

**CONWAY ZONING BOARD  
OF ADJUSTMENT**

**MINUTES**

**SEPTEMBER 26, 2007**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 26, 2007 at the Conway Town Office in Center Conway, NH, beginning at 7:35 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Jeana Hale; Alternate, Cynthia Briggs; Alternate, Sheila Duane; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**APPOINTMENT OF ALTERNATE MEMBER**

Ms. Sherman appointed Ms. Briggs and Ms. Duane as voting members.

**PUBLIC HEARINGS**

A public hearing was opened at 7:35 pm to consider a **VARIANCE** requested by **FRANCIS DEFEO** in regard to §147.13.1.5.1 of the Conway Zoning Ordinance to allow a 100-foot monopole to install a sky stream residential wind turbine for generation of power at 1564 Brownfield Road (PID 283-28). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007.

Francis Defeo appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. DeFeo stated that the additional height is needed because of the area we live to get above the tree line. Mr. DeFeo stated at 40-feet the unit is about as noisy as a refrigerator and above that height it's quieter. Ms. Sherman asked if at the proposed height would it be above the tree line. Mr. DeFeo answered in the affirmative. Ms. Sherman asked where would it be visible. Mr. DeFeo stated that the house is approximately 500-feet from the road, so it should not be visible from Brownfield Road, but it may be visible from Dundee Mountain Road.

Ms. Briggs stated that there is not a site plan showing the location of the monopole. Mr. Irving stated that he is concerned with the setbacks and would suggest at least a 100-foot setback so if it fell it would be on his own property. Mr. Irving asked what is the blade length of the unit on top of the pole. Mr. DeFeo stated that the unit on the tower is 12-feet in diameter. Ms. Briggs asked if the pad is flush with the ground. Mr. DeFeo stated that it is in the ground and then the unit that bolts to the pad under the ground is approximately 6 inches above the ground. Mr. Irving suggested a 110-foot setback.

Mr. Irving asked if the Board wants a balloon test. Ms. Sherman suggested opening public comment first. Ms. Sherman asked for public comment; Tom Bryant asked if the balloon test would be to see it's location and where it is visible. Mr. Irving answered in the affirmative. Mr. Bryant asked if this Board has requested balloon tests in the past. Ms. Sherman answered in the affirmative and stated for cell towers, but this is the first wind

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tower. Mr. Bryant asked if the tower itself was 100-feet and if the blade is another 12-feet. Mr. Irving stated that the blade is 12-feet in diameter so it would be at least six feet above the top of the tower. Mr. Bryant stated that he would like to see the balloon test.

Jeanette Blake stated she was concerned with noise. Mr. DeFeo stated that the unit runs at approximately 40-~~decibels~~ decibels. Mr. DeFeo stated at 40-feet it is the sound of a refrigerator and the higher the unit the less sound. Mr. DeFeo stated that he would be happy to conduct a balloon test. **Ms. Hale made a motion, seconded by Ms. Duane, to require a balloon test on Saturday, October 6, 2007 with an alternate date of Saturday, October 13, 2007. Motion unanimously carried.**

Mr. Irving asked if the Board would like any additional information at the next meeting. Ms. Hale stated that she would like to know the setbacks. Ms. Briggs asked about a plan. Mr. DeFeo stated that he would provide a drawing indicating the location of the monopole and the distance to the property lines. **Ms. Hale made a motion, seconded by Mr. Colbath, to continue the variance application for Francis DeFeo until October 24, 2007 at 7:30 pm. Motion unanimously carried.**

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A public hearing was opened at 8:10 pm to consider a **VARIANCE** requested by **THORNTON INVESTMENTS, INC** in regard to §147.13.14.3.1 of the Conway Zoning Ordinance to allow the construction of river access stairs and landing (deck) within the Floodplain Conservation District (PID 265-198). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007.

Shawn Bergeron of Shawn Bergeron Technical Services and Bob Thornton appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked the height of the bank. Mr. Bergeron stated that the floodplain elevation is at 450-feet and the elevation at the top of the staircase is 452-feet. Ms. Sherman asked if the proposed structure was entirely in the floodplain. Mr. Bergeron answered in the affirmative.

Ms. Sherman asked what is the rationale. Mr. Bergeron stated that the lot entirely fronts the Saco River and there are no other options to put the proposed staircase out of the floodplain. Ms. Sherman stated when you consider the river you have many areas that have the same problem with a bank that drops to the river. Mr. Bergeron stated that he would agree with that, but there are many areas that you can walk to the river. Ms. Sherman stated that those cases change year to year. Mr. Bergeron stated that the effect of the river on its banking shows up where there are oxbows and great curves in the river and this area is extremely straight.

Ms. Duane asked the width of the river in this area. Mr. Thornton answered 300-feet wide. Ms. Duane stated that she looks at the fact that the Saco River is an amenity to the property and building a set of stairs has less environmental impact than blazing their own trail. Ms. Sherman stated owning property along the river herself, which the property is banked and knowing she cannot essentially do anything with it, is an amenity, but it is not like a lake and these natural banks have been there. Ms. Sherman stated when the applicant

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purchased the property there was no access to the river. Ms. Duane stated there are structures like this along the bank. Ms. Sherman stated that they might not be permitted and if this variance is granted everyone will want stairs to the river.

Mr. Bergeron stated that the applicant is asking for the ability to construct a structure by Conway definition. Mr. Bergeron stated if they wanted to construct a sidewalk down to an embankment retaining wall then we don't have to be here since by Conway definition they are not structures. Mr. Bergeron stated in regard to the statement that there is other structures are true and many were not there before zoning. Ms. Sherman stated that may be so, but how many were permitted after or before zoning, if they came before the Board she doesn't recall. Mr. Bergeron stated that they didn't.

Mr. Thornton stated that the people who live there will go to the river and to go down the cliff is a safety issue. Mr. Thornton stated that he is trying to make it easier for them. Mr. Thornton stated it would be taken out of the water at the end of the season with the exception of the staircase. Mr. Thornton stated that a path could be seen where this is proposed. Mr. Thornton stated that it is a safety issue.

Earl Sires, Conway Town Manager, stated not sure something this simple would need so many variances to do, however, there is a good reason because it violates the regulations. Mr. Sires stated that the reason Conway doesn't experience the flooding situations like other towns are because Conway has regulations leaving unobstructed ways. Mr. Sires stated Evergreen on the Saco worked with the Town and complied with the regulations and to then throw this is their face right across the river would make the Town look silly. Mr. Sires stated that he is sure it is well intentioned, but it makes no sense for this community. Mr. Sires stated that it really is not a good thing for the community and urge the Board not approve it.

Mr. Thornton asked what is he throwing in their face. Mr. Sires stated that they complied with the regulations. Mr. Bergeron stated that they didn't ask, but they could. Mr. Thornton stated that he is asking for a safe way to get to the river on his property. Mr. Irving stated the actual structure itself is in the floodplain as well as the floodway. Mr. Bergeron stated that he didn't think it was in the floodway. Ms. Sherman asked how would you get from the deck to the dock on the river, and how many feet above the water level. Mr. Thornton stated it is about 9-feet and he stated it would be from a portable stairway. Mr. Bergeron stated he would provide a seasonable dock.

Mr. Irving asked Mr. Bergeron if the property was surveyed since they last discussed the floodway issue and is the position now that it is not in the floodway. Mr. Bergeron stated that the deck would be in the floodplain. Mr. Irving stated that Mr. Bergeron indicated that he could have put a path in the wetland setbacks across the buffer, but a path that creates damage would not be allowed. Mr. Irving read §147.13.16.4.1. Mr. Irving stated in order to grant a variance there needs to be a hardship and there seems to be reasonable use of the land considering there are 14-units and a radio tower.

Mr. Colbath asked if a pathway could or could not be installed. Mr. Irving stated that he does not know. Mr. Colbath stated River Street has residential homes and they don't have

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access to the river. Mr. Bergeron stated that someone does have a structure similar each year along River Street and not to be argumentative, but he could have a retaining wall and there are other means to have the same result. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.** Ms. Sherman asked for Board comment; Ms. Duane stated that there are other ways to access the river. Ms. Briggs stated that not having access to the river does not deteriorate the value of the property. Mr. Colbath stated 14-units is a reasonable use of the property and there are other ways to access the river. Ms. Hale stated that the topography has not changed since the applicant purchased the property. Ms. Sherman stated enforcement of the ordinance does not allow any reasonable use of the property since it has 14-units. **Motion unanimously defeated.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman asked for Board comment; Mr. Colbath stated the ordinance specifically addresses restrictions, the riverbank has not changed, the site has commercial and residential use and not having river access is not a specific restriction to this property. Mr. Colbath stated safe or unsafe they can still access the river from this property. Ms. Duane stated that the restrictions do not prevent this property from being used to its potential. Ms. Briggs stated that it doesn't affect them differently. Ms. Sherman stated there is a relationship between this property and the specific restriction. **Motion unanimously defeated.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; Ms. Briggs stated granting the variance would injure the property rights of others downstream. Mr. Colbath expressed disappointment the public did not attend. Ms. Hale stated that she agrees with Mr. Colbath. Ms. Hale stated that the public voted on the zoning ordinance and the movement to protect the waterways. Ms. Hale stated that she is surprised there are no abutters in attendance. Mr. Irving read a letter from Mary Russo who was in favor of the application. Ms. Sherman stated that she believes it would injure both. **Motion unanimously defeated.**

**Mr. Colbath made a motion, seconded by Ms. Duane, that based on the findings of a, b, and c above, denial of the variance would result in unnecessary hardship to the property owner seeking it.** Ms. Sherman asked for Board comment; there was none. Mr. Sires asked if the abutters across the river were notified. Mr. Bergeron answered in the affirmative. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; Ms. Hale stated the reason for the ordinance was to protect the waterways. Mr. Colbath stated that he agrees with Ms. Hale. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; Ms Hale stated that it does affect the public interest since they told us they want to protect the waterways. Ms. Briggs stated that the Town has taken the position that the floodplain is not to be violated. **Motion unanimously defeated.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; Mr. Colbath stated that substantial justice is to the to the applicant. **Motion unanimously defeated.**

**Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.14.3.1 of the Town of Conway Zoning Ordinance to allow the construction of river access stairs and landing (deck) within the Floodplain Conservation District be granted. Motion unanimously defeated.**

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A public hearing was opened at 8:45 pm to consider a **SPECIAL EXCEPTION** requested by **THORNTON INVESTMENTS, INC** in regard to §147.13.14.3.1 of the Conway Zoning Ordinance to allow the construction of river access stairs and landing (deck) within the Floodplain Conservation District (PID 265-198). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. **Mr. Bergeron withdrew the application.**

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A public hearing was opened at 8:45 pm to consider a **VARIANCE** requested by **THORNTON INVESTMENTS, INC** in regard to §147.13.16.4 of the Conway Zoning Ordinance to allow the construction of river access stairs and landing (deck) within the Wetland Conservation District buffer (PID 265-198). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron withdrew the application. **Mr. Bergeron withdrew the application.**

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A public hearing was opened at 8:45 pm to consider a **VARIANCE** requested by **THORNTON INVESTMENTS, INC** in regard to §147.13.16.3.1 of the Conway Zoning Ordinance to allow the construction of river access stairs and landing (deck) within the Wetland Conservation District setback (PID 265-198). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. **Mr. Bergeron withdrew the application.**

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A public hearing was opened at 8:45 pm to consider a **VARIANCE** requested by **THORNTON INVESTMENTS, INC** in regard to §147.13.14.3.1 of the Conway Zoning Ordinance to allow the construction of river access stairs and landing (deck) within the setback (PID 265-198). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 14, 2007.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. **Mr. Bergeron withdrew the application.**

**ELECTION OF CHAIR**

**Mr. Colbath nominated, seconded by Ms. Duane, Ms. Sherman as Chair. Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Colbath made a motion, seconded by Ms. Duane, to approve the Minutes of August 22, 2007 as written. Motion unanimously carried.**

Meeting adjourned at 8:52 pm.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant