

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

AUGUST 24, 2005

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 24, 2005 beginning at 7:30 p.m. at the Conway Town Office in Center Conway, NH.

Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Code Enforcement Officer, James Yeager; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of July 27, 2005 as written. Motion unanimously carried.

PUBLIC HEARINGS

A public hearing was opened at 7:35 p.m. to consider a **VARIANCE** requested by **MARY BADGER** in regard to Article 147.13.7.6.1.4.1 of the Conway Zoning Ordinance to allow a freestanding sign within the front sign setback at 2506 White Mountain Highway, North Conway (PID 218-16). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters August 17, 2005.

Brian Ahearn of Four Your Paws Only appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four-members were present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Mr. Ahearn agreed to proceed with four-members.

Mr. Yeager stated that the applicant currently has a projecting sign, which would have to be removed if granted a freestanding sign. Ms. Sherman asked what is the width of the right-of-way. Mr. Yeager answered it is a 66-foot right-of-way. Ms. Sherman asked how far would the sign be from the State right-of-way. Mr. Ahearn answered 3-feet. Mr. Bartolomeo asked if the sign would be blocked by the tree if driving north at the 25-foot setback. Mr. Ahearn answered in the affirmative.

Mr. Bartolomeo stated he is not sure if the neighbor's tree is a special condition that would cause an unnecessary hardship. Ms. Sherman asked how far is the building from the State right-of-way. Mr. Yeager answered the building is setback greater than the 25-feet. Mr. Bartolomeo stated there is a provision in the ordinance that allows a 30 square foot sign, 10-feet from the right-of-way. Mr. Yeager stated at 10-feet the sign would still

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be behind the tree. Mr. Chalmers asked if Mr. Ahearn has spoken with the abutter. Mr. Ahearn answered in the negative.

Mr. Chalmers stated that he would like to see the sign meet the ordinance, plus the applicant hasn't exhausted all avenues as he has not spoken to the neighbor regarding pruning the tree. Mr. Bartolomeo stated he would have a difficult time granting a variance when the 10-foot setback is available. Ms. Sherman asked for public comment; there was none.

Ms. Sherman asked how far is the Peach's sign setback from the right-of-way. Mr. Yeager stated he didn't know, but it is probably in the right-of-way or very close to it. Ms. Sherman asked if the lot with the park would be an unbuildable lot as it is not a very deep lot. Mr. Yeager stated that the park lot drops to the back of the property. Mr. Colbath stated that it still might be a buildable lot.

The Board agreed that they wanted to continue the application so the applicant could provide the Board a plan showing the location of the sign 3-feet from the right-of-way, 10-feet from the right-of-way and the location of the Peach's sign in relation to the right-of-way. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to continue the public hearing for Mary Badger until September 28, 2005 at 7:30 p.m. Motion carried with Mr. Bartolomeo voting in the negative.**

A public hearing was opened at 7:54 p.m. to consider a **VARIANCE** requested by **JOESPH AND LISA QUERCI** in regard to Article 147.13.7.4 of the Conway Zoning Ordinance to allow a secondary access to a second floor living unit within the side setback at 30 Kearsarge Road, North Conway (PID 218-101). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on August 17, 2005.

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four-members were present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Mr. Burnell agreed to proceed with four-members.

Mr. Bartolomeo asked if the existing building was being demolished. Mr. Burnell answered in the affirmative. Mr. Bartolomeo asked if the new building would be constructed on the same footprint. Mr. Burnell answered in the affirmative with the addition of the two variances. Ms. Sherman asked how much distance is there between the property line and the secondary access stairs. Mr. Burnell answered 3.5 feet. Ms. Sherman asked if it would mostly be for emergency access. Mr. Burnell answered in the affirmative.

Mr. Bartolomeo asked if the building would be sprinkled. Mr. Burnell stated that they have not gone that far in the project. Mr. Bartolomeo stated since this is a brand new

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building why couldn't the staircase be incorporated into the interior of the building. Mr. Burnell referred to the floor plans. Mr. Bartolomeo stated that most exterior staircases are afterthoughts, but this is a brand new building. Mr. Burnell stated that it would be greenspace under the staircase, as there would not a walkway leading to it, since it is just an accessory staircase. Mr. Chalmers agreed Mr. Bartolomeo and stated that this is a new building and if the staircase is needed it should be designed to be on the interior.

Ms. Sherman asked for public comment; there was none. Mr. Colbath stated that the restaurant on the next lot sits right on the property line and that abutter is not here. Mr. Bartolomeo stated just because an abutter is not here screaming is not a reason to grant a variance.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Mr. Colbath stated whether or not the staircase is necessary is still a question. Mr. Burnell stated that he does not think the staircase is necessary. Mr. Bartolomeo voted in the negative and stated there are no special conditions to prevent the staircase from going on the interior of the building. Mr. Chalmers voted in the negative and agreed with Mr. Bartolomeo. Mr. Chalmers stated were not even sure if the second access is necessary. Mr. Colbath voted in the negative and stated he is not sure if the second staircase is necessary for this project to move forward. Ms. Sherman voted in the negative and stated she is not sure if the second staircase is necessary for this project to move forward. **Motion unanimously defeated.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Mr. Bartolomeo voted in the negative and stated that the new stairs could be created inside the building. Mr. Chalmers voted in the negative and agreed with Mr. Bartolomeo. Mr. Colbath voted in the negative and stated that there appears to be other methods feasible. Ms. Sherman voted in the negative and agreed with Mr. Colbath. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Motion unanimously defeated.

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that there would not be a diminution in value of surrounding properties as a result of granting this variance. Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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.** Mr. Bartolomeo stated he is not sure the staircase is necessary if the building is sprinkled and has egress windows. Mr. Colbath voted in the negative and stated allowing the staircase would make

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the building more non-conforming. Mr. Bartolomeo voted in the negative and stated that it would make the building more non-conforming. Mr. Chalmers voted in the negative and agreed with Mr. Bartolomeo and Mr. Colbath. Ms. Sherman voted in the negative. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest.** Mr. Bartolomeo voted in the negative and stated eliminating visual clutter is in the public interest. Mr. Chalmers voted in the negative and agreed with Mr. Bartolomeo. Mr. Colbath voted in the affirmative and stated that there has been no public interest. Ms. Sherman voted in the affirmative and stated that the interest to the Town is not harmed in any way. **Motion defeated with Mr. Bartolomeo and Mr. Chalmers voting in the negative and Mr. Colbath and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Mr. Colbath voted in the affirmative and stated that he thinks the justice is equal to both and one is not greater than the other. Mr. Chalmers voted in the negative and stated that it would make a non-conforming structure more non-conforming and he does not see substantial justice in that. Mr. Bartolomeo voted in the negative and stated that he agreed with Mr. Chalmers. Ms. Sherman voted in the affirmative. **Motion defeated with Mr. Bartolomeo and Mr. Chalmers voting in the negative and Mr. Colbath and Ms. Sherman voting in the affirmative.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.7.4 to allow a secondary access to a second floor unit within the side setback be granted. Mr. Colbath voted in the negative and stated that there was no unnecessary hardship found. Mr. Bartolomeo voted in the negative and stated that granting the variance was not supported by the findings of fact. Mr. Chalmers and Ms. Sherman voted in the negative. **Motion unanimously defeated.**

A public hearing was opened at 8:18 p.m. to consider a **VARIANCE** requested by **JOESPH AND LISA QUERCI** in regard to Article 147.13.7.4 of the Conway Zoning Ordinance to allow a 15-foot long addition to encroach 2.4-feet into the side setback at 30 Kearsarge Road, North Conway (PID 218-101). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on August 17, 2005.

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four-members were present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Mr. Burnell agreed to proceed with four-members.

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Ms. Sherman asked the total encroachment into the side setback. Mr. Burnell answered 3.5 feet, which is the same as the existing building. Mr. Bartolomeo stated in the past the Board has granted this type of variance and he could easily support this one. Mr. Colbath stated in regard to diminution in value this would improve the value of the whole neighborhood. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Motion unanimously carried.

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that there would not be a diminution in value of surrounding properties as a result of granting this variance. Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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. Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest. Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.7.4 to allow a 15-foot long addition including eaves to encroach 2.4-feet into the side setback be granted. Motion unanimously carried.

A public hearing was opened at 8:29 p.m. to consider a **SPECIAL EXCEPTION** requested by **DOUGLAS AND MARY ELLEN HOLMES** in regard to Article 147-13.5.2.5.1 of the Conway Zoning Ordinance to convert a Bed and Breakfast to a 4-unit residential multi-family home at 1657 East Main Street, Center Conway (PID 260-40).

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Doug and Mary Ellen Holmes appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that only four-members were present and the applicant is entitled to a five-member board. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until there is a five-member board. Mr. Holmes agreed to proceed with four-members.

Mr. Holmes stated that the building was constructed in 1840, they are requesting four-units; the parking area is 140-feet long; and this would be in one building. Mr. Bartolomeo asked how many rooms were there in the Bed and Breakfast. Mr. Holmes answered seven rooms, plus the owner's quarters. Mr. Holmes stated this would be owner occupied with three rental units.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantially all of the structure is at least fifty (50) years old. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that the modification of the interior does not exceed four (4) units. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that no significant changes to the exterior lines or architectural detail are made, which would diminish the historical or architectural heritage of the structure. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that adequate area is available for parking and sewage disposal. Mr. Holmes stated that there is a 1,500-gallon tank. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that item 5 is not applicable to this application. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.5.2.5.1 of the Town of Conway Zoning Ordinance to convert a Bed and Breakfast to a 4-unit residential multi-family home be granted. Motion unanimously carried.

Meeting adjourned at 8:45 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary