

## ZONING BOARD OF ADJUSTMENT

### MINUTES

**FEBRUARY 27, 2008**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 27, 2008 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Luigi Bartolomeo; Andrew Chalmers; Alternate, Cynthia Briggs; Alternate, Sheila Duane; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

#### **APPOINTMENT OF ALTERNATE MEMBERS**

Ms. Sherman appointed Ms. Briggs and Ms. Duane as voting members.

#### **REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of December 5, 2007 as written. Motion carried with Ms. Sherman abstaining from voting.**

#### **PUBLIC HEARINGS**

A public hearing was opened at 7:35 pm to consider a **SPECIAL EXCEPTION** requested by **MOUNT WASHINGTON VALLEY ECONOMIC COUNCIL** in regard to §147.13.1.11.10 of the Conway Zoning Ordinance for a zoning approval to subdivide land with associated road infrastructure within a business development park off Technology Lane, Conway (PID 262-86.2 & 86.001 and 265-152). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 20, 2008.

Jay Poulin of H.E. Bergeron appeared before the Board. Jac Cuddy of the Economic Council was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Poulin stated that phase I has been approved and they are here this evening for the remainder of the property. Mr. Poulin stated that the applicant would like an approval to develop the remaining land. Mr. Poulin stated that a good portion of the property is within the Residential Agricultural District. Mr. Poulin submitted a memorandum dated February 27, 2008.

Mr. Poulin stated that the applicant would like to have assurance that it could be developed before moving on with the rest of the development. Mr. Poulin stated that the applicant would also like approval to not have to come back to the Board for a special exception for each lot. Mr. Poulin stated the Declaration and Covenants would enforce the special exception requirements. Mr. Bartolomeo stated Mr. Irving's concern is that if there are 19 different lots there is the potential to have 19 different owners. Mr. Poulin stated it is hard to tell what the actual development would consist of and to determine what is going to happen on the remaining land. Mr. Bartolomeo stated that this board cannot address the covenants.

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Mr. Irving stated that the fundamental question is how you are going to ensure that those lots within the development comply with the requirements of the special exception. Mr. Irving stated the question is can these lots be created within the Business Development Park that are not contiguous with the Highway Commercial District.

Mr. Poulin stated that the subject property is the Business Development Park and not an individual lot. Mr. Poulin stated that there would have to be some sort of ownership for this to work. Ms. Duane stated when we created this Business Park Development, it created a commercial use in a residential area and now we're going to go away from the original plan. Ms. Duane asked why not have the land rezoned and then change your use down the road, but right now it is putting commercial use in the residential zone.

Mr. Cuddy stated that he has brought a copy of the feasibility study. Mr. Cuddy stated one piece of the special exception is the institutional educational piece of it and then there are to be an incubator for businesses to develop. Mr. Cuddy stated that there is approximately 60 acres of land for development and the Economic Council would not have purchased the property if the special exception wasn't granted. Mr. Cuddy stated if this cannot be done we would have to close our doors. Mr. Cuddy stated that they have had many discussions with realtors and people want to own their land. Mr. Cuddy stated that they would still have to subdivide the land into parcels.

Mr. Bartolomeo asked if this Special Exception was written to specifically accommodate this. Mr. Cuddy stated anyone could create this type of development as long as the criteria were met. Mr. Cuddy stated that any for profit or non-profit business could buy a chunk of land and create a Business Development Park as long as they followed the requirements of the Special Exception.

Mr. Cuddy stated that there is a lot of land given up with the buffer. Mr. Cuddy stated that the Economic Council has discussed this and it has changed and evolved from the original idea. Mr. Cuddy stated that they originally were thinking four or five 25,000 square foot buildings on the property, but there is not a market for that. Mr. Cuddy stated that a 5,000 square foot building is the average.

Ms. Duane asked in the covenants are there restrictions on uses. Mr. Cuddy stated that there are protective items in the covenants in regard to each requirement of the Special Exception. Mr. Cuddy stated the covenants are not revocable, but they could be amended. Mr. Cuddy stated that it could be a requirement of the covenants that any amendment to them would have to be approved by the Planning Board or the Zoning Board of Adjustment, that way there is a guarantee that the Town has protection on a change.

Ms. Duane asked why not go through to change the zoning. Mr. Cuddy stated they were granted a Special Exception, which they thought was for the whole development, and they wanted to continue with the Special Exception. Mr. Bartolomeo stated that the Special Exception was only approved for the first phase. Mr. Cuddy stated since then they have a Master Plan.

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Mr. Irving stated he thought the Board designated the entire lot as a Business Development Park and then approved the actual development of phase I with the understanding that the whole park was designated, but they were only constructing phase I. Mr. Irving suggested that the Board make a motion to a finding of fact that individual lots within a business park do not have to be contiguous with the Business District as long as the overall park is contiguous with the Business District.

Mr. Cuddy stated that it has always been a subdivision with the property being leased or actually sold. Ms. Duane asked about the restrictions. Mr. Poulin answered article 7 of the covenants addresses restrictions. Ms. Duane stated that there were abutters who were very concerned during the initial special exception. Ms. Duane asked about a fast food restaurant. Mr. Cuddy stated that it would not be allowed.

Mr. Bartolomeo stated the question is does “subject property” mean the park or the individual lots. Ms. Briggs asked if it was clear to the ZBA during the original concept that it would be subdivided and sold. Mr. Irving stated that it was not clear to the ZBA at the time and he showed the concept plan from the original hearing. Mr. Cuddy stated that it is the same concept without the boundary lines. Ms. Sherman asked if the concept on the original application was a single ownership. Mr. Cuddy answered in the negative.

Ms. Sherman stated she figured it was office space in buildings that were communally owned rather than on lots that were owned individually. Ms. Sherman stated that there were concerns of the neighbors with traffic, lighting and disruption of their residential use. Ms. Sherman stated one of the provisions would have to be the traffic study. Mr. Cuddy stated that a traffic study has been done. Ms. Sherman stated that she is assuming it pictures the type of businesses. Mr. Cuddy agreed.

Ms. Duane stated in looking at the property anything that needs high visibility is not going to go in there so there is not going to be retail. Ms. Briggs stated that article 7 of the covenants bars retail. Mr. Chalmers asked if there would be additional signage. Mr. Cuddy answered in the negative. Mr. Chalmers asked what happens if this doesn't work. Mr. Cuddy stated then we go down the tubes. Ms. Duane asked if there would be other educational facilities. Mr. Cuddy stated they have not sought another educational facility.

Ms. Briggs stated businesses who want to establish outside of the incubator want their own land and buildings, but could you create a condominium. Mr. Bartolomeo stated that there is subletting. Ms. Sherman stated in regard to signage would the second entrance have a freestanding sign advertising the lot. Mr. Cuddy stated that there would be not be any signage for businesses within the park on Route 16. Mr. Cuddy stated that the property at the second entrance would be owned by the Council.

Mr. Bartolomeo asked if potential residential use is prohibited. Mr. Irving answered in the negative. Ms. Duane stated that it would seem this section of the ordinance was written for this particular property. Mr. Bartolomeo stated that it is deliberately vague.

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Mr. Bartolomeo stated that the question is do the individual lots within a business park have to be contiguous with the Business District as long as the overall park is contiguous with the Business District. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the language subject property refers to the Business Park as a whole and not individual lots.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated the only property mentioned is the business park. **Motion unanimously carried.** Earl Sires, Town Manger, asked for a point of clarification and asked if the motion applies to the Special Exception in general and not to the application. Ms. Sherman answered in the affirmative.

Mr. Poulin reviewed the memorandum dated February 27, 2008 responding to Thomas Irving's memorandum. Mr. Irving asked if the restrictive covenants satisfy the ZBA and would it satisfy the requirements of the Special Exception. Mr. Irving asked is the Board able to vote that these issues have been demonstrated within the covenants. Mr. Irving stated that the Board should clarify if the applicant is done with the Board of Adjustment unless the covenants are changed or they have to come back for each individual lot to reaffirm.

Mr. Cuddy stated that the potential buyer would have to go before the ZBA before they decide to purchase the property. Mr. Bartolomeo stated that that happens all the time. Ms. Duane stated that she is in favor of the covenants as it clearly spells out what needs to be done and the ordinance is clearly reflected. Ms. Sherman stated that she would like to hear about the traffic study before she makes a decision.

Mr. Irving stated the Board could approve subdividing the lot with the understanding that the restrictive covenants are in place and the applicant would have to come back to the ZBA for each individual development. Ms. Sherman asked for public comment; there was none. Mr. Sires stated that it should be a condition that the Covenants and Restrictions are accepted by Town Council.

**Mr. Bartolomeo made a motion, seconded by Ms. Duane, to continue the public hearing until March 26, 2008 at 7:30 pm. Motion unanimously carried.**

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A public hearing was opened at 9:00 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **SC LOOKOUT, LLC/STARBUCKS** in regard to §147.13.8.6.5.4 and §147.13.8.6.12.3 of the Conway Zoning Ordinance to appeal the Zoning Officer's decision to include the "drive-thru" portion of the wall sign in the total sign message area calculation and for not applying the sign incentive portion of the ordinance to the wall sign at 1498 White Mountain Highway, North Conway (PID 246-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 20, 2008.

Alex Dittami of Sign-A-Rama appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Dittami stated that the applicant it allowed an approximate 23 square foot wall sign and when the sign area was measured by the Town it was extended to encompass the drive thru directional sign and he believes that is incorrect. Mr. Yeager stated the application indicated that the sign was 37 square feet, which was too large to

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approve. Mr. Dittami stated that was a mistake on the applicant's part. Mr. Yeager stated what the applicant is calling a directional sign is not directing the patrons anywhere.

Mr. Dittami stated in regard to the sign incentive, the freestanding sign is a legally existing sign. Mr. Dittami stated that it is a grandfathered sign that is legally grandfathered and, therefore, is in compliance with the ordinance. Mr. Dittami stated that the applicant is entitled to the incentive. Ms. Sherman stated that it is a legally existing grandfathered sign. Mr. Irving stated that grandfathered signs are legally existing non-conformities. Mr. Chalmers asked if the applicant is suggesting making the existing freestanding sign conforming. Mr. Dittami stated if a sign is in conformance then you are entitled to a sign incentive; it doesn't say if you make it conforming. Mr. Bartolomeo stated that it is a legally, existing non-conforming grandfathered sign.

**Mr. Bartolomeo made a motion, seconded by Ms. Briggs, to uphold the Administrative Decision in regard to §147.13.8.6.5.4 and §147.13.8.6.12.3 to include the "drive-thru" portion of the wall sign in the total sign message area calculation and for not applying the sign incentive portion of the ordinance to the wall sign.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 9:30 pm to consider a **VARIANCE** requested by **SC LOOKOUT, LLC/STARBUCKS** in regard to §147.13.8.6.2 of the Conway Zoning Ordinance to allow two additional wall signs at 1498 White Mountain Highway, North Conway (PID 246-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 20, 2008.

Alex Dittami of Sign-A-Rama appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Dittami stated that this would not have an adverse impact on surrounding properties; it will be easier to identify and negotiate the traffic flow; and it would be easier and safer with a lot of traffic. Mr. Dittami stated to the applicant it is a traffic issue since the additional signs do not face the highway.

Ms. Briggs stated it's not like we're dealing with an entity that people don't know about. Ms. Briggs stated that we have the regulations for a reason. Mr. Bartolomeo stated that we have made exceptions for large box retailers with a large wall span, but this is a fairly small building. Ms. Briggs asked if this is for the east and south side. Mr. Dittami answered in the affirmative.

Ms. Sherman read item 1.a. **Mr. Bartolomeo made a motion, seconded by Ms. Duane, 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. Bartolomeo stated that there is nothing special. **Motion unanimously defeated.**

Ms. Sherman read item 1.b. **Ms. Briggs made a motion, seconded by Ms. Duane, 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; Mr. Bartolomeo stated that window signs are allowed. **Motion unanimously defeated.**

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**Mr. Bartolomeo made a motion, seconded by Ms. Duane, 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. **Ms. Briggs made a motion, seconded by Ms. Duane, 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 Ms. Duane, Mr. Chalmers, Ms. Sherman and Ms. Briggs voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 3. **Ms. Briggs made a motion, seconded by Ms. Duane, 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; Mr. Bartolomeo stated that this is quite contrary to the ordinance. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Ms. Briggs 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; Mr. Bartolomeo stated that the Town is trying to minimize visual clutter of multiple signs and is against the public interest. **Motion unanimously defeated.**

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

**Mr. Bartolomeo made a motion, seconded by Ms. Duane, 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 two additional wall signs to be granted. Motion unanimously defeated.**

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A public hearing was opened at 9:50 pm to consider a **VARIANCE** requested by **SC LOOKOUT, LLC/STARBUCKS** in regard to §147.13.8.6.5.2 of the Conway Zoning Ordinance to allow the installation of three double-sided illuminated directional signs larger than what is allowed at 1498 White Mountain Highway, North Conway (PID 246-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 20, 2008.

Alex Dittami of Sign-A-Rama appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Dittami stated that there is four square feet of directional signage and rest is skirting. Mr. Dittami stated that this is what is used at other Starbuck locations. Ms. Sherman asked why bother with the skirt. Mr. Dittami stated that it is much more visible.

Ms. Briggs stated that it is four times the size it needs to be. Mr. Dittami stated that an area with too many signs is not good, but a lack of adequate signage leads to traffic problems, congestion and confusion. Mr. Chalmers stated that this is a directional sign that becomes a freestanding

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sign. Mr. Bartolomeo stated that it is only 46” high and 24” wide. Mr. Bartolomeo stated that he would agree too many signs are not good, but too few signs are not good either. Mr. Bartolomeo stated that this does not offend him.

Mr. Yeager stated that the background color panel does exactly what a sign message area does. Mr. Dittami stated that the applicant would be willing to eliminate the logo, move the drive thru up, but maintain color and shape to have the monument that they care to have. Mr. Yeager stated that that would not make it any smaller. Mr. Irving asked why not put it on two 4x4 wooden posts. Mr. Dittami stated that it would qualify, but it is more aesthetically pleasing as proposed and less likely to be hit.

Ms. Sherman read item 1.a. **Mr. Bartolomeo made a motion, seconded by Ms. Briggs, 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 comment; Mr. Dittami stated that he would reduce the sign to 40” x 24” and eliminate the logo. Mr. Chalmers stated that there are no special conditions. **Motion defeated with Ms. Duane, Mr. Chalmers, Ms. Sherman and Ms. Briggs voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 1.b. **Mr. Bartolomeo made a motion, seconded by Ms. Duane, 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; Ms. Sherman stated that the applicant can conform to the ordinance by doing a different structural support. Mr. Chalmers stated that they can have the allowed amount and accomplish the same thing. **Motion defeated with Ms. Duane, Mr. Chalmers, Ms. Sherman and Ms. Briggs voting in the negative and Mr. Bartolomeo voting in the affirmative.**

**Ms. Briggs made a motion, seconded by Mr. Bartolomeo, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Ms. Duane, Mr. Chalmers, Ms. Briggs and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 2. **Mr. Bartolomeo made a motion, seconded by Ms. Duane, 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 Ms. Duane, Mr. Chalmers, Ms. Briggs and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 3. **Ms. Briggs 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; Ms. Sherman stated that there is no increase in area of signage, but the support structure is not conforming to Town regulations, which is contrary to the spirit and intent of the ordinance. **Motion unanimously defeated.**

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Ms. Sherman read item 4. **Mr. Bartolomeo made a motion, seconded by Ms. Briggs, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Ms. Duane, Mr. Chalmers, Ms. Briggs and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 5. **Mr. Bartolomeo made a motion, seconded by Ms. Briggs, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; Ms. Sherman stated that it implies by not granting the applicant is deprived of something. **Motion defeated with Ms. Duane, Mr. Chalmers, Ms. Briggs and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

**Mr. Bartolomeo made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.8.6.5.2 of the Town of Conway Zoning Ordinance to allow the installation of three double-sided illuminated directional signs larger than what is allowed be granted. Motion defeated with Ms. Duane, Mr. Chalmers, Ms. Briggs and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Meeting adjourned at 10:30 pm.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant