

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

MAY 24, 2006

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 24, 2006 beginning at 7:30 pm at the Conway Town Office in Center Conway, NH. Those present were: Acting Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Jeanna Hale; Code Enforcement Officer, James Yeager; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:41 pm to consider a **VARIANCE** requested by **THE ROCK DEVELOPMENT, LLC** in regard to §147.13.8.6.2.3 of the Conway Zoning Ordinance to permit three ~~four~~ wall signs (one ~~two~~ more than the ordinance permits) on a single building at 19 & 53 Barnes Road, North Conway (PID 235-78 & 78.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 15, 2006. This hearing was continued from April 26, 2006.

Carmine Tomas of Cleveland, Waters and Bass and John Kerekes of McCarthy Kerekes, LLC, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that only four members were present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant wished to proceed with the hearing or continue the hearing until there is a full Board. Mr. Tolmas agreed to proceed with four-members.

Mr. Kerekes reviewed the signs from the previous application and the amended application. Mr. Kerekes stated that the applicant has decided to keep the landscaping supplies sign and put the tool rental center sign on the interior of the building. Mr. Kerekes stated the three signs they would like to maintain are the landscaping supplies; the main entrance and the contractor lumber pick up signs. Mr. Kerekes stated that if the main sign were reduced to 100 square feet it would look lost on the building.

Mr. Bartolomeo stated that the applicant has made a good faith effort to reduce the signs and this Board led the applicant to believe that we would support a reduction. Mr. Bartolomeo stated that he could support this application. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1.a. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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 asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Colbath read item 1.b. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2.3 of the Town of Conway Zoning Ordinance to permit three wall signs (one more than the ordinance permits) on a single building be granted. Motion unanimously carried.

A public hearing was opened at 8:02 pm to consider a **VARIANCE** requested by **THE ROCK DEVELOPMENT, LLC** in regard to §147.13.8.6.2.3 of the Conway Zoning Ordinance to permit the primary wall sign to be 149.01 ~~194.66~~ square feet, the seconded permitted wall sign to exceed 20 square feet and to permit one ~~two~~ additional wall sign to exceed 20 square feet at 19 & 53 Barnes Road, North Conway (PID 235-78 & 78.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 15, 2006. This hearing was continued from April 26, 2006.

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Carmine Tomas of Cleveland, Waters and Bass and John Kerekes of McCarthy Kerekes, LLC, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Colbath read item 1.a. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 1.b. **Mr. Chalmers made a motion, seconded by Ms. Hale, 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. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath read item 2. **Mr. Bartolomeo 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, 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. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2.3 of the Town of Conway Zoning Ordinance to permit the primary wall sign to be 149.01 square feet, the seconded permitted wall sign to exceed 20 square feet [33.4 square feet] and to permit one additional wall sign to exceed 20 square feet [24.06 square feet] be granted. Motion unanimously carried.

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A public hearing was opened at 8:09 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **GREGG SAUNDERS** in regard to §147.16 of the Conway Zoning Ordinance to allow the storage of equipment for the operation of non-commercial tree farm and agricultural excavation at 166 Valley View Road, North Conway (PID 219-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

Gregg Saunders appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated that only four members were present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant wished to proceed with the hearing or continue the hearing until there is a full Board. Mr. Saunders agreed to proceed with four-members.

Mr. Colbath read the Notice of Violation dated February 17, 2006. Mr. Saunders stated that he has read the ordinance and he believes he can store equipment for a business he owns on his own property. Mr. Saunders stated that he does not operate a business there; he only stores it there since he doesn't have another piece of property to store his equipment on. Mr. Saunders stated that the equipment is not visible to his neighbor's. Mr. Saunders stated that he should be allowed to do this. Mr. Bartolomeo stated at the previous hearing there was a room-full of angry people.

Mr. Saunders stated that he wants to be busy as this keeps his equipment on the job sites. Mr. Saunders stated that he thinks most people were upset with the stock piling of material. Mr. Bartolomeo stated that this equipment does not appear to be used for agricultural. Mr. Saunders stated wouldn't the town have to have an ordinance on what type of equipment is acceptable or not acceptable for agricultural use. Mr. Bartolomeo stated that that applicant just said that the equipment is used for the commercial business.

Mr. Saunders agreed and stated that he usually just stores the equipment there. Mr. Saunders stated that he did stock pile material for his own use. Mr. Yeager stated that he has received several complaints regarding this property over the last few years. Mr. Saunders asked what is the percentage of the complaints from the same person. Mr. Yeager stated that it doesn't matter since commercial vehicles cannot be stored on this site.

Mr. Yeager stated that Robin at Mr. Saunders office indicated to David Pandora, the Building Inspector, that the material stock piled was from a job site and that is was going to be moved back to the job site. Mr. Saunders stated that that is not correct and it was moved to clean up the site after he received the violation notice. Mr. Saunders asked if the lot across the tracks was in the commercial district. Mr. Yeager stated answered in the affirmative. Mr. Saunders asked if he could store his equipment on that property. Mr. Yeager stated that Site Plan approval from the Planning Board would be required to store the equipment on the commercial land. Mr. Saunders stated there is only a certain amount of time that the trucks are stored on the site; also, there are trucks with GFS Farm on them that look very similar to the construction trucks.

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Mr. Colbath asked for public comment; Russ Seybold, General Manager of the Conway Scenic Railroad, stated that he is concerned with the crossing as it has been a farm crossing and has never been approved for any other type of crossing, not even a residential crossing. Mr. Seybold stated that the applicant has received several letters from him for a number of years requesting the execution of an agreement. Mr. Seybold stated that he is also required to have insurance on the crossing, which he does not. Mr. Saunders stated that he does have insurance. Mr. Seybold asked that he send him that information. Mr. Seybold stated that the crossing was hit by something, possibly a plow, and if that happens he is to report it to us.

Angel Williams submitted photos of an accident and of trucks leaving and entering the property. Ms. Williams stated that trucks have been going in and out of this property approximately every 15-minutes. Ms. Williams stated if the appeal is granted something still needs to be done. Mr. Williams stated that this is nothing personal; it is just hard to live in a neighborhood with a lot of trucks. Mr. Saunders stated none was taken.

Audley Williams stated if the equipment were allowed to be stored in the commercial zone he would request that they remain locked for the children's safety. Mr. Bartolomeo stated that this Board would not approve the storage in the commercial zone, as it would require a Planning Board approval.

Kevin Hickey, a truck driver for Mr. Saunders, stated there is no way with the jobs they've been on that they've been hauling in every 15-minutes. Mr. Saunders stated that there are commercial vehicles unregistered on that road and feels he is being singled out. Mr. Bartolomeo asked Mr. Yeager if he saw other violations while investigating Mr. Saunders property. Mr. Yeager answered in the negative. Mr. Williams stated that they start their vehicles at 6 am.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to uphold the Administrative Decision regarding Gregg Saunders in regard to Article 147.16 of the Conway Zoning Ordinance. Motion unanimously carried. Mr. Colbath explained the appeal process to Mr. Saunders.

A public hearing was opened at 8:31 pm to consider a **VARIANCE** requested by **CONWAY AREA HUMANE SOCIETY** in regard to §147.16 of the Conway Zoning Ordinance to allow the conversion of a single-family residential structure to retail and office space at 223 Main Street, Conway (PID 265-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, May 17, 2006.

Roz Manwaring of the Conway Area Humane Society appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Bartolomeo stepped down at this time. Mr. Colbath stated that only three members were present and the applicant is entitled to a five-member Board. Mr. Colbath asked if the applicant wished to proceed with the hearing or continue the hearing until there is a full Board. Ms. Manwaring agreed to proceed with three members.

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Mr. Chalmers asked what is to prevent it from snowballing and other people in the area wanting retail sales. Ms. Manwaring stated that this is apart of the existing kennel use. Mr. Yeager stated this would be accessory to the kennel. Mr. Colbath asked for public comment; there was none. Mr. Chalmers asked if there was another location on this site to put this type of use without a financial burden. Ms. Manwaring stated that another structure would have to be constructed. Mr. Colbath stated that they need the property the house is on in order to gain access to the back lot.

Mr. Colbath read item 1.a. **Mr. Chalmers made a motion, seconded by Ms. Hale, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 1.b. **Mr. Chalmers made a motion, seconded by Ms. Hale, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 1.c. **Mr. Chalmers made a motion, seconded by Ms. Hale, that the variance would not injure the public or private property rights of others.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath read item 2. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 3. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Ms. Hale, that the granting of this variance will not adversely affect the public interest.** Mr. Colbath asked for Board comment; Mr. Chalmers stated if the abutters were concerned they would have been here this evening. **Motion unanimously carried.**

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

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Mr. Chalmers made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the variance from §147.16 of the Town of Conway Zoning Ordinance to allow the conversion of a single-family residential structure to retail and office space be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Hale made a motion, seconded by Mr. Chalmers, to approve the Minutes of April 26, 2006 as written. Motion unanimously carried.

Meeting adjourned at 9:00 pm.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary