

## ZONING BOARD OF ADJUSTMENT

### MINUTES

APRIL 23, 2008

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 23, 2008 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; 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.

#### PUBLIC HEARINGS

A public hearing was opened at 7:32 pm to consider a **VARIANCE** requested by **NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION/MICHELE ROBER/121 FIT, INC** in regard to §147.12 of the Conway Zoning Ordinance **to install a pole for overhead electrical utilities** at 3107 White Mountain Highway, North Conway (PID 215-60). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 16, 2008.

Bob Tafuto of Ammonoosuc Survey Company and Michele Rober of 121 Fit, Inc appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving asked if the State of New Hampshire is still an owner. Mr. Tafuto answered in the negative and stated that Ms. Rober has purchased the property.

Mr. Tafuto stated that the State will not allow the applicant to bore under the road due to the ledge. Mr. Tafuto stated that this property has had 60 plus years of power on a pole, but when the road was reconstructed the pole was removed and not replaced because no one was living there at the time. Mr. Tafuto stated more than half of the perimeter of the property is along the bypass corridor and along the Route 16 corridor and on the other side is the hospital. Mr. Tafuto stated that they are proposing for the lines to go overhead over the emergency drive at Memorial Hospital, so it does not have to be closed down, to a pole on the applicant's property and then go underground from that pole.

Ms. Duane stated that the State originally wanted to sell the house and have it moved, but that did not happen. Ms. Rober stated that that was an option. Mr. Tafuto stated that the State reduced the lot considerably and then left a smaller piece of land around the house. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for Town comment; there was none. Ms. Sherman asked for public comment; there was none.

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Mr. Colbath asked if the power would come from a pole on the Memorial Hospital property. Mr. Tafuto answered in the affirmative. Mr. Tafuto stated that there is a wire that already crosses the road to a pole already on the Memorial Hospital property and the applicant would like to go from that pole on the Memorial Hospital property to a pole being set on the applicant's property and then go underground from the pole on the applicant's property.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. Briggs, 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. Briggs, 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 Ms. Duane, 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 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 unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath 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; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, 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.**

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

**Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.12 of the Town of Conway Zoning Ordinance to install a utility pole for overhead electrical utilities be granted.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 7:47 pm to consider a **SPECIAL EXCEPTION** requested by **CHUCK ROAST EQUIPMENT, INC** in regard to §147.13.1.11.4 of the Conway Zoning Ordinance **to allow the operation of a day care center** at 90 Odell Hill Road, Conway (PID 266-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 16, 2008.

Chuck Henderson of Chuck Roast Equipment, Inc and Nancy Killam of the Learning Tree appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated that they have already been to the Planning Board and the Planning Board has determined if the Zoning Board of Adjustment approves the application a site plan approval would not be required.

Ms. Sherman stated that the applicant is reducing the office space to accommodate Ms. Killam who lost her space when the roof collapsed in the building she was in on Hobbs Street. Mr. Henderson stated that there is a floor that his offices once occupied and now he wants to rent that space out.

Mr. Henderson stated that the only outside change would be the addition of a second egress as well as use it as an ADA access. Mr. Henderson stated that another change would be a gable end over the main entrance so there would not be an issue with snow. Mr. Henderson stated that there would be a play area in the woods on the two acre lot with access from the front door. Mr. Henderson stated that there should be almost no impact on the neighborhood.

Ms. Sherman asked for Board comment; Mr. Colbath asked how many kids there would be. Ms. Killam answered she hopes 25 children. Ms. Sherman asked for comment from town; there was none. Ms. Sherman asked for public comment; Don Haynes asked if the play area would be fenced. Ms. Killam answered in the affirmative and stated that the play area is required to be fenced. Mr. Haynes asked how many children. Ms. Killam answered 25. Mr. Haynes stated there would be 50 more trips on that road a day, but if the Board did not have a concern then he was not concerned. Mr. Haynes stated that his biggest concern would be the play area being fenced.

Ms. Briggs asked if it would be fenced to the property line. Mr. Henderson stated they are required to have 50 square feet per child and the play area would be central in the area between the parking and Mr. Haynes property. Mr. Henderson stated that it would be at least 30 feet from any road or property line. Mr. Haynes asked hours of operation. Ms. Killam answered 7:00 am to 5:30 pm and the drop off and pick up are usually staggered.

Mr. Chalmers asked if the Town was concerned with traffic. Mr. Irving answered in the negative and stated that the space that is available is because there are fewer employees. Mr. Haynes asked how many businesses would be run out of that building. Mr. Henderson stated that there is his business and another tenant that is a use that is similar to his. Mr. Henderson stated that the other tenant makes a product and distributes it.

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Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that traffic access to and from the development does not alter the character of the abutting residential neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the development is architecturally compatible with the height, scale, color and detail of the surrounding residential neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that a Site plan approval or site plan exemption has been granted by the Planning Board.** 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. Duane, that the size of the lot is appropriate to provide greenspace and play areas.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Irving asked if the Board wanted to indicate the number of children in their approval. It was a consensus of the Board to not include a number.

**Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.11.4 of the Town of Conway Zoning Ordinance to allow the operation of a day care center be granted.** Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 8:00 pm to consider a **VARIANCE** requested by **KASHETOKA, INC/BAGELS PLUS** in regard to §147.13.8.13.2 Conway Zoning Ordinance **to allow a drive-thru with remote communication equipment** at 2988 White Mountain Highway, North Conway (PID 215-28). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 16, 2008.

Ms. Duane stepped down at this time. Sheila Duane of Kashetoka, Inc and William Eakes of Bagels Plus appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there were only four members present and the applicant is entitled to a five member Board. Ms. Sherman asked if the applicant would like to proceed with four members or continue the application until five members were present. Mr. Eakes agreed to proceed with four members.

Ms. Duane stated that this is a commercial lot that was in existences prior to the adoption of Zoning and has been through a site plan review. Ms. Duane stated that the applicant is requesting a drive up window. Ms. Duane stated that a drive up window is allowed if they met certain criteria, one of those criteria's is the lot being in the Floodplain Conservation District and this lot is approximately 20 feet to the east and 6 inches above the floodplain.

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Ms. Briggs asked where on the building the drive up was going to be located. Ms. Duane answered on the southern side of the northern building. Ms. Duane stated that you would enter in the northern driveway, pick up your items and exit out the southern driveway. Ms. Briggs asked if customers would be ordering in the back. Ms. Duane answered in the affirmative.

Ms. Duane stated if this property were 20-feet closer or 6 inches lower to the floodplain they would have met the requirement. Mr. Irving stated that there is a provision that allows the Planning Board to waive to protect the residential properties if the property is located in the floodplain, but the floodplain doesn't quite touch their property so they cannot take advantage of that provision.

Ms. Duane stated that the property is located within the Highway Commercial District with only a few residences left. Ms. Sherman asked for Town comment; there was none. Ms. Sherman asked for Board comment; Ms. Briggs asked if the snow dump area was owned by the Town. Ms. Duane stated that a portion is owned by the Town and a portion is owned by Bernie Peters. Mr. Chalmers asked without this approval this would be dead in the water. Ms. Duane answered in the affirmative. Ms. Sherman asked for public comment; there was none.

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

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 Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.8.13.2 of the Town of Conway Zoning Ordinance to allow a drive-thru with remote communication equipment be granted.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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A public hearing was opened at 8:17 pm to consider a **VARIANCE** requested by **SC LOOKOUT, LLC/STARBUCKS** in regard to §147.13.8.6.2 Conway Zoning Ordinance **to allow a second 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, April 16, 2008.

Ms. Duane rejoined the Board at this time. 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 this site is a long stretch of property. Ms. Seybold stated that the applicant is allowed is a three square foot sign, what they want is a 9 square foot sign. Ms. Seybold stated that there are no corporate colors on this building at all. Ms. Seybold stated that the applicant would like to hang a second sign over the double door on the north side of the building facing their major parking lot.

Ms. Seybold stated that there is a common drive with the Irving property next door. Ms. Seybold stated that the Town wanted stand alone units on one lot rather than strip malls and referred to the Master Plan in regard to pedestrian activity. Ms. Seybold stated that the main entrance for Starbucks is the Irving station entrance. Ms. Duane asked if there were windows above. Mr. Irving stated if they had a function they could put a sign in the window.

Ms. Seybold stated that she proposed the ordinance to allow businesses to have a second wall sign, but the Planning Board changed it to allow businesses over 50,000 square feet to have a second sign. Ms. Seybold stated that the proposed sign would be half the size allowed if this was a 50,000 square foot building. Ms. Seybold stated that there are no abutting properties that would be affected in any way, it provides ample warning and is within the spirit and intent of the ordinance.

Mr. Chalmers asked why they don't have the corporate colors. Ms. Seybold stated that the landlord would not allow them. Mr. Colbath stated that he sees this as a nice compromise.

Ms. Sherman read item 1.a. **Mr. Colbath 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; there was none.

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**Motion carried with Mr. Chalmers voting in the negative and stating that the applicant would be able to operate a Starbucks from this location without the variance (4-1-0).**

Ms. Sherman read item 1.b. **Mr. Colbath 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; there was none. **Motion unanimously carried.**

**Mr. Colbath 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 carried.**

Ms. Sherman read item 2. **Mr. Colbath 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 unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath 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; there was none. **Motion carried with Mr. Chalmers voting in the negative and stating that this would be contrary to the spirit and intent of the ordinance because he believes the ordinance was written to reduce the number of signage not increase it (4-1-0).**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, 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 voting in the negative and stating that this is contrary to the public interest (4-1-0).**

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

**Mr. Colbath 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 a second wall sign be granted.** Ms. Sherman asked for Board comment; Ms. Briggs asked if the motion should be amended to indicate that the sign is to be 3' x 3' and located in the gable over the doors. The Board agreed. **Ms. Duane withdrew her second. Mr. Colbath withdrew his motion.**

**Ms. Briggs 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 a 3' x 3' second wall sign to be located on the gable above the northern doors be granted.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**REVIEW AND ACCEPTANCE OF MINUTES**

**Ms. Duane made a motion, seconded by Ms. Briggs, to approve the Minutes of February 27, 2008 as written. Motion unanimously carried.**

**Ms. Duane made a motion, seconded by Mr. Colbath, to approve the Minutes of March 26, 2008 as written. Motion unanimously carried.**

Meeting adjourned at 8:47 pm.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant