

ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 24, 2008

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 24, 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; Jeana Hale-DeWitt; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **J & A PROPERTIES, LLC/NORTH COUNTRY ANIMAL HOSPITAL** in regard to §147.13.1.6 of the Conway Zoning Ordinance to allow a wall sign at 2237 West Side Road, North Conway (231-116). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 12, 2008.

Alfred Famiglietti appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that 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 hearing until there is a five-member Board. Mr. Famiglietti agreed to proceed with four members.

Ms. Sherman asked if there were provisions for wall signs in the Residential Agricultural District. Mr. Irving answered in the negative and stated that only a 12 square foot freestanding sign was allowed in the Residential Agricultural District. Ms. Sherman asked what size wall sign the applicant would like. Mr. Famiglietti stated that he would like whatever the Board would allow, however, the picture of the sign submitted as part of the application is 4' x 5'.

Mr. Chalmers stated there was a wall sign when Dr. Hussey owned the property. Mr. Famiglietti stated that they removed the wall sign when they reconstructed a portion of the building. Ms. Sherman stated that she remembers there being a wall sign. Mr. Colbath stated that he remembers there being a wall sign. Mr. Irving asked if Jim Yeager, Code Enforcement Officer, was aware of the old wall sign. Mr. Famiglietti answered in the negative. Ms. Sherman asked for public comment; there was none.

The Board agreed that if the old wall sign was located and discovered to be larger than what is approved under the variance the applicant would be allowed to have the larger grandfathered signage and if it is found to be smaller than what is approved under the variance the applicant would be allowed to install what was approved under the variance.

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.**

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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 Ms. Hale-DeWitt, that, based on the forgoing findings of fact, the variance from §147.13.1.6 of the Town of Conway Zoning Ordinance to allow a 20 square foot wall sign be granted. Motion unanimously carried.

A public hearing was opened at 7:55 pm to consider a **VARIANCE** requested by **JUSTIN AND AIMEE FRECHETTE/ANDREW AND DIANE HARMON** in regard to §147.13.3.4 of the Conway Zoning Ordinance to allow a bulkhead within the setback at 88 Pleasant Street, Conway (276-267). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 12, 2008.

Ms. Hale-DeWitt stepped down at this time. Margie MacDonald appeared before the Board. Justin Frechette and Merle Sweeney, Sr. were in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated that there were only three members present and the applicant is entitled to a five member Board. Ms Sherman asked if the applicant would like to proceed with three members or continue the hearing until there is a five-member Board. Ms. MacDonald agreed to proceed with three members.

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Ms. Sherman stated that there is nine feet to the property line so the bulkhead would be 5 feet from the setback. Ms. Mac Donald agreed and stated that she has a letter from the abutter on that side which supports the application. Mr. Colbath asked if there was enough land for a boundary line adjustment. Ms. MacDonald stated that the abutting property is a small village lot with two units located on the lot.

Ms. Sherman asked if there were any other locations for the bulkhead. Ms. MacDonald stated that the only logical spot is where it is proposed. Ms. Hale-DeWitt stated that it is not going to be seen from the road and there is a line of trees on that side of the house. Ms. MacDonald stated that there is also a fence along the property line.

Mr. Chalmers asked about the back of the property. Ms. MacDonald stated that there is deck. Mr. Frechette stated that there is also water there. Mr. Colbath asked if the only access to the basement is from within the house. Mr. Frechette 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 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 §147.13.3.4 of the Town of Conway Zoning Ordinance to allow a bulkhead within the setback be granted. Motion unanimously carried.

OTHER BUSINESS

Hurst Family Realty, LLC/Saco River Campground (PID 246-22): Mr. Irving stated at the August 27, 2008 Zoning Board of Adjustment meeting the Board made a motion to defer voting on the finding of facts requested by Randy Cooper in order to obtain Town Council opinion. Mr. Irving stated that he received an email from Peter Malia, Town Council that stated that Mr. Cooper has every right to ask for finding of facts and the Board has every right to refuse to make such finding of facts.

Chapter A153 – Amendments: Mr. Irving asked if the Board would consider changing their meetings from the fourth Wednesday of the month to the third Wednesday of the month. Mr. Irving stated that this would prevent Staff from having two meetings in one week as the Planning Board meets the fourth Thursday of the month.

Mr. Colbath made a motion, seconded by Mr. Chalmers, to hold a public hearing on October 22, 2008 to amend Chapter A153.4.a, to change the meeting dates to the third Wednesday of the month. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of August 27, 2008 as written. Motion unanimously carried.

Meeting adjourned at 8:15 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant