

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

DECEMBER 20, 2006

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 20, 2006 at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Jeana Hale; Alternate, Sheila Duane; Alternate, Hud Kellogg; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Duane as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:32 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **RED JACKET MOUNTAIN VIEW, LLC** in regard to §147.13.8.12 of the Conway Zoning Ordinance to appeal the decision that a self-enclosed water slide extending outside the exterior of a building is an outdoor commercial amusement at 2251 White Mountain Highway, North Conway (PID 230-51). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, December 13, 2006.

Randy Cooper of Cooper, Deans & Cargill appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Cooper submitted a Memorandum in Support of Appeal from Administrative Decision. Mr. Cooper stated that the applicant is proposing an indoor water park. Mr. Cooper stated that the applicant is into selling hotel rooms and wants to add an amenity for their guests. Mr. Cooper stated that it would be done well and tastefully. Mr. Cooper reviewed a site plan with the Board.

Mr. Cooper stated there would be an indoor pool, an outdoor pool and an indoor water park. Mr. Cooper stated that the issue tonight is whether or not the translucent tubes that you enter inside the structure passes outside the structure and comes back inside are considered a commercial amusement. Mr. Cooper stated that the issue becomes whether these are part of the building, and if not a part of the building, are they entitled a variance to not construct inside the building. Mr. Cooper read a letter from Thomas Irving that denied the zoning permit. Mr. Cooper stated §147.13.8.12 was established based on the original 18-holes of miniature golf [at Pirate's Cove].

Mr. Cooper stated that 147.15.13 defines a building, and this is an extensive addition on a building. Mr. Cooper stated that §147.15.33, the definition of a footprint, stated that this certainly would be an overhang and by definition is a part of the footprint of the building.

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Mr. Cooper stated that the height where it exits the building would be 33-feet. Mr. Cooper stated that the slide would be a part of the building, an extension of the enclosed building, as you cannot get to the slides from anywhere other than inside the building. Mr. Cooper stated that this use would not cause noise. Mr. Cooper stated that if the building were extended out to enclose the tubes, there would be another big wall rather than being able to see around them. Mr. Cooper stated that the visual effect would be substantially less than that of a window of corresponding size.

Ms. Sherman asked for comment from the Town; Mr. Irving referred to his letter and stated that the portion not in the building is not in a building. Mr. Chalmers asked if the tubes would be over the same foundation as the new building. Mr. Cooper answered in the affirmative. Paul McBride, who was in the audience, stated that the tubes would be on sonatubes. Mr. Kellogg asked what size building would be required to enclose the tubes. Mr. Cooper answered a 154' x 50' building.

Katherine Reddington, an abutter, stated that it sounds like the tubes are enclosed, but clearly they are not. Ms. Reddington stated that it was represented at a meeting for abutters [held by the Red Jacket] that the tubes would be enclosed, but they are not enclosed within a building. Ms. Reddington stated that these are translucent intestines hanging off the side of a building. Ms. Reddington stated that there is the possibility of noise, and if they wanted to enclose it in a glass building that would be fine since there would be no noise.

Ed Ferman, an abutter and owner of Phoenix Realty Trust, stated what is sticking out of the building would be visible from his home. Mr. Ferman asked what are the materials of the tubes. Mr. McBride answered similar to fiberglass. Mr. Ferman stated that there would be noise from this water park. Mr. Ferman stated that they attended a meeting held by the business and was told that they would be enclosed. Ms. Reddington stated when you scream it would be on the slides and they would be able to hear it. Mr. Chalmers asked if the tubes would be lit. Mr. Cooper answered in the negative.

Mr. Cooper stated that he respectively disagrees that Phoenix Realty Trust would ever be able to see it from his property since there is a building in between the tubes and his property. Mr. Cooper submitted and reviewed photographs with the Board. Mr. Cooper stated that he could not state whether or not the sound would be heard at Ms. Reddington's house, which is 450-feet away from this structure.

Ms. Reddington stated there are some delicious trees but the leaves are gone in the winter. Ms. Reddington stated that it is going to be loud. Ms. Reddington stated that she has no objections if it is enclosed. Mr. Ferman stated in regard to sound, he has heard sound from their pool. Mr. Ferman stated that the noise would travel throughout the neighborhood, especially if they are outside. Mr. Cooper stated there is not going to be any more sound than what is presently there. Mr. Cooper stated that this is not a visual issue, but a sound issue. Mr. Irving stated that issue is whether or not is this or is this not an outdoor commercial amusement. Mr. Ferman stated that there is no coverage over these appendages.

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Mr. Colbath made a motion, seconded by Mr. Chalmers, to uphold the Administrative Decision in regard to §147.13.8.12 of the Conway Zoning Ordinance that a self-enclosed water slide extending outside the exterior of a building is an outdoor commercial amusement. Motion unanimously carried.

Mr. Irving asked that the Board clarify their decision to uphold the Administrative Decision. Ms. Duane stated that she agreed with the Zoning Officer's interpretation and this Board upheld the denying of the application. Ms. Sherman stated that she agreed with the Zoning Officer's reasons. The Board agreed.

A public hearing was opened at 8:06 pm to consider a **VARIANCE** requested by **RED JACKET MOUNTAIN VIEW, LLC** in regard to §147.13.8.12 of the Conway Zoning Ordinance to allow a self-enclosed water slide extending outside the exterior of a building at 2251 White Mountain Highway, North Conway (PID 230-51). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, December 13, 2006.

Randy Cooper of Cooper, Deans & Cargill appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Cooper submitted and reviewed his Memorandum of Support of Application for Variance. Mr. Irving stated it is up to the Board whether or not this was an area variance or a use variance.

Ms. Reddington stated that she would like the water slides enclosed within a building, as there would be a noise issue. Ms. Reddington stated that it was represented at an abutter's meeting that this would be enclosed within a building and if it were enclosed within a building, and then she would be okay with the project. Mr. Ferman stated Mr. Cooper has not been to his property. Mr. Cooper agreed. Mr. Ferman stated that Mr. Cooper could not speak about noise on his property from the Red Jacket. Mr. Ferman stated that they discussed a tree buffer at the abutter's meeting at the Red Jacket in addition to an enclosed building. Mr. Ferman stated it should be enclosed and there should be a sound barrier as well, but it needs to be enclosed.

Mr. Ferman stated that the new Hampton Inn has a water park, but it is entirely enclosed within a building. Mr. Ferman stated by granting this application, it would be opening a Pandora's box. Mr. Ferman stated that they were told that this was strictly for the Red Jacket guests, but have heard that their sister hotel, the Red Fox, would be using it as well. Mr. Ferman stated that the noise is going to increase dramatically. Ms. Reddington stated when they met she asked specifically if it would be open to the public and was told it would be for Red Jacket guests only. Ms. Reddington stated that a barrier of blue spruce was discussed, but it was independent to the fact that it would be enclosed within a building.

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David Abraham stated that they invited the neighbors to review the plans and they meant enclosed as in you would not see children and adults, as the slide would be enclosed. Mr. Abraham stated that this would reduce noise, as the new outdoor pool would be farther away from the abutting properties than the current outdoor pool.

Ms. Duane asked if this would have a retractable roof. Mr. Abraham answered in the negative. Mr. Ferman stated that he asked that and was told it could be retractable. Mr. Ferman stated that he does not put much weight on Mr. Abraham's word. Mr. Cooper was offended by Mr. Ferman's comment.

Dewitt Davenport, Manager of the LLC, stated that his family has been involved since the inception of the Red Jacket. Mr. Davenport stated that the roof system would not be retractable. Mr. Davenport stated that it was designed not just for the hotel, but groups, like other hotels in the area, that would benefit of the community. Mr. Davenport stated that they have reviewed approximately 40 facilities around the country and they are trying to incorporate the very best to bring forth a product that is a benefit to the community. Mr. Davenport stated that it is contained and you are not going to hear the screams. Mr. Davenport stated that children do not scream when they go down the ride. Mr. Davenport stated that they want to be good neighbors and will plant whatever they would like as a buffer. Mr. Davenport stated that it is their goal to work with the people and the community to build a first class facility.

Mr. Kellogg stated he was shocked to hear that this would be a year round facility and asked if the tubes would be heated. Mr. Davenport stated that the tubes would not be heated as there is constant water flow, so there would be no problem with freezing. Mr. Ferman asked if the applicant would be willing to have walls, but no roof. Mr. Davenport stated that they would like their application to remain as presented.

Ms. Reddington stated she appreciates the comment that there would be no noise, but would like scientific evidence. Ms. Sherman asked Mr. Irving if this should be a use variance or an area variance. Mr. Irving stated that his recommendation would be a use variance.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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. Cooper stated the comment regarding opening a Pandora's box, he wanted to remind the Board that every variance is different and not precedent setting. Ms. Sherman asked for Board comment; Mr. Hale stated that there are other feasible ways to accomplish their goal by enclosing the water slide within a building. Mr. Chalmers stated that the property is being utilized as a hotel and assumes it is a busy hotel even without the water park. Mr. Colbath stated that this is already a multi-use property and the ordinance requires it to be enclosed within a building. Ms. Sherman stated that there are reasonable means to use the property the way they wish. **Motion unanimously defeated.**

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Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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; Mr. Hale stated that the ordinance was written specifically for this type of activity. Mr. Colbath stated that the property could be used for a water park as long as it is enclosed within a building to meet the standard for noise. **Motion unanimously defeated.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; Ms. Duane stated that it would have an affect if it is not enclosed within a building. Ms. Hale stated that the abutters have testified that it would be a nuisance from the noise caused by the water slides not being enclosed within a building. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, 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; Ms. Duane stated that they can still use their property for the proposed use if they make other arrangements. **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; Ms. Duane stated that it is a visual impact to at least one abutting property and a distraction to the view outside their home. Ms. Hale stated that at least one person is going to have to look at this from their home, but the noise nuisance could have an affect. Ms. Sherman stated that the reason the whole ordinance was enacted was to keep these types of amusements inside a building in order to prevent any auxiliary light and noise from affecting the neighbors. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; Ms. Duane stated that it is contrary based on how the ordinance is written. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; Ms Duane stated based on the ordinance as it is written it would be underlying its future use by town staff. Mr. Colbath stated that the public has written the ordinance as such that commercial amusements are supposed to be enclosed within a building. **Motion defeated with Ms. Hale and Ms. Sherman voting in the affirmative.**

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

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for Board comment; Ms. Duane stated that it is undermining the written ordinance. Ms. Hale stated that we have heard from members of the public. Mr. Colbath stated that this weighs to the public. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.12 of the Town of Conway Zoning Ordinance to allow a self-enclosed water slide extending outside the exterior of a building be granted. Motion unanimously defeated.

A public hearing was opened at 8:44 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC.** in regard to §147.13.16.3.1 and §147.13.16.4 of the Conway Zoning Ordinance to allow the proposed structure to encroach within the wetland buffer and setback at 107 River Road, North Conway (PID 218-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on December 13, 2006.

Ms. Duane stepped down at this time. Ms. Sherman appointed Mr. Kellogg as a voting member. Sheila Duane of the River Run Company, and Burr Phillips of Civil Solutions, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Phillips submitted and reviewed a presentation outline.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Steve Hartman of the Nearledge Inn stated that he contacted the State to try to purchase this property and was unable to, but he doesn't understand if the applicant purchased the property under these circumstances how there could be a hardship. Mr. Hartman stated that he was told that the property was given to River Run Company. Mr. Phillips stated that he would have to ask Joe Berry about the time line in regard to purchasing the property.

Mr. Irving stated that this doesn't have any relevance to the application. Mr. Hartman asked how this could be a hardship to the applicant if they knew what they were receiving. Mr. Irving stated how they acquired the property doesn't matter. Mr. Hartman asked about the grandfathered structure. Ms. Sherman stated that it would be grandfathered forever. Mr. Hartman asked about if the green and yellow areas would be replanted. Mr. Phillips answered in the affirmative.

Mr. Hartman stated if that property was acquired after the road was constructed where is the hardship. Ms. Duane stated that they owned the property prior to the road construction. Mr. Irving read the requirements under the hardship test. Mr. Phillips stated that the River Run Company purchased the property with the grandfathered rights, whether the road moved or not, they would still be here.

Ms. Sherman asked Mr. Hartman if the proposal would have an affect on his property. Mr. Hartman stated that it would affect his site line. Ms. Sherman asked if the existing building were there, would it have an affect. Mr. Hartman stated he has only been there for

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three years so he is not sure how it would affect his site. Mr. Chalmers asked when the State takes a property they don't take the buildings as well. Mr. Irving stated that the State typically takes a property just as if they purchased it fee simple, then they slice off the part they want and then dispose the remaining property. Mr. Irving stated unless they take an overt action to specifically relinquish the grandfathered rights, those rights go with the property.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked if there were any further comments by the Town; there was none. Ms. Sherman asked for public comment; there was none.

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

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

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** 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 variance from §147.13.16.3.1 and §147.13.16.4 of the Town of

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Conway Zoning Ordinance to allow the proposed structure to encroach within the wetland buffer and setback be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC.** in regard to §147.13.8.4 of the Conway Zoning Ordinance to allow the proposed structure to encroach within the front setback at 107 River Road, North Conway (PID 218-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on December 13, 2006.

Sheila Duane of the River Run Company, and Burr Phillips of Civil Solutions, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

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

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

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Ms. Sherman read item 5. **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 carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.4 of the Town of Conway Zoning Ordinance to allow the proposed structure to encroach within the front setback be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 9:31 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC.** in regard to §147.13.16.4 of the Conway Zoning Ordinance to allow the temporary vegetation removal within the wetland buffer at 107 River Road, North Conway (PID 218-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on December 13, 2006.

Sheila Duane of the River Run Company, and Burr Phillips of Civil Solutions, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

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

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

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** 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 variance from §147.13.16.4 of the Town of Conway Zoning Ordinance to allow the temporary vegetation removal within the wetland buffer be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 9:33 pm to consider a **VARIANCE** requested by **RIVER RUN COMPANY, INC.** in regard to §147.14.2.1.3 of the Conway Zoning Ordinance to allow the expansion of a non-conforming structure at 107 River Road, North Conway (PID 218-53). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on December 13, 2006.

Sheila Duane of the River Run Company, and Burr Phillips of Civil Solutions, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

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

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

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** 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 variance from §147.14.2.1.3 of the Town of Conway Zoning Ordinance to allow the expansion of a non-conforming structure be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of November 15, 2006 as written. Motion carried with Ms. Sherman abstaining from voting.

Meeting adjourned at 9:44 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant