

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 15, 2015

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 15, 2015 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 Hysten; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman was not yet in attendance. Mr. Colbath, as acting Chair, appointed Mr. Steiner as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** requested by **JAMES PAGE** in regards to §147.13.1.4 of the Conway Zoning Ordinance **to allow an existing garage to remain in the front setback at 148 Kancamagus Highway, Conway (PID 264-28)**. Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 3, 2015.

James Page appeared before the Board. Mr. Page stated the garage is encroaching 6-feet within the front setback. Mr. Page stated he met with Mr. Irving to review the plot plan and an equitable waiver seemed the best fit. Mr. Page stated the encroachment was not discovered until he filed an application for an accessory apartment on May 20, 2015. Mr. Page stated no bad faith was intended; this is not a public or private nuisance; it fits within the operation of the road and plowing; and to correct it would be costly. Mr. Page asked the Board to entertain an equitable waiver for 6-feet of encroachment.

Ms. Sherman joined the meeting at this time; Mr. Colbath remained Acting Chair and Mr. Steiner remained a voting member. Mr. Bartolomeo asked if there was a plot plan or just a tax map. Mr. Page stated he could have had a new survey done or accept the Town survey that was on record; he accepted the survey from 1998 that is on record with the town. Mr. Irving stated the Town had a survey from two decades ago submitted to the Town for a different purpose and it showed sufficient monuments and the existing buildings; it was approximated that there is a 6-foot encroachment.

Mr. Chalmers stated so there was survey data available. Mr. Irving stated he believes it is in the Board's packets; there is a snapshot showing previously existing buildings. Mr. Bartolomeo asked if Mr. Page constructed the garage. Mr. Page stated he had it built for him. Mr. Bartolomeo asked if the contractor attempted to locate the property lines. Mr. Page answered in the affirmative; and stated a building permit was presented to the Building Inspector, David Pandora, and to the foundation contractor. Mr. Page stated the foundation contractor, in placing the garage, did not go by the plan.

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Mr. Chalmers stated the estimated cost of construction on the building permit was \$15,000; being 708 square feet that is \$20 per square foot. Mr. Chalmers stated the 6-foot encroachment is not a huge amount of money. Mr. Page stated to remedy the encroachment you would have to cut the building back and that has an expense. Mr. Page stated the reason this process was set up was for circumstances like this; had there had been a check by the Town, and he is not blaming anyone, this might not have happened. Mr. Page stated he gave the plan to the person who was building it on his property.

Mr. Chalmers stated the application shows that it was actually supposed to be a foot off the setback line. Mr. Page agreed and stated it was sizably different than that. Mr. Colbath asked if there was room to have it back further. Mr. Page answered absolutely; and that was the intention. Mr. Bartolomeo asked if 56-feet from the centerline were the intent. Mr. Page stated that was his intent.

Mr. Bartolomeo stated this mechanism does exist for this type of problem and it is usually the front setback as people take their best guess at it. Mr. Page stated there is one pin on the eastern most side of the property. Mr. Bartolomeo asked when the garage was constructed. Mr. Page answered 2010. Mr. Bartolomeo asked how this was discovered. Mr. Irving stated it was discovered when Mr. Page submitted an application for an accessory apartment. Mr. Irving stated when he went by the site he thought it was too close; however, absent that the Town does not conduct residential building inspections we might never have caught it.

Mr. Colbath asked for Board comments; there was none. Mr. Colbath asked for public comment; there was none. Mr. Irving stated staff has no issues or comments.

Mr. Colbath read item 1. **Mr. Hylen made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 2. **Mr. Hylen made a motion, seconded by Mr. Chalmers, 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.**

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if the foundation contractor made a good faith attempt. Mr. Page stated he believes he did. Mr. Bartolomeo stated it is a straight shot. Mr. Page stated that he agrees with you now. Mr. Bartolomeo stated he doesn't see how this error could be made when it is wide open and there is nothing in the way. Mr. Chalmers stated and there was a surveyed plan. Mr. Bartolomeo stated having seen the neighborhood; it is a suburban neighborhood and not many others close to you. **Motion carried with Mr. Bartolomeo, Mr. Hylen, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

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Mr. Colbath read item 3. The Board determined that item 3 was not applicable.

Mr. Colbath read item 4. **Mr. Hysten made a motion, seconded by Mr. Steiner, 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.**

Mr. Colbath read item 5. **Mr. Hysten made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; Mr. Chalmers stated it is important to point out there are many reasons to maintain the setbacks and most of them are for public benefit. Mr. Chalmers stated it allows for maintenance of the road; this is a State road, but it is still important and is a benefit to the owner.

Mr. Chalmers stated if the construction investment was \$20 a square foot then the encroachment has a \$520 value; it doesn't seem to be an incredibly high cost. Mr. Bartolomeo stated he agrees with Mr. Chalmers, it would be a minimal cost to remove, but now you have to construct 6-feet to the back. Mr. Bartolomeo stated the Board denied a lady in Dandiview Acres a car-port because it was way beyond the setback and the character of the neighborhood.

Mr. Bartolomeo stated setbacks are meant to preserve, it was a nice street, but what she was proposing was way off. Mr. Bartolomeo stated on this property, on the Kancamagus Highway, your neighbors are so sparse; that mitigates this. Mr. Chalmers stated most people do not have a survey, but one was available here. Mr. Colbath stated it is a travesty that it was built in the setback, but also a travesty to cut 6-feet off the front and add it to the back. **Motion carried with Mr. Bartolomeo, Mr. Hysten, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

Mr. Chalmers made a motion, seconded by Mr. Hysten, that, based on the forgoing findings of fact, the equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow an existing garage to remain within the front setback be granted. Motion unanimously carried.

A public hearing was opened at 7:25 pm to consider a **SPECIAL EXCEPTION** requested by **JAMES PAGE** in regards to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 148 Kancamagus Highway, Conway (PID 264-28). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, May 7, 2015. This hearing was continued from May 20, 2015.

James Page appeared before the Board. Ms. Sherman became Chair at this time and Mr. Steiner is no longer a voting member. Ms. Sherman stated the building is already built. Ms. Sherman asked if there are at least 4 parking spaces. Mr. Page answered in the affirmative; and submitted

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photos to the Board [in the file]. Mr. Chalmers asked if the Town confirms parking. Mr. Irving answered in the negative; and stated this is a single-family residence. Mr. Page stated vehicles will not be sticking out into the right-of-way at all.

Mr. Bartolomeo asked if it would remain owner occupied. Mr. Page answered in the affirmative and stated that the apartment is for him. Ms. Sherman asked if the house will be rented. Mr. Page answered in the affirmative. Ms. Sherman asked for Board comment; there was none. 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 apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if there is language in the ordinance that it has to be a permanent tenant and not transient housing. Mr. Irving answered in the negative. Mr. Page stated that he has no intention of renting both units. Mr. Bartolomeo asked if Mr. Page would be renting it by the week. Mr. Page answered in the negative. **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 §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

A public hearing was opened at 7:32 pm to consider a **SPECIAL EXCEPTION** requested by **FRED W. SOMERS, JR** in regards to §147.13.1.2.4.2 of the Conway Zoning Ordinance to **allow an accessory apartment** at 30 Bow Lane, North Conway (PID 216-41). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 3, 2015.

Fred Somers appeared before the Board. Ms. Sherman asked if the apartment will be over a garage that is already constructed. Mr. Somers answered in the affirmative. Ms. Sherman asked if the architecture of the garage would be changed. Mr. Somers answered in the negative. Mr. Bartolomeo asked the size of the garage. Mr. Somers answered 28' x 30'; and the apartment is 772 square feet.

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Ms. Sherman asked if there is plenty of room for parking. Mr. Somers answered in the affirmative. Mr. Bartolomeo asked if the stairs are internal and do they already exist. Ms. Somers answered in the affirmative. Mr. Bartolomeo asked what the space is used for currently. Mr. Somers answered a workshop and storage.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for Town comment; there was none. Ms. Sherman asked for public comment; Kate McPhee stated she lives across the street at 27 Bow Lane. Ms. McPhee stated that she bought her house in a residential neighborhood; she used to live in the Village where there were a lot of renters around her and she would prefer to not have renters across the street from her. Ms. McPhee stated there are already a lot of vacation rentals in the neighborhood.

Ms. Sherman asked Ms. McPhee if the rental properties she lived in the Village by were owner-occupied. Ms. McPhee stated they were not. Ms. McPhee stated that she spoke to Mr. Somers and he assured her that he would be living in the house, but it just didn't sit well with her. Ms. Sherman stated for this special exception to be granted it has to be an owner-occupied house and the owner has to be on-site.

Cheryl Arena read the attached statement. Mr. Bartolomeo read the definition of an accessory apartment in the ordinance. Ms. Arena stated that she obtained her definition from the internet. Mr. Steiner asked what happens if this gentleman moves out and rents both units. Mr. Irving stated the Town would investigate and if it fails to meet the owner-occupied criteria they would be in violation and the Town would start the enforcement process.

Mr. Bartolomeo stated that he was on the committee that drafted this language and he thought there was language that required a renter to sign a lease for one-year. Mr. Irving stated there were lots of conditions that were proposed, but never made it into the ordinance. Mr. Bartolomeo asked who trimmed it down. Mr. Irving answered the Planning Board or the committee itself. Mr. Bartolomeo stated the intention was to provide permanent rentals; not transient. Mr. Colbath stated at some point legal counsel probably reviewed it for what would be enforceable.

Mr. Chalmers asked if the accessory apartment would need a building permit; and be reviewed for septic loading, egress windows, fire separation, etc. Mr. Irving stated one would expect so, but he does not administer the building permits. Mr. Colbath stated that is beyond what this Board considers. Robert Arena stated the renters could become numerous; and he is imagining the septic system is limited with two potential houses. Mr. Arena stated the lot slopes downhill and he can see it being absorbed between the two lots. Mr. Bartolomeo stated there will have to be a septic design for the number of bedrooms; would have to go for a redesign and he would not be able to obtain a building permit without a septic approval. Mr. Arena stated that the building is too close to the property line, but the appeal to have it removed was denied by a higher court.

Mr. Steiner asked how many bedrooms the septic system is approved for. Mr. Somers answered four; there are three bedrooms in the house. Mr. Bartolomeo asked how many bedrooms are in the garage apartment. Mr. Somers answered one. Mr. Chalmers stated that he foresees an issue down the road.

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Mr. Somers stated that he intends to sign nothing less than a year lease; he does not intend to lease it to skiers. Mr. Somers stated that his neighbors rent out their home; and they are rarely up here, but they complain about him. Mr. Somers stated the Superior court approved the location of his garage; it was a mistake of my builder. Mr. Somers stated that he spent \$4,000 to get it approved in Superior Court; and he does not intend to rent it part-time.

Mr. Somers stated that he lives here full-time and has a 10 year old son; he has no intention of leaving. Mr. Somers stated that Ms. McPhee has an apartment in her own house that she chooses not to use; that should not go against him. Mr. Somers stated that Ms. Arena's house is not too close; she sees his back yard and his wife's flower gardens. Mr. Somers stated he has no intent of moving out; it is a one-bedroom apartment for one or two people. Mr. Somers stated he has submitted a summary of every accessory apartment request for the past five years. Mr. Somers stated each of them met the requirements and were granted; he meets the requirements and his request should be granted.

Ms. McPhee stated when she purchased her home there was an illegal apartment; however, she has chosen not to rent it illegally. Ms. McPhee stated there is no stove in it. Mr. Somers stated that he was going to look at that property and the real estate listing indicated an in-law apartment. Mr. Steiner asked if it did have a stove. Ms. McPhee stated when she purchased the house it did, but now there is a bathroom, two bedrooms that were made into an exercise room, a sink and living space.

Mr. Somers stated the Arena's home is not owner-occupied and there are different people there every week. Ms. Sherman stated it is a single-family home only. Ms. Arena stated they rent it 4-weeks in the summer and to one family in the winter. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for new public information; there was none. Ms. Sherman closed the public hearing at 7:56 pm.

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 §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

A public hearing was opened at 8:00 pm to consider a **VARIANCE** requested by **IPTV-B-C42 LLC/CHARTER FOODS NORTH, LLC** in regards to §147.13.8.13.2 of the Conway Zoning Ordinance **to allow an interactive menu-board with speakers, drive-up window and associated uses within 600-feet of a residential property and the Residential Agricultural District** at 1672 White Mountain Highway, North Conway (PID 235-8). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 3, 2015.

Joshua Rogers, New Projects Assistant for Charter Foods North, LLC, appeared before the Board. Bayard Kennett of Remax Residential representing the owner; and Anne Flanagan, Marketing Director for Taco Bell, were in attendance. Mr. Rogers stated that this will be a Taco Bell restaurant. Mr. Rogers stated since there are residential houses behind this property we are unable to meet the required 600-foot limits. Mr. Rogers stated we are doing as much as possible to eliminate noise and light; we feel any noise generated will not be any more than is already there with the highway. Mr. Rogers stated we are within the spirit of the ordinance by doing what we can.

Mr. Bartolomeo asked if the speaker will face the highway. Mr. Rogers answered in the affirmative; and stated a curved block wall will be constructed to deflect the noise and an 8-foot high cedar fence will be installed along the back property setback to help reduce the noise on the site. Mr. Colbath asked if the existing building is to be razed and reconstructed to meet the architectural regulations. Mr. Rogers answered in the affirmative.

Mr. Rogers stated that the speaker will automatically adjust to a lower decibel when there is less ambient noise. Mr. Bartolomeo asked who the abutters are. Mr. Kennett stated there is a cemetery to the North and the Polo Outlet is to the South. Mr. Bartolomeo asked who the residents are. Mr. Kennett stated there are 37 mobile homes to the West between the property line and the Conway Scenic Railroad. Mr. Colbath asked how close is it to the nearest residential structure. Mr. Rogers answered approximately 140-feet from the back of the speaker post to the property line.

Ms. Sherman asked the hours of operation. Ms. Flanagan stated we open at 7 am and can stay open up until 2 am, but it depends on the local laws. Mr. Bartolomeo asked if there is language in the ordinance that limits the decibels. Mr. Irving answered in the negative and stated there were discussions regarding limits, but that language did not make it into the ordinance. Mr. Bartolomeo asked if there is information on what the speaker decibel will reduce to. Mr. Irving stated that information is in the packet provided by the applicant. Mr. Rogers explained the decibels of the site to the Board.

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Ms. Sherman asked about lighting. Mr. Rogers stated a photometric plan will be submitted to the Planning Board and will meet the site plan requirements for lighting. Mr. Irving explained the lighting requirements to the Board; and stated even if they didn't have to come before this Board they would be required to meet the site plan regulations on lighting. Mr. Colbath asked if a traffic study will have to be conducted during the site plan review process. Mr. Irving stated that it might be required, but it is a State road and they will likely require a scoping meeting to see what is necessary. Mr. Irving stated the State will be issuing the driveway permit.

Ms. Sherman asked for further Board comment; there was none. 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; Mr. Hylen asked Mr. Steiner how this would affect the value of surrounding properties. Mr. Steiner stated the site is already being used commercially, so for him this would not affect surrounding property values. **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 unanimously carried.**

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.**

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

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.8.13.2 of the Town of Conway Zoning Ordinance to allow an interactive menu-board with speakers, drive-up window and associated uses as represented on the plan within 600-feet of a residential property and the Residential Agricultural District be granted. **Motion unanimously carried.**

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A public hearing was opened at 8:19 pm to consider a **SPECIAL EXCEPTION** requested by **EARLE III AND SARAH MACGILLIVRAY/VERIZON WIRELESS** in regards to §147.13.11.13.2 of the Conway Zoning Ordinance **to allow the construction of a 100-foot wireless facility within a 50' x 50' compound with associated equipment and associated infrastructure** at 819 East Conway Road, Conway (PID 244-7). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, July 3, 2015.

Victor Manougian of McLane, Graf, Raulerson & Middleton, representing Verizon Wireless; Brian Ross, Real Estate Consultant for Structure Consulting Group; Thomas Hector of Hudson Design Group, LLC; and Keith Vellante, RF Engineer for C Squared Systems, LLC appeared before the Board.

Mr. Manougian stated Verizon is proposing a 100-foot monopole with an equipment shelter on the ground. Mr. Manougian stated that this would be within a 50' x 50' compound area with 6-foot high fencing within a 100' x 100' leased area. Mr. Manougian stated this location covers a gap along the East Conway Road and along an area of Route 113/302. Mr. Manougian stated it would be situated to the rear right of the 8.35 acre Industrial-2 zoned property. Mr. Manougian stated that it would be very minimally seen; and less visible when there are leaves on the trees.

Mr. Manougian stated §147.13.11.13.2.1 requires other municipalities who may be visually affected be notified; don't believe this can be seen from other communities, but they have been notified.

Mr. Manougian stated §147.13.11.13.2.2 requires every reasonable effort be made to make the facility with the least visual impact. Mr. Manougian stated it will be painted grey, or brown or as requested by the Planning Board. Mr. Manougian stated given the size of the property it will have minimal visual impact. Mr. Manougian stated there are no other structures in the area, such as steeples or towers, which could be used.

Mr. Manougian stated §147.13.11.13.2.3 requires the facility be designed to hold other carriers. Mr. Manougian stated this facility will fit Verizon plus 3 other carriers. Mr. Manougian stated §147.13.11.13.2.4 allows for the ZBA to hire outside consultants. Mr. Manougian stated we believe we have provided extensive plans, radio frequency and other information regarding this facility, but would be willing to hire an outside consultant if the Board feels it necessary.

Mr. Manougian stated §147.13.11.13.2.5 requires, if granted, a major review by the Planning Board. Mr. Manougian stated they will file an application with the Planning Board. Mr. Manougian stated for those reasons, we ask that the Board grant the special exception.

Mr. Irving stated relative to color of the tower, the Planning Board will not address that; this Board could stipulate, but that is not necessarily the recommendation of staff. Mr. Irving stated the Board could have a third party review this application and have a balloon test, which you have sometimes done in the past, but it is not necessary.

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Mr. Irving stated the recently constructed Redstone Facility has no one on it, and Verizon already has that area covered. Mr. Irving stated the Redstone Facility is not able to cover the East Conway Road. Mr. Manougian stated they would have gladly gone on an existing tower, but it will not cover the area where they need it.

Mr. Colbath asked if this tower could be a tree. Mr. Ross answered in the affirmative. Ms. Sherman stated that would be kind of silly. Mr. Steiner asked if they had approached the Town to construct the facility at the dump. Mr. Ross stated being an active dump made it problematic for us for us and probably would not have been approved by Verizon. Ms. Sherman asked if there is any interest from other carriers to be on the tower. Mr. Ross stated they do not advertise the space until after the facility is built. Mr. Manougian stated we build it and we use it.

Mr. Irving stated we have required decommissioning bonds in the past, how does this lease agreement protect the property owner in the instance the tower is no longer needed. Mr. Manougian stated if we no longer need the site, everything except the foundation is removed within 90-days. Mr. Colbath asked Mr. Manougian how confident you are with this on the owner's behalf. Mr. Manougian answered very confident. Mr. Irving asked if he represents both the owner and Verizon. Mr. Manougian answered in the affirmative.

Mr. Bartolomeo asked if there is a propane generator. Mr. Ross answered in the affirmative. Mr. Irving asked if the generator is enclosed. Mr. Ross answered in the affirmative. Mr. Colbath stated he was impressed with the data presented to the Board prior to the meeting; it answered a lot of questions prior to getting here. There was no public in attendance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that since the visual impact of wireless communication facilities can transcend town lines, communities that may be visually affected shall be formally notified of applications for such proposed facilities as projects having regional impact. This requirement has been satisfied.** 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 applicant must demonstrate that every reasonable effort has been made to cause the facility to have the least possible visual impact on the town at large, including demonstration of realistic analysis of multiple sites, the need for the proposed height, and any impact on significant roadside viewpoints. This requirement has been satisfied.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated he does not see the need for a condition on colors. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that any wireless communication facility shall be designed to accommodate multiple providers of communication services and will only be approved under the condition that the primary developer of the facility will make the facility available upon reasonable terms by lease or other legal instruments to other wireless communication services. This requirement has been satisfied.**

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Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if the lesser positions would still provide working coverage for other carriers. Mr. Vellante stated it would depend on those carriers particular needs. Mr. Vellante stated general coverage requires being 15-20 feet above the tree line. Mr. Irving asked if all those on the antenna would be viable. Mr. Ross stated he can't see why they wouldn't be viable. Mr. Irving asked the height of each of the carriers. Mr. Vellante answered 87-feet, 77-feet and at 67-feet.

Mr. Irving asked the average tree height in that area. Mr. Ross answered 60-80 feet for mature trees. Mr. Ross stated that this property has a significant drop off and the trees are all below. Mr. Colbath asked if the others can be viable. Mr. Ross answered in the affirmative. Mr. Bartolomeo asked if a carrier on a lower position might experience better coverage when the leaves were gone. Mr. Vellante answered in the affirmative. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the Board of Adjustment may request detailed plans from the applicant and may, at the expense of the applicant, engage the services of professional consultants to review and comment on the proposal, and testimony of the applicants or their agents relating thereto. This requirement has been satisfied.** 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. Bartolomeo, that a Major Site Plan Approval must be obtained from the Planning Board.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

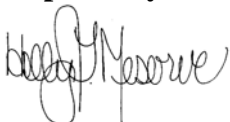
Mr. Colbath made a motion, seconded by Mr. Hylan, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.11.13.2 of the Town of Conway Zoning Ordinance to allow the construction of a 100-foot wireless facility within a 50' x 50' compound with associated equipment and infrastructure be granted. Motion unanimously carried.

REVIEW AND APPROVAL OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of May 20, 2015 as written. Motion unanimously carried.

Meeting adjourned at 9:09 pm.

Respectfully Submitted,



**Holly L. Meserve
Recording Secretary**