

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

JULY 25, 2007

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 27, 2007 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Jeana Hale; Alternate Cynthia Briggs; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:35 pm to consider a **VARIANCE** requested by **PLR REAL ESTATE DEVELOPMENT AND IRVING OIL CORPORATION** in regard to §147.13.8.6.2 of the Conway Zoning Ordinance to exceed the number of permitted wall signs at 1500 White Mountain Highway, North Conway (PID 246-21.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 18, 2007.

Ms. Briggs stepped down at this time and left the room. Paul Pietropaoli of Perkins Thompson representing Irving Oil Corporation appeared before the Board. Dot Seybold of OVP Management and James Yeager, Code Enforcement Officer, was in attendance. Ms. Sherman stated that there are only four members present as one member has stepped down. Ms. Sherman asked if the applicant would like to proceed with four-members or continue the hearing until a five-member Board is present. Mr. Pietropaoli agreed to proceed with four members. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Pietropaoli stated that it is the same as the hearing in February. Mr. Pietropaoli reviewed the history of the applications. Mr. Pietropaoli stated that the applicant is requesting one sign facing east with a square footage of 24.8 square feet. Ms Sherman asked for Board comment; Mr. Bartolomeo stated the ordinance addresses the issue of two tenants, however, the literal interpretation doesn't work when one business is in the building and the other business is in the canopy. Mr. Bartolomeo stated that this is a great example of an applicant working with the Board. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** 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. Bartolomeo, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Hale, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2 of the Town of Conway Zoning Ordinance to exceed the number of permitted wall signs be granted. Motion unanimously carried.

A public hearing was opened at 7:47 pm to consider a **VARIANCE** requested by **AMETHYST HILL PROPERTIES, INC.** in regard to §147.12 of the Conway Zoning Ordinance to extend the existing overhead utility system across East Conway Road, Conway (PID 257-47). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 18, 2007.

Ms. Briggs rejoined the Board at this time. Josh McAllister of H.E. Bergeron Engineers and Kirk Saunders of Amethyst Hill Properties and White Mountain Oil appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Saunders stated that PSNH has agreed to set another pole on the other side of the road. Mr. Saunders stated that they are being penalized for being on the wrong side of the street. Mr. Saunders stated that it does not detract from the character of the neighborhood nor anyone's land value. Mr. Saunders stated he believes putting the utilities underground on someone else's property would cause visualize clutter. Mr. Saunders stated that they would be causing a burden on someone else's property and he believes the intent of the rule was to stop the proliferation of above ground utilities in new developments.

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Mr. Saunders stated if this variance is granted, the applicant is willing to move the drop from the former Tyler home [PID 252-44] that currently goes across East Conway Road and move to the new development. Mr. Saunders stated if or when the Tyler home property is developed, the utilities can go underground from the utility service of the new development.

Mr. Bartolomeo stated once you get onto your property you intend to go underground to the project. Mr. Saunders agreed. Ms. Sherman appointed Ms. Briggs as a voting member. Mr. Bartolomeo stated that the town created an industrial zone to sort of attract light industry, but it has kind of failed due to lack of infrastructure, municipal water and sewer, and the fact that someone wants to invest in this zone he can support this application. Ms. Sherman stated the applicant is going underground once they get to their property. Mr. Colbath stated that this applicant is going underground once he gets to his property and doesn't see why the variance is necessary.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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.**

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

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Ms. Hale, 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. Bartolomeo, 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.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** 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. Bartolomeo, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** 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. Bartolomeo, 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.**

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Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.12 of the Town of Conway Zoning Ordinance to extend the existing overhead utility system across East Conway Road be granted. Motion unanimously carried.

A public hearing was opened at 8:05 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** requested by **985 MAIN STREET, LLC/ MOUNTAINVALE VILLAGE MHP** in regard to §147.13.1.4 of the Conway Zoning Ordinance to permit existing porches and steps to remain in the front setback on Blake Hill Road, Conway (PID 254-29.202, .204 & .205). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 18, 2007.

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 during the construction of the road some of the pins were removed and the applicant was not aware that the front steps were an issue. Ms. Smith stated in a mobile home park the lots are smaller. Mr. Colbath asked if these are parked owned lots. Ms. Smith answered in the affirmative.

Donna Mae Renard stated the properties being affected were revamped about six years ago and they consolidated some of the lots to accommodate the larger homes. Ms. Renard stated that she is the President of the Partridge Run development and the Association asked her to be here this evening. Mr. Bartolomeo stated no one found this, but it was caught when the applicant submitted a Boundary Line Adjustment application with the Planning Board. Ms. Smith agreed. Ms. Renard stated the Association applauded them when they decided to combine lots to accommodate the doublewide homes. Ms. Renard stated that this is a very neat and clean development. Ms. Renard stated that they don't have a problem at all with what is being done.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** 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. Bartolomeo, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which**

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that official had authority. 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. Bartolomeo, that item 3 was not applicable.** 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. Bartolomeo, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Hale, due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to permit existing porches and steps to remain in the front setback be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Ms. Hale, to approve the Minutes of June 27, 2007 as written. Motion unanimously carried.

OTHER BUSINESS

H. Carol Lynch (PID 214-42.01) File #07-28: Mr. Colbath stated that the business has been there for 50-years and thought they would carve out a residential lot and keep the business. Ms. Briggs stated that the business has been there for many years. **Mr. Colbath made a motion, seconded by Ms. Briggs, at the request of the applicant the Zoning Board of Adjustment rescinds its decision of June 27, 2007 regarding case #07-28 and acknowledge the withdrawal of the subject application without prejudice. Motion unanimously carried.**

Meeting adjourned at 8:40 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant