

ZONING BOARD OF ADJUSTMENT

MINUTES

JANUARY 18, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, January 18, 2012 at the Conway Town Office in Center Conway, NH, beginning at 7:35 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Sheila Duane; Alternate, Luigi Bartolomeo; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

There were approximately 25 members of the public present. Also, present were Town Manager, Earl Sires, Assessor, Thomas Holmes; Code Compliance Officer, Jim Yeager; and Town Attorney, Peter Malia;

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:33 pm to consider a **SPECIAL EXCEPTION** requested by **MOUNT WASHINGTON VALLEY ECONOMIC COUNCIL** in regards to §147.13.1.11.10 of the Conway Zoning Ordinance **to allow a manufacturing business within a business development park** on Technology Drive, Conway (PID 262-86.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Josh McAllister of H.E. Bergeron Engineers and Jac Cuddy of Mount Washington Valley Economic Council appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. McAllister stated they would like the Board to allow a plastic injection facility within the technology village. Mr. McAllister stated that they design internal injection moldings for lots of products. Mr. McAllister stated that they are proposing a 13,000 square foot building, constructing the extension of Technology Lane and the construction of Innovation Drive. Mr. Bartolomeo stated molding machines are very noisy and there is a constant influx of trucks. Mr. Cuddy stated there are five machines, all heat; so there is no noise, no stacks outside and everything is self-contained. Mr. Cuddy stated that excess rubber is all recycled on site.

Mr. Cuddy stated the owner of Ambex was a consultant that designed parts for arrow space, oceanography and other areas. Mr. Cuddy stated that the owner worked out of his house in Freedom and they liked what they saw at the technology village and wanted their business to be located there. Mr. Cuddy stated that they are currently on Hobbs Street; they have limited space and ceiling height and planned to always put a building in the technology village. Mr. Cuddy stated that they have reached a point in their growth for us to build a building in the park for them. Mr. Cuddy stated there is no noise, or limited noise, but nothing on the outside. Mr.

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Cuddy stated they are heat machines; they heat up plastic and mold it. Mr. Bartolomeo stated that the noise is in what lifts the machines. Mr. Chalmers joined the Board at this time.

Mr. Bartolomeo asked if the use was consistent with a technology village. Mr. Cuddy stated he believes there were covenants that were drawn up and they allowed non covenant uses to be approved by the Board. Mr. Bartolomeo asked what type of uses. Mr. Cuddy retail, restaurant, hair salons, etc. Ms. Duane stated this area is for technology; the proposed use is for the industrial district. Ms. Duane stated that manufacturing is not what she understood the technology village to be. Mr. Cuddy stated that light industry was always a part of this. Mr. Cuddy stated that the covenants were approved by the Board.

Mr. Bartolomeo asked how many trucks come in and out a day. Mr. Cuddy stated that he does not know how many UPS trucks come in a day. Mr. Bartolomeo asked how the raw material is delivered. Mr. Cuddy stated that he does not know, but what he has seen has been very small pieces delivered in crates; very clean operation. Mr. Cuddy stated that a lot has changed over 30 years. Mr. Cuddy stated that the Board could review the operations if they feel it necessary.

Mr. Bartolomeo asked if there would be a traffic study. Mr. McAllister stated a traffic study was completed to account for all different types of developments. Mr. McAllister stated that light manufacturing proposed was approved by NHDOT under the driveway permit. Mr. McAllister stated that the study was completed with these types of uses in mind and NHDOT has indicated that an update of the traffic study is not necessary for this development.

Mr. Bartolomeo stated that this may not be the best location for this particular use, however, the Board has been invited to look at the operation and the Board should do that before we act on this application. Mr. Irving stated that the Board could conduct a site visit and the applicant could produce data to answer any questions you have. Mr. Irving stated that the Board has questions regarding traffic impact and noise and they would like to conduct a site visit.

Ms. Duane asked how many days do they operate. Mr. Cuddy answered 24-7. Ms. Duane asked how many employees there were. Mr. Cuddy answered 8; however, they would like up to 26 over the next two years. Mr. Bartolomeo asked if they were proposing any more machines. Mr. Cuddy answered only one new machine is proposed. Ms. Duane asked who is constructing the building. Mr. Cuddy answered the MWVEC is constructing the building.

Ms. Sherman asked for public comment; Michael Hager of 33 Mineral Spring Road asked how this would affect his property value. Mr. McAllister stated that they submitted a study when this site was first being developed in 2004 and the study indicated 200,000 to 300,000 square feet could be developed without diminishing surrounding property values. Mr. McAllister stated that they do not plan on developing that amount.

Mr. Hager stated that the noise and pollution it will cause is a concern. Mr. Hager stated that they do not want a lot of trucks behind their house as it is a residential neighborhood. Mr. Cuddy stated in regard to environment there are no stacks; there are no exhausts or emission that would impact the environment.

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Debbie Duggan asked what type of sewer. Mr. Cuddy stated that it will be on municipal sewer. Ms. Duane asked if there is precinct sewer now. Mr. McAllister answered in the affirmative. Mr. Cuddy stated that each lot was approved for a subsurface system as well.

Mr. Bartolomeo stated that he would like to hear from the owner about how many trucks. Mr. Colbath stated someone should be here to answer operational questions; cannot believe there are no emissions. Mr. Bartolomeo stated he would like to see the covenants. Mr. Irving stated that the Board would like the applicant to address traffic impacts and traffic questions, specific noise outside the building and to conduct a site visit. Mr. Hager asked what about smells. Mr. Cuddy stated there is no smell.

Mr. Colbath made a motion, seconded by Ms. Duane, to continue the hearing for Mount Washington Valley Economic Council until February 15, 2012 at 7:00 pm. Motion unanimously carried.

A public hearing was opened at 8:06 pm to consider a **VARIANCE** requested by **SHAWN AND KRISTIN JARVI** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** at 348 Transvale Road, Conway (PID 251-72). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, November 3, 2011. This hearing was continued from November 17, 2011.

Mr. Chalmers became a voting member at this time. Shawn and Kristin Jarvi appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Jarvi stated they purchased their property in 2009 and when they purchased it there was an existing pavilion and shed on it. Ms. Jarvi stated that they pull their RV up to the pavilion. Ms. Jarvi stated that they understand they were constructed in 2004 without permits and they would like to take the steps to rectify this situation. Ms. Jarvi stated that every year they endure flooding; we take care of it and clean it up. Ms. Jarvi stated that they are seasonal campers, they watch the weather and they have never in any way had any issues.

Ms. Sherman stated that according to the timeline in 1979 the Town of Conway enacted the floodplain ordinance; in 1994 the accessing files indicate that it was a vacant lot. Mr. Jarvis stated that they purchased the property in 2009 and they did not know it was constructed illegally. Ms. Jarvi stated that they would like to keep the shed to keep things dry.

Ms. Sherman stated in 2004 it was indicated there was a shed on the property, but there were no permits. Ms. Sherman stated that it indicates that the pavilion came after 2004. Ms. Jarvi stated they would like to keep the open pavilion and asked if it is possible to have someone come in and certify the pavilion. Ms. Sherman stated that a building permit cannot be issued within the floodway.

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Ms. Jarvi read §147.13.16. Ms. Sherman stated that is the Wetland and Watershed Protection Overlay District. Ms. Sherman stated that you are in violation of the Floodplain Conservation District. Ms. Jarvi stated they are looking to keep what they have and do what they can to come up here and enjoy their property. Ms. Jarvi stated that they do not see how a pavilion is any different than a telephone pole or a mailbox. Ms. Jarvi stated that they are willing to do what we need to do to rectify this situation.

Ms. Sherman asked for public comment; Bruce Duggan stated that he does not see where their property diminishes anyone's property values and he doesn't see how a pavilion deters the flow of water; it is the same as a post or a tree. Mr. Hylen stated that it diminishes the Town as a whole as it could lose the ability to participate in the Flood Insurance Program. Mr. Irving stated any property owners that are participating in the program through the purchase of flood insurance might not be able to purchase or the resale of the property might be encumbered.

Ms. Sherman stated that FEMA controls the flood insurance program. Ms. Duane stated it is the Town as a whole. Mr. Duggan stated only if you grant a variance. Ms. Sherman stated that it has to be removed. Susan Blaney stated there are places that have been given a variance in the past years, and one was granted a building permit. Ms. Blaney stated that one variance allowed fill and a mobile home.

Mr. Malia stated the ordinance adopted in 1979 made it impossible to put anything in the floodway, as a result of Irene the Town has become aware of many illegal buildings as well as some permits and variances granted which probably shouldn't have been if the floodplain ordinance had been applied. Mr. Malia stated that FEMA is saying the town cannot look away or your Town will be in jeopardy of not being a part of this program.

Mr. Malia stated it is a difficult situation for everyone. Mr. Irving stated the difficulty is not just one pavilion it is application of the test in a fair manner and this is where FEMA looks at the accumulative impact. Mr. Irving stated that FEMA will look at that and then review if the Town is administering their ordinances. Ms. Sherman closed the public hearing at 8:31 pm.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment: Ms. Duane stated that this would create a public safety issue as it would put first responders at risk and structures in the floodway would be subject to flood damage with resulting debris impeding the flow in the floodway causing higher flood elevation and debris washing up on downstream properties. Mr. Colbath stated that this could affect the affordable flood insurance through FEMA and the public interest is greater for the applicant. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Hylen stated that this goes against the spirit of the ordinance. Ms. Duane stated that it goes against the spirit of the ordinance. **Motion unanimously defeated.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated that we have to look if the justice is greater for the public or for the applicant, and the justice would be greater for the applicant. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Ms. Duane made a motion, seconded by Mr. Colbath, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Ms. Duane stated that the increased flood risks, debris and potential disqualification from the NFIP would diminish the values of surrounding properties. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; Ms. Duane stated that the restriction was adopted to mitigate flooding risks from development on properties in the floodplain Ms. Sherman stated that this property is not distinct from other properties in the area. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Ms. Duane stated buildings in the floodway are not a responsible use. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; Ms. Duane stated that there is nothing to distinguish this property from other properties in the area. **Motion unanimously defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Colbath stated even without the structures on the property there is still a reasonable use of the property. Ms. Duane stated that the property can still be used for temporary camping. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the requested variance is for activity within the designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Ms. Sherman asked for Board

comment; Ms. Duane stated that the applicant did not demonstrate that the flood heights would not increase. **Motion unanimously defeated.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Ms. Duane stated granting the variance would not grant any relief from flood hazards. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow existing structures to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

A public hearing was opened at 8:39 pm to consider a **VARIANCE** requested by **PATRICE AND HOLLY ROULEAU** in regard to §147.13.14 of the Conway Zoning Ordinance **to allow existing structures to remain in the Floodplain Conservation District** at 372 Transvale Road, Conway (PID 251-58). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, November 3, 2011. This hearing was continued from November 17, 2011.

Holly Rouleau appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Rouleau stated they would like to be able to store tools, lawn chairs, rakes and other items on their property. Ms. Rouleau stated if there is not a place to keep them, they will either be stolen, or since they are right on the river, then all her belongings will be down the river if the river rises. Ms. Rouleau stated she does not believe she is impacting the public and the spirit of the ordinance is to allow her to keep a structure to maintain her property and because of the theft to keep everything in there.

Ms. Rouleau stated that she does not see how the shed is any different from having a tree. Ms. Rouleau stated that she has not cut any trees as she thought it would be better to keep the root system. Ms. Duane asked about the water pump. Ms. Rouleau stated that she has a water point. Mr. Colbath asked if she has electricity. Ms. Rouleau stated she did until they pulled the meters. Ms. Duane asked the type of bathroom. Ms. Rouleau stated that it composts the waste.

Ms. Sherman asked for public comment; Susan Blaney stated the location of the shed is surrounded by trees so it is not going anywhere; same as if it were a tree.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment: Ms. Sherman stated she doesn't believe the applicant met this requirement primary because of FEMA's interpretation of flood insurance. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Ms. Duane stated that neither the spirit nor the letter of the ordinance is observed. Ms. Duane stated that allowing structures in the floodplain directly conflicts with the objective of mitigating risk by prohibiting structures in the floodplain. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Hylen, that substantial justice is done.** Ms. Sherman asked for Board comment; Ms. Duane stated the benefit gained by the applicant is at the expense of the public safety and threatens both first responders and properties in or near the floodplain. Ms. Duane stated if FEMA is compelled to review such variances and determines that they are inappropriate, the Town could be subject to disqualification from the NFIP program; and if the NFIP program is no longer available to other property owners in and near the floodplain, that would be an injustice. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; Ms. Duane stated that increased flood risk, debris and potential disqualifications from the NFIP would diminish the values of surrounding properties. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Duane, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; Ms. Duane stated that the restriction was adopted to mitigate flooding risks from development on properties in the floodplain; the relation is direct and compelling. Mr. Hylen stated there is nothing that distinguishes this property from others in the area. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Duane, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Ms. Duane stated building structures in the floodway is not a reasonable use. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; Ms. Duane stated that there is nothing that distinguishes this property from surrounding properties in the area and the property can still be used for temporary camping as it was originally intended. **Motion unanimously defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Hylen, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Chalmers stated there are no special conditions that distinguish this property from others in the area. **Motion unanimously defeated.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Ms. Duane, that the requested variance is for activity within the designated regulatory floodway, no increase in flood levels during the base flood discharge will result.** Ms. Sherman asked for Board comment; Ms. Duane stated that the applicant did not demonstrate that the flood heights would not increase. **Motion unanimously defeated.**

Ms. Sherman read item 8. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance is necessary, considering the flood hazard, to afford relief.** Ms. Sherman asked for Board comment; Ms. Sherman stated that granting the variance would not afford any relief from the flood hazards. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to allow existing structures to remain in the Floodplain Conservation District be granted. Motion unanimously defeated.

A public hearing was opened at 8:52 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **DEBORAH DUGGAN** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** at 361 Transvale Road, Conway (PID 251-51). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Deborah Duggan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Irving stated that staff was not able to determine that it was grandfathered; they are asking that you overturn that decision. Mr. Bartolomeo stated there does seem to be documentation in 1975 for \$100. Mr. Irving stated that we are not contesting that there was something there, but we cannot attest that it was all there.

Ms. Duggan stated there has been an open pavilion there since 1977; same in 1994 and the same after Hurricane Irene. Ms. Duggan stated that a travel trailer and a screen room were taxed from 1978. Ms. Duggan stated that there are photographs from 1977 that were clearly mentioned when they went out to the site; looks the same in 1977 as it does today. Ms. Duggan stated that the pavilion has been called many things, an open porch, and a screen room. Ms. Duggan stated that a pavilion is not a structure and is allowable in the flood plain.

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Ms. Duggan stated that this subdivision was done in 1961 and recorded at the registry of deeds. Ms. Duggan stated that you did not have ordinances until 1980. Ms. Duggan stated in 1964 brochures it boasts Transvale Acres and other areas in the floodplain. Ms. Duggan stated that we have been coming up here for five generations and we are doing exactly what was intended by the subdivision in 1961.

Ms. Duggan stated that open pavilions or sheds are not considered structure and it is in the spirit of the ordinance to keep these seasonal and recreational. Ms. Duggan stated under §147.14 this is legally, non-conforming. Ms. Duggan stated using the 1979 ordinance is a mistake. Ms. Duggan stated a zoning change has to go through Town Meeting to be legally binding and that did not happen until Town Meeting on March 9, 1982.

Ms. Sherman stated it was a Selectmen's ordinance in 1979. Mr. Malia stated that he did the research and there were three dates that could have been used. Mr. Malia stated that we felt comfortable settling on September 1979 and FEMA has agreed with us. Mr. Malia stated that is what we have been using. Mr. Malia stated the Town's Floodplain Conservation Overlay District is stricter than FEMA regulations. Mr. Malia stated that the key date is September 1979; and applicants need to prove what was there prior to 1979 and if it was there prior to that it would grandfathered.

Mr. Malia stated that staff did not necessary disagree that something was there prior to 1979, but there is something more there now. Ms. Duggan stated there is an issue with the 1979 date as it went to Town Meeting in 1982. Ms. Duggan stated that the Town has a significant amount of flood area and what applies to one needs to apply to all. Ms. Duggan stated an open pavilion is allowable by the Flood insurance program and slabs at grade are not a huge risk.

Ms. Duggan stated that you are going on a definition of a structure that changed in March 1989 and Conway Code §147.14 has changed through the years. Ms. Duggan stated that it depends on what was there and when to determine what might be grandfathered or not. Ms. Duggan stated there was a change in 1992 to the definition of unit. Ms. Duggan stated in 2010 there were no codes, but in 2011, after Irene the codes were changed. Ms. Duggan stated the Master Plan was done in 2002.

Ms. Sherman asked what was on her lot in 1977. Ms. Duggan answered an open pavilion and a shed. Ms. Sherman asked if there was a slab. Ms. Duggan answered in the affirmative. Ms. Sherman asked if there were posts. Ms. Duggan answered in the affirmative.

Mr. Irving stated we concur that the tax records indicated in 1978 a travel trailer with a screened room. Mr. Irving stated that it could have been a pavilion of an undetermined size with no slab as it had a \$100 value. Mr. Irving stated our task was to review the information before us and determine if it was grandfathered. Mr. Irving stated that we reviewed the site. Mr. Irving stated that our records indicate that there was something there; the document from the tax assessor's office indicates there was something there. Mr. Irving stated what is currently there is larger now than what it was then.

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Mr. Irving stated on December 9th, 2011 there were two sections of concrete slab; one appears to be older than the other. Mr. Irving stated that the older portion appears to be the same size as the pavilion in the 1978 photo. Mr. Irving stated there was no evidence in this documentation that the other buildings existed prior to the enactment of the ordinance in 1979. Mr. Irving stated there is no evidence that the rock structure surrounding the well was there. Mr. Irving stated that they could not make a determination that everything on the site was grandfathered. Mr. Irving stated that staff is having the Board determine what is grandfathered.

Tom Duggan asked who put the restrictions on our deeds. Mr. Holmes stated either Mr. Shaw, the developer, or his attorney; they are private restrictions. Ms. Duane stated they would have been put in by who originally subdivided the land. Mr. Holmes stated they are put in by some owner, chain of title, and then lawyers copy language over from transfer to transfer. Mr. Holmes stated they are simply private covenants by someone with chain of title.

Ms. Sherman asked if the travel trailer was on the concrete. Ms. Duggan stated the travel trailer was on dirt. Ms. Duggan stated that the date is important and the definition is important. Ms. Duggan stated that you cannot enforce anything until 1986. Ms. Duggan stated that a small shed is not a burden on society. Mr. Bartolomeo stated that the use is still allowed, it is the permanent structure that is the issue.

Ms. Sherman asked for public comment; Pat Stone, who owns property across from the Duggan's, stated that her husband's family has been coming here for 44 years, around the same time as the Duggan's and pavilions, slabs and sheds were put up. Ms. Stone stated that we are coming four and half hours on the weekends and we can't bring everything with us. Ms. Stone stated that our family has been using the site for 44 years and want to continue to using it.

Jim MacInnis stated that their property doesn't take any value away from ours. Ms. Sherman closed the public hearing 9:43 pm.

Mr. Irving stated that staff cannot grandfather everything on the site, they are appealing that decision. Mr. Colbath stated he believes there was a pavilion, a slab and a shed, but after that he is not sure what was there. Mr. Colbath asked if the shed and the outhouse are the same. Ms. Duggan answered in the affirmative.

Mr. Colbath stated we know in 1978 there was a screen room, a shed and a platform of some kind; as of today there are similar structures. Mr. Colbath stated that he cannot imagine that they have not been enlarged and improved over the years. Mr. Colbath stated that we need to make a decision to not allow anything or allow something. Mr. Colbath stated that he believes there was a screened room, a shed and a platform. Mr. Colbath stated by record there was some sort of screened room, a shed and a platform that you have a right to continue to have, but there are additional well structures that has been added.

Mr. Hylen made a motion, seconded by Ms. Duane, to uphold the administrative decision. Mr. Colbath stated that he would like the rationale behind the motion. Mr. Hylen stated we are guessing on what was there and in his mind we don't know what was there, when the slab was

there and he has not seen anything to determine when the slab was there. Mr. Bartolomeo stated that he believes there was something there. **Motion defeated with Mr. Colbath, Ms. Duane, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Hylen voting in the affirmative.**

Mr. Hylen made a motion, seconded by Ms. Duane, to overturn the administrative decision in its entirety. Motion unanimously defeated.

Ms. Duane made a motion to allow an 11' x 11'6" concrete pad prior to September 1979. Mr. Irving stated if they were to construct a pavilion on it then it would have to comply with FEMA. **Mr. Hylen seconded the motion.** Mr. Irving stated that the portion of the slab delineated would be found grandfathered and nothing else; everything else has to go. Mr. Irving stated if the Board were to find the slab with a screened room on top, they could put that back if it met FEMA standards.

Mr. Hylen withdrew his second. Mr. Colbath stated there was a shed there, but not the shed that is there now. Mr. Irving stated that we have the photograph that shows the height of the screened room. **Ms. Duane withdrew her motion.**

Ms. Duane made a motion, seconded by Mr. Hylen, to find that the existing 11' x 11'.6" concrete slab with a screen room on top of it are considered grandfathered and it is not to exceed the existing volume of what was indicated in the 1978 photographs stapled to the 1978 tax cards. Motion unanimously carried.

A public hearing was opened at 9:55 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **THOMAS DUGGAN JR** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** at 78 B Road, Conway (PID 251-40). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Thomas and Deborah Duggan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Duggan stated that he cleaned up the shed and put it back on the slab that was there. Mr. Duggan stated that the only pictures he has show a vacant lot as the shed had collapsed.

Ms. Sherman asked if the slab was there in 1981. Mr. Duggan answered in the affirmative. Mr. Malia stated there was a pad there and if there was a shed, it was collapsed. Mr. Duggan answered in the affirmative. Mr. Colbath stated the town assessing records show a vacant lot from 1978 until 1994. Mr. Colbath stated a shed is indicated in 2004. Ms. Duggan stated the grass was grown over. Ms. Duane stated that the letter states that he started to build and the flood washed it away. Mr. Hylen stated it is not indicated in the tax assessor's documents and there are no pictures.

Mr. Hylen made a motion, seconded by Ms. Duane, to uphold the Administrative Decision. Ms. Sherman asked for public comment; Ms. Duggan stated that she has pictures up to 1993. Ms. Sherman closed public comment and the public hearing at 10:19 pm. **Motion unanimously carried.**

A public hearing was opened at 10:20 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **CHARLES WATTERS** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** at Beach Road, Conway (PID 251-69). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

There was no representation for this application. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Malia suggested making a decision on what was submitted.

Mr. Colbath stated there was shed, but the tax property record from 1978 to 2007 has no record of this property having a shed. Ms. Sherman stated the picture from 2004 doesn't show a shed.

Ms. Sherman asked for public comment; Ms. Duggan asked if the zoning department has any record. Mr. Irving stated we only have what is in the tax assessment records. Ms. Sherman stated the picture from 2004 doesn't show a shed. Mr. Colbath stated that the shed was first indicated in 2011. Ms. Sherman closed public hearing at 10:24 pm.

Mr. Hylen made a motion, seconded by Ms. Duane, to uphold the Administrative Decision. **Motion unanimously carried.**

A public hearing was opened at 10:25 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **PAUL AND MARCIA DUGGAN** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** at 341 Transvale Road, Conway (PID 251-50). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Kelly and Larry LeBlanc appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. LeBlanc stated that she does have the original copies of the photographs if the copies are not good. Mr. Colbath stated the date is 1979, what do you feel was existing in 1979 that you would like grandfathered. Ms. Leblanc stated the open pavilion with removable screens and a shed. Ms. LeBlanc stated the tax record in 1978 confirms the

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existence of those structures. Mr. Colbath asked if the property has changed. Mr. LeBlanc stated that the slab was enlarged. Ms. LeBlanc stated a walkway was added about 18 years ago.

Mr. Irving asked if you can use the line of the area added for the walkway. Ms. LeBlanc stated absolutely. Ms. Duane stated the pictures from 2004 and the spring of 1979 are not the same. Ms. Duane stated from her view there was no shed in 1979; there may have been a wooden box, but not the same shed. Mr. LeBlanc stated that the pavilion's roof line changed.

Ms. Duane stated that she does not want to grandfather something that is much larger than what was there in 1979. Ms. LeBlanc stated currently nothing exists on this property; we took it down for safety reasons. Mr. Colbath asked if there is still a slab. Ms. LeBlanc answered in the affirmative. Mr. Bartolomeo stated that the slab they put under it to replace the wooden slab; does that just come under routine maintenance. Mr. Irving stated that it would have still required a building permit or an intent to build. Mr. Irving stated that the repair and/or maintenance of a legally existing structure would still have some regulations.

Mr. Irving stated there was a concrete slab in which the joist floor sat. Mr. LeBlanc agreed. Ms. Duane asked prior to the walkway what the size of the slab was. Mr. LeBlanc stated that they never measured it. Ms. Duane asked with the structure gone, what happens now. Mr. Irving stated within this district it may be repaired within one year as long as they meet the FEMA regulations. Mr. Irving stated that the Board needs to determine what they want to replace it with and look at FEMA standards too see how it can or needs to be done. Mr. Irving stated at this point, don't know if we can issue a permit to replace it, but it needs to be determined if it was a legally existing non-conforming structure.

Ms. Sherman asked for public comment; Bruce Duggan stated they had a wooden platform over the concrete as the concrete had cracks. Deborah Duggan stated that her parents and our parents camped in that area over 40 years ago; it is the true sense of the word grandfathering. Ms. Sherman closed the public hearing at 10:43 pm.

Ms. Duane made a motion, seconded by Mr. Chalmers, to grandfather the 10 x 18 concrete pad and associated open pavilion; and that the volume is to be equivalent to that shown on the 1978 tax card photo. Ms. Duane stated a photo from 1979 shows a slab with a structure on it. Mr. Holmes stated we were assessing a platform and a shed. Mr. Colbath stated which is indicated on the 1978 tax card. **Mr. Chalmers seconded the motion.**

Mr. Hylen asked Mr. Irving why he could not grandfather this. Mr. Irving stated we did not have sufficient information. Mr. Irving stated we were not comfortable and wanted the ZBA to have full information. **Motion unanimously carried.**

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A public hearing was opened at 10:53 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **BRUCE AND DAWN DUGGAN** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** on Beach Way, Conway (PID 251-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Bruce and Beverly Duggan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated we reviewed it and did not see anything that was grandfathered. Mr. Bartolomeo stated the Assessing Department doesn't show anything in 2011. Mr. Duggan stated that he tore the building down and found the slab underneath. Mr. Duggan stated that the slab was about a foot underground. Mr. Chalmers asked if he poured a new slab. Mr. Duggan answered in the negative. Mr. Duggan stated that the slab and the shed were in poor shape.

Ms. Sherman asked for public comment; Deborah Duggan stated that she remembers them digging the slab out. Mr. Bartolomeo asked Mr. Holmes if he could have missed a slab. Mr. Holmes stated if it was under the ground, yes. Mr. Bartolomeo asked if there was an old structure on the slab. Mr. Duggan stated not that he was aware of; he found it by mistake.

Mr. Irving asked if you are representing the slab is prior to 1979 and not the pavilion. Mr. Duggan answered in the affirmative. Ms. Sherman closed the public hearing at 11:05 pm.

Mr. Colbath made a motion, seconded by Mr. Hylen, to uphold the Administrative Decision. Motion unanimously carried.

A public hearing was opened at 11:07 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **BEVERLY DUGGAN** in regards to §147.14 of the Conway Zoning Ordinance **to request that the ZBA find that the existing structures are legally existing non-conformities** on Beach Way, Conway (PID 251-55). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Bruce and Beverly Duggan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Duggan stated that she has been there since 1969 and it is the same other than maybe new shingles. Ms. Duggan stated that nothing has ever floated away. Ms. Sherman asked when this was built. Mr. Duggan answered 1973. Ms. Sherman stated that the assessing records indicate a vacant lot in 1978.

Ms. Sherman asked for public comment; Debbie Duggan asked what happened to their paperwork; think they went out at different times of the year. Mr. Holmes stated the trailer is not in question; it's the canopies and the sheds. Mr. Holmes stated that we are not saying that they were not there, but our records don't indicate it. Mr. Irving stated the tax card in 1978 indicates

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a travel trailer, but does it show a pavilion. Mr. Holmes answered in the affirmative and stated that the photograph predates the date on the card; so prior to October 9, 1979.

Mr. Duggan stated that he is going for one shed, the other was constructed later. Ms. Duane asked prior to 1979 they would not have required building permits. Ms. Duane stated prior to 1979 there was no floodplain ordinance, but there were intent to builds. Ms. Sherman closed the public hearing at 11:21 pm.

Mr. Hysten made a motion, seconded by Ms. Duane to overturn the administrative decision and grandfather the 14'x20' pavilion on a concrete slab and one, 8'x10' shed on a concrete slab. Motion unanimously carried.

A public hearing was opened at 11:24 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **NORTH BEACH WAY REALTY TRUST/ROBERT AND PATRICIA STONE** in regards to §147.14 of the Conway Zoning Ordinance to request that the ZBA find that the existing structures are legally existing non-conformities at 36 Beach Way, Conway (PID 251-56). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, January 6, 2012.

Robert and Patricia Stone appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Stone stated that we have been there since 1969, but your records show nothing until 1981. Mr. Stone stated that there are pictures from 1971. Mr. Colbath stated the applicant is requesting a 16' x ~~20~~26' slab with pavilion and a shed. Mr. Colbath asked if the shed was on the concrete slab. Ms. Stone answered in the negative.

Mr. Holmes stated there was a letter in file from a previous owner indicating that it was a vacant lot. Ms. Sherman asked for public comment; Debbie Duggan stated their lot was there before our lot and we are both only seasonal. Ms. Duggan stated that they were there prior to us with what was on the lot. Mr. Irving asked if the roof on this structure was modified sometime between 2007 and 2011. Ms. Stone stated that it was reroofed and the trailer was lowered.

Ms. Stone showed pictures of the roof being constructed with her father-in-law in the picture and he passed away in 1976. Ms. Stone showed a copy of his death certificate. Ms. Sherman closed public hearing at 11:39 pm.

Mr. Colbath made a motion, seconded by Mr. Chalmers, to overturn the administrative decision and grandfather the 16' x ~~20~~26' concrete slab with a canopy and an 8' x 10' shed on a concrete slab. Motion carried with Mr. Colbath, Mr. Chalmers, Mr. Hysten and Ms. Sherman voting in the affirmative and Ms. Duane voting in the negative.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Chalmers made a motion, seconded by Mr. Hylen, to approve the Minutes of December 14, 2011 as written. Motion carried with Ms. Sherman and Mr. Colbath abstaining from voting.

Mr. Chalmers made a motion, seconded by Mr. Hylen, to approve the Minutes of December 21, 2011 as written. Motion unanimously carried.

Meeting adjourned at 11:45 pm.

Respectfully Submitted,

Holly Meserve
Recording Secretary