

**CONWAY ZONING BOARD  
OF ADJUSTMENT**

**MINUTES**

**SEPTEMBER 28, 2005**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 28, 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; Jeana Hale; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, to adopt the Minutes of August 24, 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. This hearing was continued from August 24, 2005. There was no one in attendance representing this application.

**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. Bartolomeo stated that the applicant is entitled to a 30 square foot sign with a ten-foot setback and the neighbor's tree does not constitute a special condition. Mr. Colbath stated that the applicant does have a projecting sign that meets the standard that would have to be removed. **Motion defeated with Ms. Hale abstaining from voting.**

**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 stated that the applicant does have other options. **Motion defeated with Ms. Hale abstaining from voting.**

**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 defeated with Ms. Hale abstaining from voting.**

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**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 carried with Ms. Hale abstaining from voting.**

**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 defeated with Ms. Hale abstaining from voting.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary to the public interest. Mr. Bartolomeo stated that this property already has visual clutter with the number of flags and denying the variance would protect the public interest by not making a bad situation worse. Motion defeated with Mr. Colbath voting in the affirmative and Ms. Hale abstaining from voting.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done. Mr. Colbath stated that there would be a greater justice to the public in this instance. Motion defeated with Mr. Bartolomeo voting in the affirmative and Ms. Hale abstaining from voting.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.7.6.1.4.1 of the Town of Conway Zoning Ordinance to allow a freestanding sign within the front sign setback be granted. Motion defeated with Ms. Hale abstaining from voting.**

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A public hearing was opened at 7:45 p.m. to consider a **SPECIAL EXCEPTION** requested by **JAMES DESCHAMBEAULT** in regard to Article 147.13.1.11.13 of the Conway Zoning Ordinance to allow a mobile home for a residential unit at 2245 East Conway Road, Center Conway (PID 242-9). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on September 21, 2005.

James Deschambeault appeared before the Board. Mr. Colbath asked how large is the lot. Mr. Deschambeault answered 34 acres. Ms. Sherman asked who would be the resident of the mobile home. Mr. Deschambeault answered his daughter.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the mobile home shall be occupied only as the usual residence of the immediate family, including grandparents, parents and children of the owner and/or spouse of the primary single-family residential structure on the lot. The lot shall be at least one (1) acre if served by municipal water and sewerage; or the lot shall be at least two (2) acres in all other cases.** Ms. Sherman asked for board comment; there was none. **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 §147.13.1.11.13 of the Town of**

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**Conway Zoning Ordinance to allow a mobile home to be used as a residential unit be granted with conditions: (1) the special exception shall terminate on a change of ownership or occupancy of either the mobile home or the primary residential structure; and (2) a permit shall be obtained from the Selectmen or their agent, which shall be renewed yearly to ensure compliance with the above conditions. Motion unanimously carried.**

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A public hearing was opened at 8:00 p.m. to consider a **VARIANCE** requested by **ALVAR NELSON** in regard to Article 147.13.4.2.1 of the Conway Zoning Ordinance to allow a third residential unit on 0.411 of an acre at 6 White Horse Road, North Conway (PID 214-7). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on September 21, 2005.

Alvar Nelson and Robert Nelson appeared before the Board. Mr. R. Nelson stated that one reason for asking for the third unit is for income, but the other reason is he would like to be living close to his father, as he is getting older. Mr. R. Nelson stated the third unit would eventually become a rental property. Mr. R. Nelson stated that he does not believe the third unit would impact the surrounding properties. Mr. R. Nelson stated that Scott Lee put in a third apartment on his lot down the street. After a review of the file for Scott Lee it was determined that he was granted a special exception to convert an older home to apartments.

Mr. Bartolomeo asked what is the acreage of this lot. Mr. R. Nelson answered .411 of an acre. Mr. R. Nelson stated that it was a two-family home that burned sometime in 1978 or 1979. Mr. R. Nelson stated that the home was rebuilt and was being converted to a single-family home when his father purchased the property. Mr. R. Nelson stated that his father kept it as a two-family home.

Mr. Bartolomeo asked if they have approached a neighbor regarding purchasing land to meet the requirement. Mr. R. Nelson answered in the negative. Mr. Bartolomeo stated that the lot doesn't meet the requirement for one unit, there are two units and now you want a third. Mr. Bartolomeo stated that he is sympathetic to the care of his father, but the lot is already over the density limit. Mr. Bartolomeo asked if the son could live in one of the apartments. Mr. R. Nelson answered in the affirmative.

Mr. R. Nelson stated that the units that exist now are one bedroom and one-bathroom units. Mr. Colbath asked if municipal water and sewer service the lot. Mr. R. Nelson answered in the affirmative. Mr. Colbath asked how close is the neighbor to the east. Mr. R. Nelson stated there is 20-feet of trees between the two properties. Mr. Colbath asked about the abutter to the North. Mr. R. Nelson stated that their driveway is on his father's land. Mr. R. Nelson stated that he has spoken to the neighbor's and they don't have a problem with this application.

Ms. Sherman asked the square footage of the proposed apartment over the garage. Mr. R. Nelson answered approximately 672 square feet. Mr. R. Nelson stated that there is ample

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parking. Ms. Sherman asked if there is access from Oak Street now. Mr. R. Nelson answered in the affirmative. Mr. Chalmers asked if there is a driveway on both Oak Street and White Horse. Mr. R. Nelson answered in the affirmative.

**Mr. Colbath made a motion, seconded by Ms. Hale, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Hale voted in the negative and stated there are already two units on the property. Mr. Bartolomeo voted in the negative and stated that by the son's testimony he could live in one of the units and this Board cannot consider finances as a reason to grant a variance. Mr. Chalmers voted in the negative and stated that he agrees with Mr. Bartolomeo. Mr. Colbath voted in the negative and stated he has use of the property and there are two units already on the substandard lot. Ms. Sherman voted in the negative and stated there are no special conditions. **Motion unanimously defeated.**

**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.** Ms. Hale voted in the negative and stated the applicant has not looked at purchasing other land. Mr. Bartolomeo voted in the negative and stated that the benefit would be for the son to live next door to help his father, but he can do this by living in one of the existing units. Mr. Chalmers voted in the negative. Mr. Colbath voted in the negative and stated that the only feasible solution would be to expand the lot. **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.**

**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.** Ms. Hale voted in the affirmative and stated that she has the house next door listed for sale and this would not decrease the value of that home. Mr. Bartolomeo voted in the negative and stated that three units on .411 of an acre are not acceptable according to the ordinance. Mr. Chalmers voted in the negative and agreed with Mr. Bartolomeo. Mr. Colbath voted in the negative and agreed with Mr. Bartolomeo. Ms. Sherman voted in the affirmative. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the negative.**

**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.** Ms. Hale voted in the negative and stated that the ordinance is to protect the density on the lots. Mr. Bartolomeo voted in the negative and agreed with Ms. Hale. Mr. Bartolomeo stated that he understands what they are trying to do as a family, but they are constrained by the ordinance. Mr. Chalmers voted in the negative and stated that the intent is to protect density. Mr. Colbath and Ms. Sherman both voted in the negative. **Motion unanimously defeated.**

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**Mr. Colbath made a motion, seconded by Ms. Hale, that the granting of this variance will not be contrary the public interest.** Ms. Hale voted in the affirmative. Mr. Bartolomeo voted in the negative and stated there is not enough land for two units. Mr. Chalmers voted in the negative and stated that the public has spoken by writing the zoning regulations. Mr. Colbath voted in the affirmative. Ms. Sherman voted in the negative and stated that it is contrary to the public interest for the amount of density being requested. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Ms. Sherman voting in the negative.**

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. Bartolomeo stated that the town looks at this board to keep density in line. **Motion unanimously defeated.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the Variance pursuant to §147.13.4.2.1 of the Conway Zoning Ordinance to allow a third residential unit on 0.411 of an acre be granted. Motion unanimously defeated.**

Meeting adjourned at 8:35 p.m.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary