

## ZONING BOARD OF ADJUSTMENT

### MINUTES

**AUGUST 19, 2020**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 19, 2020 at the Conway Village Fire Station, 97 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Luigi Bartolomeo; Steven Steiner; Alternate, Phyllis Sherman; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

#### **ALTERNATE MEMBER**

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

#### **PUBLIC HEARINGS**

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **GABRIEL AND HOLLY NECOCHEA** in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 38 Westwind Drive, North Conway (PID 262-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Kirk Roberts of ASK Home Improvements, LLC appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to continue the hearing until five members are present or proceed with the hearing with four members. Mr. Roberts agreed to proceed with four members.

Mr. Roberts stated the new dwelling will be located at the rear of the property, and there is an existing driveway to the left that will be utilized to access the property. Mr. Robert stated there are at least two parking spots for the unit. Mr. Colbath asked for Board comment; Mr. Colbath asked what is the existing structure. Mr. Roberts answered a 3-bedroom single-family home with a two-car garage. Mr. Colbath asked if this is an accessory dwelling unit with a garage. Mr. Roberts answered in the affirmative.

Mr. Bartolomeo asked if one of the units would remain owner-occupied. Mr. Roberts answered in the affirmative and stated their mother is moving into it. Mr. Colbath asked if it is architecturally compatible with what exists. Mr. Roberts answered in the affirmative. Mr. Colbath asked if there will only be parking in the garage. Mr. Roberts stated there will be a turn around so two additional spaces will be outside.

Mr. Colbath asked about a septic system. Mr. Roberts stated a new septic system will be installed behind the new structure; and there is an existing septic for the existing home. Mr. Bartolomeo asked if they will share a well. Mr. Roberts answered in the affirmative.

Mr. Colbath asked for public comment; there was none.

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

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

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

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

Mr. Colbath read item 5. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Ms. Sherman made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance to allow an accessory dwelling unit be granted. Motion carried unanimously.**

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A public hearing was opened at 7:12 pm to consider a **SPECIAL EXCEPTION** requested by **SHERYL DOUCET AND RICHARD OAKS** in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 50 Dinsmore Road, North Conway (PID 202-162). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Richard Oaks and Sheryl Doucet appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to continue the hearing until five members are present or proceed with the hearing with four members. Mr. Oaks agreed to proceed with four members.

Mr. Oaks stated he received approval for a second driveway from the Board of Selectmen. Mr. Colbath asked for Board comment; Mr. Colbath asked about the septic. Mr. Oaks stated they are on municipal water and sewer. Mr. Colbath asked if there is sufficient parking. Mr. Oaks answered in the affirmative. Mr. Bartolomeo asked if this dwelling unit is located over a converted garage. Mr. Oaks answered in the affirmative.

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Mr. Bartolomeo asked the location of the stairs to access the unit. Mr. Oaks answered outside off the deck. Mr. Colbath asked what is the square footage of the accessory dwelling unit. Mr. Oaks answered just over 300 square feet. Mr. Bartolomeo asked if there are any exterior elevations. Mr. Oaks stated there is no change to the exterior of the existing building.

Mr. Colbath asked for public comment; there was none.

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

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

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

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

Mr. Colbath read item 5. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Ms. Sherman made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance to allow an accessory dwelling unit be granted. Motion carried unanimously.**

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A public hearing was opened at 7:22 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-30.C.(2) and §190-18.F.(10)(e) of the Conway Zoning Ordinance **to remove and replace the existing freestanding sign with a new externally illuminated freestanding sign with a structure in excess of maximum permitted structure area** at 23 & 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

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A public hearing was opened at 7:22 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-18.F.(3)(a) of the Conway Zoning Ordinance **to replace the existing wall sign with a larger wall sign that exceeds the maximum permitted sign message area** at 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:22 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-18.F.(3) of the Conway Zoning Ordinance **to allow an additional wall sign over the main entrance** at 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:22 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-18.F.(3) of the Conway Zoning Ordinance **to allow an additional wall sign over the drive-thru canopy** at 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Mr. Colbath stepped down. Ms. Sherman became Chair. Mr. Irving stated the applicant has requested the consideration of their applications be deferred to the next meeting since there are only three members present this evening.

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to defer all four Bank of New Hampshire applications until September 16, 2020 at 7:05 pm. Motion carried unanimously.**

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A public hearing was opened at 7:29 pm to consider a **SPECIAL EXCEPTION** [FILE #20-26] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(f) of the Conway Zoning Ordinance **to allow the installation of fill within the Floodplain Conservation Overlay District to raise an area above the floodplain** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:29 pm to consider a **SPECIAL EXCEPTION** [FILE #20-27] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(d) of the Conway Zoning Ordinance **to allow the installation of a paved drive and utilities within the Floodplain Conservation Overlay District to access the raised portion of the property** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

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A public hearing was opened at 7:29 pm to consider a **SPECIAL EXCEPTION** [FILE #20-28] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(l) of the Conway Zoning Ordinance **to allow the installation of signage along the paved drive and ADA parking spaces within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:29 pm to consider a **VARIANCE** [FILE #20-29] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance **to allow light poles (structures) to illuminate the driveway, parking, pool and patio areas within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:29 pm to consider a **SPECIAL EXCEPTION** [FILE #20-30] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(a) of the Conway Zoning Ordinance **to allow the installation of a playground, one tennis court, one basketball court and the associated features for each within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:29 pm to consider a **VARIANCE** [FILE #20-31] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance **to allow structures within the Floodplain Conservation Overlay District including tennis court net posts, basketball hoop posts and playground equipment** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

A public hearing was opened at 7:29 pm to consider a **VARIANCE** [FILE #20-32] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance **to allow light poles (structures) to illuminate the tennis and basketball courts within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Mr. Colbath rejoined the Board as Chair at this time. Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath stated that there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to continue the hearings until five members are present or proceed with the hearings with four members.

Mr. McAllister stated he would like to continue the hearings for files #20-26 through #20-32, but would like to proceed with file #20-33 this evening. **Ms. Sherman made a motion, seconded by Mr. Bartolomeo, to defer files #20-26 through #20-32 for Adventure & Entertainment Properties, LLC until September 16, 2020 at 7:10 pm. Motion carried unanimously.**

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A public hearing was opened at 7:30 pm to consider a **VARIANCE** [FILE #20-33] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance to **construct an ADA accessible concrete pavilion, ADA accessible pool, ADA accessible bathrooms, ADA accessible multi-purpose building, and associated concrete walkways within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to continue the hearing until five members are present or proceed with the hearing with four members. Mr. McAllister agreed to proceed with four members.

Mr. McAllister stated this site is currently a commercial campground within the Highway Commercial District and the Floodplain Conservation Overlay District. Mr. McAllister stated with the exception of the driveway coming down from Route 16, the property is entirely within the floodplain.

Mr. McAllister stated previous zoning approvals for this project was for the construction of 89-campsites, the installation of gravel drives, water, sewer and other utilities and roadways necessary to access those campsites, as well as getting a variance granted for a bathhouse facility that was 1,920 square feet, plus an additional 14,286 square feet of walkway, pavilion and pool concrete area. Mr. McAllister stated as part of that approval we also agreed to remove the existing pool and items associated with the pool.

Mr. McAllister stated after that zoning approval was completed, we went forward with site plan review, built the 89 campsites, built the maintenance building and all of the activities, driveways and utilities associated with the approvals granted with the exception of the bean shape pool and the bathhouse; those are the only portion of the construction that has ZBA approval that has not been completed.

Mr. McAllister stated the goal is to gain a modification of the approval that we were granted. Mr. McAllister stated we have to apply for the variance again for some minor modifications of layout and architecture, but the same justification applies here as was used previously. Mr. McAllister stated the first revision they are seeking is modification of the bean shape pool to a rectangular pool, generally in the same location. Mr. McAllister stated overall the square footage of the pool area, the walkway and the pavilion surrounding the building is 2-square feet less than what was previously approved.

Mr. McAllister stated the other request is an architectural modification to the bathhouse building, specific to the exterior stairway to the second story, and a deck. Mr. McAllister stated the owners would like an exterior access to the second story, the original layout had an interior stairway only.

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Mr. McAllister stated the top of the stairs and the exit is out of the floodplain conservation overlay district, but the stairs themselves extend down into the floodplain conservation overlay district; however, they land on the concrete walkways that were originally approved. Mr. McAllister stated it is not creating any additional impervious area as it is sitting on top of the concrete previously approved.

Mr. McAllister stated the other modification is the second story porch which is a viewing area over the pool; this is above the floodplain conservation overlay district in elevation, but has posts that come down and sit on the pavilion below in a location that concrete was already proposed. Mr. McAllister stated there is no additional impervious area associated with the porch or the posts.

Mr. McAllister stated the modification here is the geometric modification to the pool area in the same location and the exterior modification to allow a porch and a second egress off the second story multi-use bathhouse.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked other than the viewing deck what is proposed for the second floor. Mr. McAllister stated they are still working on the programming in there; the first floor has a bathroom facility and a pumphouse for the pool, and they are in the process of determining what the use of the second floor will be. Mr. Bartolomeo asked if the public is invited to use the viewing deck. Mr. McAllister stated it is for the users of the campground.

Mr. Steiner stated he remembers the previous applications were all about ADA and asked how does someone with disabilities get to the second floor. Mr. McAllister stated the ADA conversation was associated with providing access to the pool and bathrooms to the campers. Mr. McAllister stated we don't know what the use of the second floor will be yet.

Mr. Colbath asked if the bathhouse has been built. Mr. McAllister answered in the negative. Mr. Bartolomeo asked if there would be an interior staircase as well as an exterior staircase. Mr. McAllister answered in the affirmative.

Mr. Colbath asked for public comment; there was none.

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

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

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

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

Mr. Colbath read item 5.a.i. **Mr. Steiner made a motion, seconded by Ms. Sherman, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

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

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary.** **Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; Mr. Bartolomeo asked Mr. McAllister to assure the Board that they have met this requirement. Mr. McAllister stated there is an approval for a conditional letter of map amendment (CLOMA) for a cut and fill that included these elevations; we've met the floodplain needs with the design. **Motion carried unanimously.**

Mr. Colbath read item 7. Mr. McAllister stated this is not within the floodway. **Mr. Bartolomeo made a motion, seconded by Ms. Sherman, that item 7 is not applicable.** **Motion carried unanimously.**

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

**Ms. Sherman made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190, Use Table of the Town of Conway Zoning Ordinance to construct an ADA accessible concrete pavilion, ADA accessible pool, ADA accessible bathrooms, ADA accessible multi-purpose building, and associated concrete walkways within the Floodplain Conservation Overlay District be granted.** **Motion carried unanimously.**

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A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **VICKI FADDEN/GSSG NEW HAMPSHIRE, LLC** in regards to §190-11 of the Conway Zoning Ordinance **to allow overhead utility lines and pole relocation for the grid interconnection of a commercial scale solar energy generation facility** on Green Hill Road, Center Conway (PID 225-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Clay Mitchell of Tenday, LLC appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to continue the hearing until five members are present or proceed with the hearing with four members. Mr. Mitchell agreed to proceed with four members.

Mr. Mitchell stated originally Eversource asked us to connect at Green Hill Road, it was in the Town's interest to get the pole back and not connect at the road; that put us connecting at the medium voltage line on the property. Mr. Mitchell stated what has happened once we received approval from Eversource, a different department reviewed that connection subsequent to telling us that we were done, and that department wants that line to be split and modify the crossing of the existing connection point across Green Hill Road.

Mr. Mitchell stated the line they are connecting to goes into Maine and connects to the Swan Falls power plant and that line is a direct line to the distribution system; they are using this as an opportunity to upgrade that line. Mr. Mitchell stated that same facility that is on our connection point includes a meter and a reclosure; a reclosure allows the grid to isolate the system if anything goes wrong. Mr. Mitchell stated the power plant that is miles away is going to be controlled at our location.

Mr. Mitchell stated the new reclosure requires two additional poles and a perpendicular cross over Green Hill Road; these things will increase the reliability of the grid for all customers served in that area. Mr. Mitchell stated they are requesting five new poles within the wetland buffer and a realignment of the crossing that goes over Green Hill Road; it now goes over at an angle, and it will now go over completely perpendicular. Mr. Mitchell stated where it hits the distribution system there will be a new pole on Green Hill Road.

Mr. Mitchell stated the area of the new poles is already disturbed; it is all within the utility right-of-way, and completely cleared. Mr. Mitchell stated with this change we were able to eliminate some additional clearing and an additional access road which will be less impact on the site overall.

Mr. Colbath asked for Board comment; Mr. Steiner asked if it could go underground. Mr. Mitchell answered not at this level as this is a medium voltage distribution line. Mr. Mitchell stated we are underground until we connect to the line. Mr. Colbath asked for public comment; there was none.

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

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

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

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

Mr. Colbath read item 5.a.i. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

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

**Ms. Sherman made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary.** **Motion carried unanimously.**

**Ms. Sherman made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-11 of the Town of Conway Zoning Ordinance to allow overhead utility lines and pole relocation for the grid interconnection of a commercial scale solar energy generation facility be granted.** **Motion carried unanimously.**

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A public hearing was opened at 7:55 pm to consider a **SPECIAL EXCEPTION** requested by **VICKI FADDEN/GSSG NEW HAMPSHIRE, LLC** in regards to §190-28.I.(4) of the Conway Zoning Ordinance **to install four (4) new utility poles and to relocate an existing utility pole within the Wetland and Watershed Protection Overlay District buffer** on Green Hill Road, Center Conway (PID 225-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

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Clay Mitchell of Tenday, LLC appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that there are only four members present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant would like to continue the hearing until five members are present or proceed with the hearing with four members. Mr. Mitchell agreed to proceed with four members.

Mr. Mitchell stated the comments in the previous application apply here as well. Mr. Mitchell stated that footprint of five poles will be within the wetland buffer, in an area that has already been cleared.

Mr. Colbath asked for Board comment; Mr. Colbath asked if the entire project is within the Wetland buffer. Mr. Mitchell answered in the negative and stated the solar array is completely outside of the buffer. Mr. Mitchell stated the utility right-of-way has a significant amount of wetland soils under them and nearby, and any changes within the right-of-way would trigger the Town's ordinance. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that the use is essential to the productive use of the land in the District.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that the use is so located and constructed to minimize the detrimental impact upon the wetlands.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Steiner made a motion, seconded by Mr. Bartolomeo, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that item 4 is not applicable as this project already has site plan approval.** **Motion carried unanimously.**

**Ms. Sherman made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-28.I.(4) of the Conway Zoning Ordinance to install four (4) new utility poles and to relocate an existing utility pole within the Wetland and Watershed Protection Overlay District buffer be granted.** **Motion carried unanimously.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the minutes of July 15, 2020 as written.** **Motion carried unanimously.**

Meeting adjourned at 8:05 pm.

Respectfully Submitted,

Holly L. Meserve, Planning Assistant

