

ZONING BOARD OF ADJUSTMENT

MINUTES

JANUARY 25, 2006

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, January 25, 2006 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; 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 approve the Minutes of December 21, 2005 as written. Motion unanimously carried.

PUBLIC HEARINGS

A public hearing was opened at 7:30 p.m. in regard to an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **LISA GRAVES AND PATRICIA MURRAY** in regard to §147.13.3.7.7 of the Conway Zoning Ordinance to allow a 9 square foot sign for a home occupation, which is larger than is allowed at 117 East Main Street, Center Conway (PID 265-21). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on January 18, 2006.

Lisa Graves and Patricia Murray appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Murray stated that they are appealing the administrative decision in relation to the ordinance of 3 square feet on East Main Street. Ms. Murray stated that Ms. Graves is operating an art studio and she is a physician. Ms. Murray stated in July 2005 she contacted Jim Yeager to come to the property to review two items, paving the driveway and the size of a sign. Ms. Murray stated that she had read the material, but wasn't sure if she understood it so they contacted Mr. Yeager.

Ms. Murray stated that they reviewed the two items with Mr. Yeager at their home. Ms. Graves stated that she had a measuring tape and pulled it out 3-feet. Ms. Graves stated that she showed Mr. Yeager a 3' x 3' square and asked Mr. Yeager if that was correct and Mr. Yeager answered in the affirmative. Ms. Graves stated at that time we were thinking that that would be sufficient amount of signage.

Ms. Murray submitted a notarized statement from a fourth party, Thomas Downey, who was present. Ms. Sherman read Mr. Downey's statement. Ms. Murray stated we thought that that would be plenty of signage. Ms. Murray stated after the sign was erected, Mr. Yeager arrived at the property unannounced and she was with a patient at the time. Ms. Murray stated that she did not recognize him at first and he did not introduce himself. Ms. Murray stated that she stepped out onto the porch and Mr. Yeager proceeded to tell her that the sign was too big. Ms. Murray stated at that point she realized who he was. Ms. Murray stated that the sign is

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26” x 21”. Ms. Sherman asked if there is an approved sign permit. Ms. Murray stated a sign permit is not necessary for a home occupation. Ms. Murray stated that we feel there has been a good faith error in measurement on a Town employee’s part and ourselves.

Mr. Irving stated that Mr. Yeager had a prior commitment and could not attend this evening, however, he has provided the Board written testimony. Mr. Irving read Mr. Yeager’s statement and stated that he would like to call the Board’s attention to the home occupation form that was signed by the applicant as part of the permit that states the sign could not exceed three square feet. Mr. Irving stated that in Mr. Yeager’s defense, since the Town of Conway has employed him, we have never had this type of incident and hard to believe he represented a 9 square foot sign.

Mr. Irving stated that the applicant could have applied for a variance for a larger sign, but the variance request was withdrawn prior to noticing. Mr. Irving stated that it is the interpretation of the ordinance that is before the Board. Ms. Murray stated that she has stopped in Town Hall a few times and was told she would be better off to apply for the appeal from administrative decision then to apply for the variance because a variance is difficult to obtain.

Mr. Irving stated his standard reply is to always apply for the appeal from administrative decision because the Board may agree with the applicant and eliminate the need for pursuing the variance, which has very strict requirements. Ms. Sherman stated in order to receive a variance there is a five-part test and an appeal from administrative decision is either the Code Enforcement Officer was correct or not correct. Ms. Sherman asked for public comment; there was none. Ms. Sherman asked for Board comment; John Colbath stated that he is always amazed that abutters don’t show up.

Ms. Graves stated that she had spoke to Randy Davidson across the street and he stated that they were in the village commercial district and is an allowed use. Ms. Hale stated that it might have been a communication breakdown. Mr. Colbath stated this is the law adopted by the Town and need to change the law if they don’t like it. Ms. Murray stated that there was a measuring tape in the room and we asked if it was three feet by three feet and Mr. Yeager answered in the affirmative. Ms. Sherman stated that this is an appeal of the ordinance and what they may want to consider is an equitable waiver.

Ms. Murray stated that they invited a town employee onto their property to gain information; the sign cost them \$350 plus another \$60 for this application. Ms. Murray stated that she is not going to spend any more money and will have to comply with the ordinance. Ms. Graves stated that Mr. Yeager was very rude. Ms. Hale stated that what your asking us to do is determine if the Code Enforcement Officer made a error in his decision and she cannot see that he did.

Mr. Colbath made a motion, seconded by Ms. Hale, to deny the Appeal from Administrative Decision requested by Lisa Graves and Patricia Murray in regard to Article 147.13.3.7.7 of the Conway Zoning Ordinance. Motion unanimously carried.

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A public hearing was opened at 7:55 p.m. in regard to a **SPECIAL EXCEPTION** requested by **DORIS D'ANGELIS** in regard to §147.13.4.2.4.1 of the Conway Zoning Ordinance to allow a fourth unit in an existing three-unit building at 22 Oak Street, North Conway (PID 219-6). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on January 18, 2006.

Josh Brustin appeared before the Board. 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 until a five member Board was available. Mr. Brustin agreed to proceed with four members. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Brustin stated that this is an existing three-unit building in North Conway. Mr. Brustin stated that the owner has done extensive work and they would still like to construct a dormer for a sleeping loft in the proposed studio apartment. Mr. Brustin stated that the owner does things right and this is a long-term investment. Mr. Brustin stated that there are at least 10 parking spaces and municipal water and sewer service the site. Mr. Brustin stated that it is just natural that this would make a really nice a studio apartment.

Mr. Irving asked the amount of floor space in the dormer. Mr. Brustin stated he's not really sure, as they haven't planned that far ahead. Mr. Irving asked if there is a sketch of the parking area. Mr. Brustin answered in the negative. Mr. Irving stated that the property could probably accommodate the parking, but it appears that some of the spaces are located within the buffer, however, that does not impact the decision of this Board. Mr. Irving stated that eight parking spaces could be accommodated. Mr. Irving stated that the applicant should put together a hand drawn site plan showing the parking spaces in order to determine what type of site plan review this project will require. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantially all of the structure is at least fifty (50) years old.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the modification of the interior does not exceed four (4) units.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that no significant changes to the exterior lines or architectural detail are made, which would diminish the historical or architectural heritage of the structure.** Ms. Sherman asked for Board comment; Mr. Colbath stated that it is not significant enough to bring out any of the abutters. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that adequate area is available for parking and sewage disposal provided by the precinct.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that item 5 is not applicable to this application.** 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 §147.13.4.2.4.1 of the Town of Conway Zoning Ordinance to allow a fourth unit in the existing three-unit building be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 8:08 p.m. to consider a **VARIANCE** requested by **PATRICIA GRISHMAN** in regard to §147.13.19.9.1.2 of the Conway Zoning Ordinance to allow relief from the Special Highway Corridor Overlay District's buffer requirement on C Street and D Street, Conway (PID 278-43 & 50). Notice was published in the Conway Daily Sun and certified notices were mailed January 18, 2006. Given that the applications are for identical relief on similar adjacent properties, the Board considered the applications simultaneously and there was no objection from the Board, the applicant or the public.

Patricia and Michael Grishman appeared before the Board. Ms. Sherman read the applications 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 until a five member Board was available. Ms. Grishman agreed to proceed with four members.

Ms. Grishman stated that the State has taken a good portion of one lot out of the three lots that she owns. Ms. Grishman stated that the Town requires a 75-foot buffer from the State's right-of-way. Mr. Irving stated that the buffer requirement renders the lots unbuildable. Mr. Irving stated that there is a provision for commercial structures to reduce the buffer, but it is not available for residential. Ms. Sherman stated if they met the setbacks there would only be 3,750 square feet in which to construct a home. Mr. Chalmers stated if there were a lot of lots in this situation, we would have to do the same on all of the lots. Mr. Irving stated that this is not a precedent setting Board.

Mr. Irving stated what the applicant is seeking relief from is the Special Highway Corridor Overlay District buffer. Ms. Grishman stated since there is a slope with a 35-foot drop; the homes would not be visible from the bypass. Mr. Chalmers stated that he doesn't agree with granting a variance for the entire buffer. Ms. Sherman stated if there is too narrow of a strip of mature trees they are much more prone to wind damage and that defeats the purpose of the buffer. Mr. Chalmers stated if the trees do come down, it is up to the property owner to replace the trees.

Ms. Sherman read item 1.a. **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**

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special conditions of the property. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Hale, that the benefit sought by the applicant couldn't be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Hale, 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. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Hale, 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.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Hale, 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; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Hale, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Hale, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the variance from §147.13.19.9.1.2 of the Town of Conway Zoning Ordinance to allow relief from the Special Highway Corridor Overlay District's buffer requirement be granted with the buffer to be reduced to 20-feet along the southern boundary of the subject parcels. **Motion unanimously carried.**

Meeting adjourned at 8:56 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary