

**CONWAY ZONING BOARD  
OF ADJUSTMENT**

**MINUTES**

**JUNE 28, 2006**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 28, 2006 at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Alternate, David Weathers; Alternate, Hud Kellogg; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**APPOINTMENT OF ALTERNATES AS VOTING MEMBERS**

Ms. Sherman appointed David Weathers and Hud Kellogg as voting members for this evening.

**PUBLIC HEARINGS**

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **JOHN AND JOANNE GRAVES** in regard to §147.13.1.11.13.1 of the Conway Zoning Ordinance to allow a mobile home to be used as a residential unit at 42 Fein Lane, Center Conway (PID 254-5). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

John Graves, Sr., John Graves, Jr. and David Pandora appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked would his son occupy the mobile home. Mr. Graves, Sr. answered in the affirmative. Ms. Sherman asked if this lot was four acres. Mr. Graves, Sr. answered in the affirmative.

Ms. Sherman asked for Board comment; Mr. Weathers stated when the son does not want to live there anymore, the mobile home would have to be removed. Mr. Irving stated that is correct unless another qualified person occupies the mobile home. Mr. Graves, Sr. asked if his daughter could live in the mobile home. Mr. Irving answered in the affirmative. Ms. Sherman asked for public comment; there was none.

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

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**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 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 7:35 pm to consider a **SPECIAL EXCEPTION** requested by **JOHN H. NELSON, JR.** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow the construction, installation and maintenance of proposed roads, driveways, drainage structures and underground utilities across eighteen wetlands on East Main Street and Old Goshen Road, Center Conway (PID 258-68). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Paul Bergman of The Nelson-Bergman Group appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergman reviewed the project. Ms. Sherman asked for Board comment; Mr. Weathers asked who did the wetlands identification. Mr. Bergman stated Seekamp Environmental Consulting, Inc. Mr. Weathers asked if the State put any restrictions in the permit in regard to the time of year the crossings could be constructed. Mr. Bergman stated that the construction would be done in late summer or early fall and that was a part of the application.

Mr. Weathers stated the State is concerned with minimizing the impact. Mr. Colbath stated that this is going to allow for a lot of development. Mr. Colbath asked how many lots are proposed in the subdivision. Mr. Bergman stated phase one has 39-lots with two wetland crossings. Ms. Sherman asked for public comment; there was none.

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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**Mr. Colbath made a motion, seconded by Mr. Chalmers, that a site plan review is not required.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Kellogg voting in the negative.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction, installation and maintenance of proposed roads, driveways, drainage structures and underground utilities across eighteen wetlands be granted.** Ms. Sherman asked for Board comment; Mr. Weathers stated the work should be done under dry conditions. Mr. Weathers stated it is so important that the crossings are installed sometime between August and October. Mr. Kellogg stated that Black Cap Brook is over 8 feet wide and mitigation is very important. **Motion unanimously carried.**

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A public hearing was opened at 7:47 pm to consider a **SPECIAL EXCEPTION** requested by **BETH E. CAMPBELL REVOCABLE TRUST OF 1997** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow the installation of two, 20'x30" culverts in a wetland on Stritch Road, Center Conway (PID 274-35 & 36). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Beth Campbell, owner, and Timothy Jones of Garland Lumber appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Jones reviewed the project. Ms. Sherman asked for Board comment; Mr. Weathers asked who determined the size of the culverts. Mr. Jones stated he did working for Garland Lumber. Mr. Weathers asked if it was for a 10-year or 25-year storm. Mr. Jones stated that he used the acreage of land with the appropriate calculation. Mr. Weathers stated that there was no spillway and there should be one. Mr. Weathers asked if Garland Lumber would be doing the work. Mr. Jones answered in the affirmative.

Mr. Kellogg stated that he noticed a discrepancy between the application and the diagram in regard to the size of the culverts. Mr. Irving stated that the size of the culvert is not the issue at hand; the crossing is the issue. Mr. Weathers asked how many acres feeds into the culvert location. Mr. Jones stated that he thought it was approximately 80 acres.

Ms. Sherman asked for public comment; John and Betty Longley stated that they both support this application. Mr. Weathers asked if this is an intermittent stream. Mr. Jones answered in the affirmative. Ms. Sherman asked if the State requires something different than what has been presented does the applicant have to reapply to this Board. Mr. Irving stated if it is a substantially different location then the applicant might need to reapply.

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that a site plan review is not required.** Ms. Sherman asked for public 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 §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the installation of two, 20'x36" culverts in a wetland be granted.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 8:02 pm to consider a **SPECIAL EXCEPTION** requested by **THE KENNETT COMPANY** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow the construction, installation and maintenance of subdivision road, associated drainage structures and underground utilities across a wetland on Hillcrest Drive off Dollof Hill Road (PID 291-30). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Doug Burnell of H.E. Bergeron Engineers and Barry Keith appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Burnell stated that this was before the Board in April and they have since discovered another crossing. Mr. Burnell stated that there is about a 1,000 square feet of impact.

Ms. Sherman asked for Board comment; Mr. Weathers asked if this is a fill operation. Mr. Burnell answered in the affirmative. Mr. Burnell stated that it is a pocket and not a major drainage way. Mr. Irving stated the Town engineer would review this drainage system. Ms. Sherman asked for public comment; there was none.

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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**Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that a site plan review is not required.** Ms. Sherman asked for public 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 §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction, installation and maintenance of subdivision road, associated drainage structures and underground utilities across a wetland be granted.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 8:10 pm to consider a **SPECIAL EXCEPTION** requested by **THE KENNETT COMPANY** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow construction, installation and maintenance of driveways, associated drainage structures and underground utilities to lots 8 and 14 through a wetland buffer on Hillcrest Drive, off Dollof Hill Road (PID 291-30). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Doug Burnell of H.E Bergeron Engineers and Barry Keith appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Burnell stated they had to reconfigure the lots to avoid the buffers, but the driveway for lot 14 is within the buffer due to proximately. Mr. Burnell stated the driveway for lot 8 is proposed to be directly across from the driveway across the street for safety reasons. Ms. Sherman asked for Board comment; Mr. Weathers asked if there was a mitigation package. Mr. Keith answered in the affirmative. Mr. Weathers asked how many acres. Mr. Keith answered 39 acres. Ms. Sherman asked for public comment; there was none.

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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**Mr. Colbath made a motion, seconded by Mr. Chalmers, that a site plan review is not required.** Ms. Sherman asked for public 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 §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction, installation and maintenance of driveways, associated drainage structures and underground utilities to lots 8 and 14 through a wetland buffer be granted.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 8:14 pm to consider a **VARIANCE** requested by **ALVAH AND NANCY JOHNSON/JOHNSON'S AUTO CARE** in regard to §147.13.8.6.1.4.1 of the Conway Zoning Ordinance to allow a 38.74 square foot sign with no less than a ten-foot setback at 577 Eastman Road, Conway (PID 252-37.3). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Alvah Johnson appeared before the Board. Jim Yeager, Code Enforcement Officer, was in the audience. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked how large is the original sign. Mr. Johnson answered 30 square feet. Ms. Sherman asked the proposed square footage of the new sign. Mr. Johnson answered it would be an additional 8 square feet.

Ms. Sherman asked the setback of the existing sign. Mr. Yeager answered 10-feet. Ms. Sherman stated the sign could be increased to 40 square feet if it has a 25-foot setback. Mr. Yeager stated the sign would be within the parking lot or the building if required to be setback 25-feet. Mr. Chalmers asked if it would be detrimental to his business to not have the additional signage. Mr. Johnson stated it wouldn't be detrimental, but it would be beneficial.

Ms. Sherman asked what is the unnecessary hardship. Mr. Johnson stated he could reconfigure the sign, but this is the simplest way for him. Mr. Colbath asked if the sign could be placed anywhere else. Mr. Irving stated it could be a wall sign or incorporated into the existing freestanding sign. Mr. Irving stated there is a regulation allowing coverage of window area. Mr. Johnson stated that it would not work in a window.

Mr. Johnson stated all the signs would have to be redesigned. Mr. Colbath stated that the J logo could be replaced with the Good Year sign. Mr. Johnson stated that it could, but he would prefer to keep their logo. Ms. Sherman asked when did they start to carry Good Year. Mr. Johnson answered last fall. Mr. Colbath asked how long the freestanding sign has been there. Mr. Johnson answered a few years. Mr. Weathers asked if the signage had a line of site hazard. Mr. Johnson answered in the negative and stated if anything it is an issue to see the sign itself.

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Ms. Sherman asked for public comment; there was none.

Mr. Kellogg stated that he believes adding signs to a right-of-way is contrary to what the town wishes in preventing sign clutter. Mr. Kellogg stated the more signage added the more it is distracting. Mr. Kellogg stated that the Town should be trying to reduce sign clutter, not increase it. Mr. Kellogg stated that he does not believe there is a hardship. Mr. Weathers stated that there has been public response to reduce signage, not to increase signage.

Ms. Sherman stated that the literal enforcement of the ordinance does not address financial. Mr. Chalmers stated this business has been operating for a while and he finds it hard to believe that the lack of this sign would impact the business financially. Mr. Chalmers stated that the additional signage could be achieved by other means, such as by reconfiguring the freestanding sign or the wall sign. Mr. Colbath agreed with Mr. Chalmers.

**Mr. Colbath made a motion, seconded by Mr. Weathers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Kellogg stating that the business could still be operated without the additional signage.**

**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. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Chalmers stating that the additional signage could be achieved by other means, such as incorporating it into the existing freestanding sign or wall sign.**

**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.** Ms. Sherman asked for Board comment; there was none. **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.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Kellogg and Mr. Chalmers voting in the negative and Mr. Chalmers stating it would diminish property values by overturning what the voters would like to see.**

**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. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Colbath stating the purpose of the**

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**ordinance is to maintain signage in a reasonable amount and the applicant already has increased signage within the setback and ordinance should be maintained.**

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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Colbath stating that the public interest is to maintain the sign ordinance.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Chalmers stating the substantial justice is with the public and not the private landowner.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.6.1.4.1 of the Town of Conway Zoning Ordinance to allow a 38.74 square foot sign with no less than a ten-foot setback be granted. Motion unanimously defeated.**

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A public hearing was opened at 8:35 pm to consider a **VARIANCE** requested by **NORTH CONWAY HOLDINGS, LLC** in regard to §147.13.8.6.1.4 of the Conway Zoning Ordinance to allow a 60 square foot sign with no less than a ten-foot setback at 1205 Eastman Road, North Conway (PID 246-44). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Chris Jones of the Sound Resort appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked how large is the proposed sign. Mr. Jones answered 60 square feet. Ms. Sherman asked what is the setback of the existing sign. Mr. Yeager answered 10-feet from the right-of-way. Mr. Yeager stated that the applicant applied for and was permitted for a 60 square foot sign with a 25-foot setback. Mr. Yeager stated that the increased signage was allowed based on a sign incentive.

Mr. Yeager stated once the site was redeveloped the applicant decided he did not want the sign 25-feet from the right-of-way. Mr. Jones stated 25-feet from the right-of-way places the sign in the parking lot. Mr. Jones stated that the proposed sign would stay in its existing location and increased toward the parking lot leaving approximately 2-feet before the parking lot.

Mr. Irving stated the Zoning Ordinance allows a 40 square foot sign, setback 25-feet or a 30 square foot sign, setback 10-feet. Mr. Irving stated that the existing sign is 30 square feet with a setback greater than 10-feet, but less than 25-feet. Mr. Irving stated that the applicant requested to use a sign incentive that allows for a 60 square foot sign as long as it is 25-feet back. Mr. Irving stated that the applicant wants a 60 square foot sign with the existing setback. Mr. Irving stated there are other locations to place this sign if it was angled differently.

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Mr. Colbath asked if each business is allowed a wall sign. Mr. Irving answered in the affirmative. Mr. Jones stated that the owner is beautifying the lot and would like a sign that compliments the site. Mr. Chalmers stated there is no doubt that the site looks nice. Mr. Jones stated the sign would not be any closer to the road as it would be expanded away from the road. Mr. Chalmers stated it is a nice looking sign, but it is having your cake and eating it, too. Mr. Chalmers stated that applicant wants to take advantage of the larger sign incentive, but wants to keep it near the road. Mr. Chalmers stated the incentive for the larger sign is to move signage off the road.

Mr. Jones stated the sign is tremendously off the road in this area compared to other signs in the Town. Mr. Kellogg stated that he should keep the grandfathered signage. Mr. Irving stated there is not a grandfathered situation here. Mr. Irving stated the ordinance allows for a 30 square-foot sign setback 10-feet, which is what the applicant currently has installed. Mr. Irving stated what is there today is allowed by the ordinance.

Mr. Jones stated if the applicant is required to set the sign further back, the sign would become a taller sign. Mr. Jones stated the owner would like to keep the lower profile rather than having the sign stick up in the air. Mr. Chalmers asked with the sign incentive is the property allowed to have wall signs. Mr. Irving answered in the affirmative. Mr. Colbath stated there is a location on the site that the larger sign could be erected without being in the parking lot. Ms. Sherman asked for public comment; there was none.

**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.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Colbath stating that there is not a special condition of the property as there are several ways to configure signage for this lot that is acceptable to the sign ordinance.**

**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. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Chalmers stating there are several areas feasible for the applicant to pursue.**

**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.** Ms. Sherman asked for Board comment; there was none. **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. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Kellogg, Mr. Weathers and Mr. Chalmers voting in the negative and Mr. Chalmers**

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**stating that it would be contrary to what the voters decided and would be increasing the visual clutter.**

**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. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Weathers stating that it would be contrary and Mr. Colbath stating that there are provisions in the ordinance to allow signage for this lot.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Colbath stating that the public interest is to uphold the Zoning Ordinance.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated with Mr. Colbath stating that this weighs in favor of the public.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.6.1.4 of the Town of Conway Zoning Ordinance to allow a 60 square foot sign with no less than a ten-foot setback be granted. Motion unanimously defeated.**

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A public hearing was opened at 9:02 pm to consider a **VARIANCE** requested by **PLR REAL ESTATE DEVELOPMENT, LLC** in regard to §147.13.8.6.2 of the Conway Zoning Ordinance to allow a second 20 square foot wall sign at 1500 White Mountain Highway, North Conway (PID 246-21.002). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Don Reed and Ben Barr of Barlo Signs appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Reed stated that Northway Bank occupies 3,000 square feet and would like a second sign facing the southbound traffic. Mr. Reed stated that there is a drive-up on that side of the building and the freestanding sign is at the other end of the lot with a small bank sign on it. Mr. Reed stated most banks have their own freestanding, but it is not allowed in this location. Mr. Reed stated that it is in the public interest to have the proposed sign and it is appropriate for the corner unit to have a sign on that side of the wall. Mr. Reed stated that the sign is sized appropriately and they can meet all of the points that are mandated.

Mr. Chalmers asked how visible would the new sign be to Route 16. Mr. Reed stated the sign would be quite visible and easily recognized. Mr. Chalmers stated someone looking for the bank could turn at the campground. Mr. Reed stated that they could see the freestanding further down the road indicating the entrance. Mr. Irving stated that the site

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to the north of this property is proposing to construct an access from this property to the campground road. Mr. Chalmers asked the likelihood of each tenant wanting a wall sign on that side. Mr. Irving answered he did not know, but they would have to submit a variance request.

Mr. Reed stated that he thinks the request is modest and this is a business occupying the corner of the building. Ms. Sherman asked if the drive-up is on that side of the building. Mr. Reed answered in the affirmative. Mr. Barr stated that it is hardship to figure which direction you should be going. Mr. Colbath stated signs are an issue as he has been a tourist in other areas and wasn't able to locate the bank. Mr. Chalmers stated that the purpose of the sign is not so much a directional sign, but that it is a bank.

Mr. Kellogg stated the growth of trees along the campground road and on Route 16 would block the view of this site and possible that the sign would not be visible at all. Mr. Colbath stated it probably would not be high enough to see it. Mr. Kellogg agreed. Mr. Irving stated there is a strip of land between this site and the proposed Stop & Shop site with a lot of those trees on the campground property. Mr. Irving stated that the campground site does not have a site plan approval so there is no guarantee that those trees will remain.

Mr. Chalmers stated with the trees along Route 16 the sign would not be visible until after the entrance to the campground. Mr. Irving stated if the entrance to the campground is passed there will be a wall sign on the front of the building then there is another entrance to the site in front of the gas pumps and then there is the main entrance. Mr. Chalmers stated by that point they have passed the building and see the signs that are allowed. Mr. Kellogg stated that he would hate to see the building broken up with signage. Mr. Reed stated that the way the building is designed that side of the building lends to have a sign there. Mr. Reed stated personally it would enhance that side of the building as it completes the corner business.

Ms. Sherman asked for public comment; Dot Seybold stated the applicant is able to have a larger sign to the east, but they are sacrificing that sign for a second sign. Ms. Seybold stated that the Planning Board encourages hopping from one parking lot to another parking lot with connecting drives. Ms. Seybold stated that this is going to be a busy entrance with keeping people off Route 16. Ms. Seybold stated with two drive-ups and an ATM that side of the building is a very active customer area. Ms. Seybold stated that the wall area is apart of the bank, as that wall does not enclose any other tenant. Ms. Seybold stated that another tenant would not be allowed by the ordinance to have a wall sign on that wall.

Ms. Sherman asked if the entrance to the campground is constructed would this site be allowed additional signage. Mr. Irving stated that they would be allowed any provisions allowed by the ordinance. Ms. Seybold stated it would be very complicated intersection if additional signage were allowed. Mr. Irving stated that this property only fronts on one road, as the campground owns a slither of land between the road and this site.

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Ms. Sherman asked what is the size of the wall sign on the easterly side of the building. Mr. Reed answered 24 square feet. Ms. Sherman asked what are the special conditions of the property. Mr. Reed stated that the special conditions is that the freestanding sign is located at the other end of the property, the building is located 200 feet from the road, it will help south bound traffic know there is a bank and it is a corner business asking for additional square footage. Mr. Reed stated that it could not be achieved any other way, as there is no other place to put another sign without a variance for a freestanding. Mr. Reed stated that it is in the public interest to clearly identify a bank. Mr. Kellogg stated that the design of the building is a compliment and this is a perfect example of clutter and to do less is better.

**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.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Kellogg voting in the negative, Mr. Chalmers voting in the negative and stating that the lack of a second sign is not going to negatively impact the business and Ms. Sherman voting in the negative and stating to access the property other than the road that is proposed they would be going past the property anyway.**

**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. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Chalmers voting in the negative and stating there are other avenues for the applicant to pursue for larger signs, Mr. Kellogg and Ms. Sherman voting in the negative.**

**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.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Chalmers, Mr. Kellogg and Ms. Sherman voting in the negative.**

**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. Sherman asked for Board comment; there was none. **Motion carried with Mr. Kellogg voting in the negative and Mr. Chalmers voting in the negative and stating that adding another sign would add to the visual clutter that the voters have requested be cut down on.**

**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. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Chalmers voting in the negative, Mr. Kellogg voting in the negative and Ms. Sherman voting in the negative and stating the ordinance states that they don't want an increase in signage.**

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**Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Chalmers and Mr. Kellogg voting in the negative.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion carried the Mr. Kellogg voting in the negative and Mr. Chalmers voting in the negative and stating they need to cut down on the amount of additional signage.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2 of the Town of Conway Zoning Ordinance to allow a second 20 square foot wall sign be granted. Motion defeated with Mr. Chalmers voting in the negative, Mr. Kellogg voting in the negative and Ms. Sherman voting in the negative for the reasons in item 1 and item 3.**

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A public hearing was opened at 9:38 pm to consider a **VARIANCE** requested by **PLR REAL ESTATE DEVELOPMENT, LLC** in regard to §147.13.8.6.12.3 of the Conway Zoning Ordinance to allow sign incentive for wall signs at 1500 White Mountain Highway, North Conway (PID 246-21.001 & .002). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Dot Seybold of OVP Management appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Seybold stated that the property has a freestanding sign located at the main entrance. Ms. Seybold stated that the sign was permitted in the fall of 2004 and erected where it is located today. Ms. Seybold stated at the time there was a setback of 25-feet. Ms. Seybold stated in November of 2004 the State did a taking of land, which the landowner planned on and incorporated into the sign setback to accommodate the taking from the State. Ms. Seybold stated that the State actually took 3.3 feet more than they had anticipated making the existing freestanding sign non-compliant. Ms. Seybold stated that this is at no fault of our own.

Ms. Seybold stated that the variance would be necessary for the landowner to take advantage of the sign incentives. Ms. Seybold stated that a business has the right to have appropriate signage and there are reasons for the sign incentive. Ms. Seybold stated that the public does want signage that helps them navigate. Ms. Seybold stated meeting the setback cannot be accomplished by any other reasonable methods, as it would require ripping up the entrance, disturbing the electrical, irrigation and plantings. Ms. Seybold stated that it could cause damage to the sign, plus it will cost \$15,000 to move the sign that has a value exceeding \$60,000.

Ms. Seybold stated granting this variance would not cause diminution in value of the surrounding properties and it would not be contrary to the spirit and intent of the

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ordinance as the ordinance is designed to award compliance with the ordinance. Ms. Seybold stated that the landowner made a good faith effort to meet the regulations. Ms. Sherman asked if it could have been an equitable waiver application. Mr. Irving stated the sign was legally installed so a variance application is appropriate. Mr. Irving stated moving it a few feet would still get the same signage. Mr. Chalmers stated the landowner made good faith effort to make the sign comply

Ms. Sherman asked for public comment; there was none.

**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.** Ms. Sherman asked for Board comment; Mr. Kellogg stated the Board is not allowed to weigh financial hardship. Mr. Irving stated that the courts have determined that financial hardship can be considered. Mr. Irving stated this is not the same as a waiver through the Planning Board. Mr. Kellogg stated \$15,000 is overstated. Ms. Seybold stated that all new pylons are needed.

Mr. Kellogg stated that landowner has recourse with the engineer. Mr. Irving stated there has been no error on the surveyor's part; the plans indicated the location of the right-of-way, but the State changed the location of the right-of-way after the fact. Ms. Sherman stated that the State took more land than they had anticipated. Mr. Yeager stated that the landowner did everything possible to make it conforming and the State changed the location after the sign was installed. Mr. Yeager stated that everything possible was done to make it a conforming sign. **Motion unanimously carried.**

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

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

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**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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 Mr. Weathers, that, based on the forgoing findings of fact, the variance from §147.13.8.6.12.3 of the Town of Conway Zoning Ordinance to allow sign incentive for wall signs be granted. Motion unanimously carried.**

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A public hearing was opened at 9:57 pm to consider a **VARIANCE** requested by **LEE FAMILY ENTERPRISES, LLC** in regard to §147.13.1.2.3 of the Conway Zoning Ordinance to allow a second apartment building containing 8 apartments at 2659 West Side Road, North Conway (PID 217-24). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Randy Cooper of Cooper, Deans & Cargill and Norman Lee, owner, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Cooper stated that this property is located in the residential district and is the former Cliffside Restaurant. Mr. Cooper stated a year ago the owner was allowed to convert the non-conforming use to a coffee roasting business and eight apartments. Mr. Cooper stated that the applicant would like to construct another 8-unit apartment building. Mr. Cooper stated that the neighborhood has a hotel and a bed & breakfast and this would be compatible with the neighborhood. Mr. Cooper stated that the major thing this provides is affordable housing, however, the only thing it doesn't meet is the density.

Mr. Cooper stated the new apartments would be for lease and approximately 725 square feet. Mr. Cooper stated that it is an appropriate use and a use that is needed. Mr. Cooper stated that it would be keeping with how the property is already being used. Mr. Colbath asked what is the water system. Mr. Lee answered there is an artisan well. Mr. Lee stated there would be firewalls and water storage on site in case of fire. Mr. Kellogg asked what is the rent. Mr. Lee stated the apartments rent between \$675 and \$850.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Myles Waltz stated that he read in the paper regarding affordable housing, but how is it regulated. Ms. Sherman stated that they try to regulate it with the size of the unit. Mr. Cooper stated someone who wants to rent a two-bedroom home on two acres is going to pay more than someone in a small apartment building. Mr. Colbath asked what is the vacancy rate. Mr. Lee stated that they are at 100% full capacity and there is a waiting list.

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Mr. Colbath asked how many evictions have there been due to non-payment. Mr. Lee answered none. Mr. Weathers asked if the well would be able to support this development. Mr. Lee answered in the affirmative. Mr. Weathers asked how deep is the well. Mr. Lee answered 300-feet, plus there are storage tanks. Mr. Cooper stated that the restaurant used more water. Mr. Lee stated part of the reason for this request is because the infrastructure is in place. Mr. Weathers asked if the abutters were notified. Mr. Irving answered in the affirmative.

**Mr. Colbath made a motion, seconded by Mr. Weathers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mt. Colbath made a motion, seconded by Mr. Weathers, 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 Mr. Weathers, that, based on the forgoing findings of fact, the variance from §147.13.1.2.3 of the Conway Zoning Ordinance to allow a second apartment building containing 8 apartments be granted. Motion unanimously carried.**

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A public hearing was opened at 10:15 pm to consider a **VARIANCE** requested by **SANDRA KIDDER, ANDREW KIDDER AND WENDY DODD** in regard to §147.13.16.3.1 & 147.13.16.3.2.1 of the Conway Zoning Ordinance to allow an expansion of the existing footprint and replacement of the existing septic system with in the Wetland and Watershed Protection Overlay District at 2520 East Conway Road and 54 Garland Pit Road, Conway (PID 214-3.1 & 3.001). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Smith stated this is an existing mobile home that encroaches into the wetland setback Ms. Smith stated that the owner would like to replace the mobile home with a regular home and allow expansion further into the setback as well as allow the replacement of the existing septic system if it goes into failure.

Mr. Irving stated in the late 1990's the overlay district was adopted, however, the mobile home and the septic system were installed prior to the adoption of the ordinance. Mr. Irving stated the proposed expansion is generally going away from what the ordinance is trying to protect, but it is still within the setback. Mr. Irving stated moving the septic would have an impact on the driveway. Mr. Colbath asked how long has the mobile home been there. Ms. Smith answered approximately 1992.

Ms. Smith stated there have been no problems with the existing septic, but Town staff asked that it be included in the application in case it does have to be replaced. Ms. Smith stated that it would not violate the State's required 75-foot setback for septic systems. Ms. Sherman asked if the proposed mobile home would be on a slab. Ms. Smith stated that she does not know. Mr. Chalmers asked how much area of the building would be in the setback. Ms. Smith stated it would encroach into the setback approximately 10-feet.

Ms. Sherman asked for public comment; there was none. Mr. Kellogg asked if a continuance is necessary to see if there would be a basement or a slab. Ms. Sherman stated knowing the area she doesn't think they can have a basement. Mr. Chalmers stated there is nothing under this approval that precludes them from installing a basement. Mr. Colbath stated if additional fill is necessary then the applicant would have to come back before this Board. Mr. Irving stated this is not in the wetland, it is in the wetland buffer. Mr. Irving stated he does not know of a justified reason for not allowing a basement, but if it would have an impact on the wetland it would have to come back to this Board first.

Mr. Chalmers stated if they are moving the mobile home then why can't it be turned to be out of the buffer. Ms. Smith stated the owner is trying to have the least impact with tying into the water line and septic system. Mr. Chalmers stated turning the house would make it out of the setback. Ms. Sherman asked if this property is on Town water. Mr. Irving stated the property has Fryeburg water.

Mr. Chalmers stated he has a hard time supporting this application since there are other feasible ways to approaching this and moving it out of the setback completely. Mr.

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Weathers stated the best management of the property would be better if it was out of the buffer. Mr. Kellogg agreed with Mr. Chalmers. Ms. Sherman stated she knows the site and doesn't have a problem with the application. Mr. Colbath stated he did not a problem with the application.

**Mr. Colbath made a motion, seconded by Mr. Weathers to continue the variance request for Sandra and Andrew Kidder and Wendy Dodd until July 26, 2006 at 7:30 pm. Motion unanimously carried.**

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A public hearing was opened at 10:36 pm to consider a **VARIANCE** requested by **ELIAS BURR NYBERG** in regard to §147.13.1.3 of the Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage at 1515 Eaton Road, Conway (PID 291-3). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Smith stated that a NHDOT driveway permit has been approved to share a driveway with the existing home, but the permit was not faxed to her today. Mr. Irving stated the actual frontage along the new lot is not qualified because they don't have access to the road. Mr. Colbath asked why the NHDOT would not issue a separate driveway permit for this lot. Ms. Smith answered for safety reasons. Ms. Sherman asked for public comment; there was none

Mr. Weathers stated there are times when you cannot get up that driveway. Ms. Sherman asked if NHDOT would only allow the existing curb cut to be used. Ms. Smith answered in the affirmative. Mr. Weathers asked about the access from Stark Road. Ms. Smith stated that she would have to research that avenue.

**Mr. Colbath made a motion, seconded by Mr. Weathers, to continue the variance request for Elias Burr Nyberg until July 26, 2006 at 7:45 pm. Motion unanimously carried.**

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A public hearing was opened at 10:43 pm to consider a **VARIANCE** requested by **WALTER AND BETH CAMPBELL** in regard to §147.13.1.3 of the Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage at 1022 Stritch Road, Conway (PID 274-29 & 35.01). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Beth and Walter Campbell, owners, and Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Smith stated they are proposing to meet the dimensional requirement and are willing to give up building rights on PID 274-35.01 in order to not increase the number of units on this road. Ms. Smith stated since the road is not constructed to town standards it does not qualify as road frontage.

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Mr. Irving stated that the applicant can volunteer to postpone development of the other lot, however putting such a condition on the approval that takes away someone's right to develop that other lot is not a condition he would recommend a ZBA make a part of an approval. Ms. Campbell stated they are willing to merge the lots. Mr. Irving stated there is a chance if the lots are merged that they could never be resubdivided. Mr. Irving stated that he is not comfortable putting a stipulation on another lot and suggested the Board review the application on its merit.

Ms. Sherman asked for Board comment; Mr. Weathers asked if the second lot has been subdivided at this time. Ms. Campbell stated it is one lot at this time. Mr. Weathers stated if the other lot has a small usable area it may be in the applicant's best interest to merge it with one of the other lots. Mr. Weathers asked what is the unnecessary hardship. Mr. Campbell stated they own six acres on the lake in which they pay a lot of taxes. Mr. Campbell stated they are putting kids through college and they would like to build a house for themselves on the second lot. Mr. Campbell stated they have decided not to work for a piece of land.

Ms. Sherman asked for public comment; John Edgerton stated the Morrill's were allowed to subdivide without bringing the road up to Town standard. Mr. Campbell stated that they would like to subdivide out a homestead lot and merge three lots into two lots. Patrick Ernst stated the Campbell's are very friendly neighbors and he would like them to achieve what they want. Mr. Ernst stated that his future intent is to construct on his own lot across from the proposed lot. Mr. Ernst stated this second lot would invade his privacy as creating a cul-de-sac that currently does not exist. Mr. Ernst stated that the cul-de-sac would only serve this lot as he does not need the cul-de-sac to get into this property.

Ms. Campbell stated that the cul-de sac is on the plan and the area of the cul-de-sac belongs to them. Mr. Campbell stated that the driveway is in the deed and it was the intent of the Town to have a cul-de-sac. Mr. Campbell stated when Mr. Ernst bought his property he was not aware of where his boundaries were and he has been parking on their property, but we have not said a word. Ms. Campbell stated when the proposed subdivision was marked the neighbors were surprised of the location of the property lines. Mr. Ernst stated he was aware of the cul-de-sac, but he did not know the Campbell's owned the property. Mr. Ernst stated that he is trying to address the impact on the privacy of the two adjoining lots.

Mr. Chalmers asked if the two proposed lots could share a driveway. Ms. Campbell answered in the affirmative. Mr. Irving agreed. Mr. Ernst stated by granting this variance the Board is paving the way for anybody with the means to buy a small lot in order to barter with the Board. Mr. Ernst stated that he cannot subdivide his lot. Mr. Chalmers stated the Board is not encouraging that nor is the Board bartering anything here. Mr. Ernst stated what is good for the goose is good for the gander. Ms. Campbell asked if Mr. Ernst feels the subdivision would diminish the value of his property. Mr. Ernst answered in the affirmative, as there would be three people on the peninsula.

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Mr. Ernst stated that he did not anticipate a subdivision across the street. Ms. Campbell stated that it is not feasible to bring that road up to town standards. Mr. Chalmers stated that this ordinance is not unique to this property.

**Mr. Colbath made a motion, seconded by Mr. Weathers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**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. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**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. Sherman asked for Board comment; Mr. Chalmers stated that the Board did hear from an abutter that his property would be diminished. Mr. Ernst stated that it is creating more density that doesn't currently exist and another abutter has a financial gain by allowing the boundary line adjustment. Mr. Colbath stated that 33 abutters were notified. **Motion carried with Mr. Chalmers voting in the negative.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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 carried with Mr. Chalmers voting in the negative and stating that it is clear that the ordinance is not looking for subdivisions on unimproved roads.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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 Mr. Weathers, that, based on the forgoing findings of fact, the variance from §147.13.1.3 of the Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage be granted.** **Motion unanimously carried.**

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A public hearing was opened at 11:41 pm to consider a **SPECIAL EXCEPTION** requested by **DIODATI REALTY TRUST/MICHAEL DIODATI** in regard to §147.13.7.2.5.3 of the Conway Zoning Ordinance to allow 7 dwelling units on 0.64 acres at 109 Pine Street, North Conway (PID 218-69). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Doug Burnell of H.E. Bergeron Engineers and Michael Diodati, owner, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Myles Waltz stated the neighborhood thought these would be condominiums. Mr. Burnell stated that two of the units would have to be for rent. Mr. Burnell stated that the restricted units would be units #2 and #4.

Nolan Moody asked if these plans address parking. Mr. Burnell stated that this project would be required to have Planning Board review. Mr. Moody stated that he was concerned with right-of-way in the back. Mr. Burnell stated the applicant intends to leave it as it is and use it as an access.

**Mr. Colbath made a motion, seconded by Mr. Weathers, that each structure must contain at least three dwelling units except for the existing unit granted a variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, that not less than 25% of all dwelling units shall be designated as full time rental apartments. At the time of Planning Board approval, the units designated as full time rental apartments must be shown on the plan with a condition that they are leased for twenty years from the date of Planning Board approval by the developer and a deed restriction shall be recorded in the Registry of Deeds as evidence of the same.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, that all lots must be serviced by municipal water and sewerage.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, that Rental/Deed restricted units shall be a maximum of 1,000 square feet and a minimum of 300 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers that architectural design plans must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the zoning regulations.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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**Mr. Colbath made a motion, seconded by Mr. Weathers that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.7.2.5.3 of the Town of Conway Zoning Ordinance to allow 7 dwelling units on 0.64 acres be granted. Motion unanimously carried.**

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A public hearing was opened at 12:04 am to consider a **VARIANCE** requested by **DIODATI REALTY TRUST/MICHAEL DIODATI** in regard to §147.13.7.2.5.3.1 of the Conway Zoning Ordinance to allow one dwelling unit in a structure at 109 Pine Street, North Conway (PID 218-69). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Doug Burnell of H.E. Bergeron Engineers and Michael Diodati, owner, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none.

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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; there was none. **Motion unanimously carried.**

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

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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; Mr. Colbath stated that it should increase the values. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

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**Mr. Colbath made a motion, seconded by Mr. Weathers, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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 Mr. Weathers, that, based on the forgoing findings of fact, the variance from §147.13.8.2.5.3.1 of the Town of Conway Zoning Ordinance to allow one dwelling unit in a structure be granted. Motion unanimously carried.**

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A public hearing was opened at 12:15 am to consider a **VARIANCE** requested by **DIODATI REALTY TRUST/MICHAEL DIODATI** in regard to §147.13.7.4 of the Conway Zoning Ordinance to allow the construction of a porch to encroach in the setback at 109 Pine Street, North Conway (PID 218-69). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006.

Doug Burnell of H.E. Bergeron Engineers and Michael Diodati, owner, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked how many feet is encroaching. Mr. Bergeron stated approximately eight feet. Ms. Sherman asked for public comment; there was none.

**Mr. Colbath made a motion, seconded by Mr. Weathers, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; Mr. Chalmers stated that the applicant is removing encroachment at the back of the property and increasing the encroachment at the front of the property. Ms. Sherman stated that the house already encroaches into the setback. **Motion unanimously carried.**

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

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Adopted: July 26, 2006 – As Amended  
CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 28, 2006**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

**Mr. Colbath made a motion, seconded by Mr. Weathers, 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.**

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

**Mr. Colbath made a motion, seconded by Mr. Weathers, that, based on the forgoing findings of fact, the variance from §147.13.7.4 of the Town of Conway Zoning Ordinance to allow the construction of a porch to encroach within the side setback as presented be granted.** **Motion unanimously carried.**

Meeting adjourned at 12:25 am.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant