in the affirmative and stated that his wife is the owner of record. Mr. Colbath asked whose lot is the identified driveway on. Mr. Bernier stated it is on the Lee property; their driveway is on their own property.

Sherri Bernier stated that she is the owner of record and that she closed on the property on October 28, 2016. Ms. Bernier stated at first her husband and she were going to buy the property together, but before the closing Mr. Meier initiated conversations with her husband through his office requesting information which they felt were personal and confidential. Ms. Bernier stated ultimately that is when we made the decision to put it her name only because her husband does not have a right to speak about personal issues in his office.

Ms. Bernier stated she received an email from Mr. Meier on October 31, 2016 stating that he wanted two things from us and then he would be inclined not to disrupt our building permit process. Ms. Bernier stated that he wanted a treed buffer and that we would not rent the property for less than one month.

Ms. Bernier stated she and her husband discussed the request and decided this would not upset their plans for their new home; we wanted to be amicable with our new neighbors and decided this was something we could certainly deal with so we asked him to send us something and we would consider it.

Ms. Bernier stated what came next, along with a Superior Court claim that he did not find the property deed restrictions, were six other restrictions which did not include the two he had asked for in his original email. Ms. Bernier stated there were six items that would devalue their property, and not what we agreed to, but we wanted to see what we could do to work with him.

Ms. Bernier stated as communications continued some of his emails were very nasty, so she felt compelled to draw a line and not continue to review the items as they were limiting to what we could do with the property for his benefit and all because he offered the Town \$1,000 and the

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Town said no. Ms. Bernier stated he got the property on the other side of him for \$1,000. Ms. Bernier stated this property was on the market for a year and a half, he could have bought this property; he offered \$1,000. Ms. Bernier stated he interfered with sales we've been told and buyers walked away; they were scared of him.

Ms. Bernier stated then we came along, it just happened to be the right time for us; and her husband has to live in the precinct it is in his contract. Ms. Bernier stated we wanted to work with him, but he has been so difficult and has harassed us so much that things have come to this point right now. Ms. Bernier asked that the Board take everything that has been said into consideration.

Ms. Sherman asked for any other public comment; there was none. Mr. Meier stated as to the back and forth with the Bernier's he would stand by his emails. Mr. Meier stated as for asserting that he trespassed on Town property, before this survey map that was done on December 15<sup>th</sup> the only map was the precinct map and the Town map. Mr. Meier stated the map shows that the wetlands are all on that property by the only map that existed then.

Mr. Meier stated he hired a soil scientist for his property and he takes great offense that somebody is saying that he did something by having these wetlands mapped. Mr. Meier stated if the roles were reversed and the Town wanted to come onto his property and he was before this Board saying the Town should not have been able to come onto his property to see if there were wetlands or not it wouldn't go over so well. Mr. Meier stated that their own survey shows there is a pin on his property that their surveyor admits is on his property, but there is a flag on top of it; he is not here asserting that anyone trespassed on his property.

Mr. Meier stated he has a wetland scientist that says there is a wetland that causes a 75-foot setback. Mr. Meier stated he is not a surveyor, but he looks at the survey plan and sees two courses that are degrees off; both those deviations benefit the person who hired the surveyor. Mr. Meier stated he received the survey he believes on Friday when Town Counsel sent it to him; he certainly has not had had time to have another surveyor look at it, and he is not sure if he will or not as he believes the wetlands are more important and there is a wetland there.

Mr. Meier stated Town Counsel didn't understand what he was saying regard §147.13.16.1.7; there are seven categories as to what constitutes a wetland in the WWPOD and he does not allege that this wetland that the wetland expert found is any one of these in sections one through six, he alleges that it is §147.13.16.1.7.

Mr. Meier read §147.13.16.1.7, "When there is a dispute over the delineation of a mapped wetland, or in cases where an unmapped wetland is delineated, it may be resolved with a plan...". Mr. Meier stated that is what he got, a plan by a wetland scientist. Mr. Meier stated he doesn't allege it is 1 through 6; he alleges that it is a 1.7 wetland, which is part of the WWPOD under 16.1.

Mr. Meier stated they cannot say that a newly delineated wetland under 1.7 has to meet the criteria of 1.3; it wouldn't be written that way. Mr. Meier stated you would have this 1.7 be 16.2; it would be a different section if you wanted it to apply over all the criteria's, but it is not it is one of the seven types of wetlands that is within the Wetland and Watershed Protection Overlay District.

Ms. Sherman asked for Board comment; there was none. Mr. Irving stated that he would like to clarify as to the way the Zoning Ordinance is administrated and interpreted, which has been the same for 17 years and may be more than that; you will notice the district boundaries that are in bold, the usual and customary interpretation of this by the Town of Conway is that if there is a dispute among one through six then seven comes into play.

Mr. Irving stated we don't dispute that there is a small tiny wetland on this property, we agree there is a small wet area, their expert says that's there, however, it is not three acres so there is none of the criteria that qualifies it as a regulated wetland under the Town of Conway Zoning Ordinance.

Ms. Bernier stated in her first email to Mr. Meier she told him that we were in the process of getting a full and complete survey done so that the property boundaries would be known to all parties; he has known this since October 31, 2016.

Scott Lees, Christina Lee's husband, stated that he was told by Mr. Bernier that his driveway was on their land and that they were not going to make him move it; so, they were using the precinct map as well. Ms. Bernier stated they were until they had a survey done we did think the driveway was on our property and we were going to give them an easement; we want to be neighborly.

Ms. Sherman closed public hearing at 8:30 pm. Ms. Sherman stated this is a lot of record, a lot that was formed before zoning so it would be considered a grandfathered lot. Ms. Sherman stated that she doesn't see the 150-feet of frontage as relevant. Ms. Sherman stated we have always in the past dealt with 3-acre wetlands.

Mr. Chalmers stated the Board is here to determine if the Building Inspector issued a building permit in error. Mr. Chalmers asked knowing there is a wetland on this piece of property would that impact the issuance of a building permit on this piece of property. Mr. Pandora answered in the affirmative and stated if it was over three acres or if it met any of the criteria's.

**Mr. Hylen made a motion, seconded by Mr. Steiner, to grant the appeal of the administrative decision. Motion unanimously defeated.** Ms. Sherman stated that the appeal from Administrative Decision has been denied. Ms. Sherman reviewed the appeal process with the applicant.

#### ALTERNATE MEMBER

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

#### REVIEW AND ACCEPTANCE OF MINUTES

**Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of September 21, 2016 as written. Motion unanimously carried.**

Meeting adjourned at 8:38 pm.  
Respectfully Submitted,



Holly L. Meserve, Recording Secretary