

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 20, 2011

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 20, 2011 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; Dana Hysten; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

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

SECOND READING OF THE ZONING BOARD OF ADJUSTMENT BYLAWS REGARDING ALTERNATE MEMBERS

Ms. Sherman read the attached amendment to the bylaws. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to adopt the Bylaws regarding Alternate Members as read. Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Hysten, to approve the Minutes of May 18, 2011 as written. Motion carried with Ms. Tobin abstaining from voting.

The Minutes of June 15, 2011 should be amended as follows: Page 1, under Appointment of Alternate Members, line 1 should read, "...Ms. Briggs and Ms. ~~Duane~~ **Tobin**...". **Mr. Chalmers made a motion, seconded by Ms. Tobin, to approve the Minutes of June 15, 2011 as amended. Motion carried with Mr. Colbath and Mr. Hysten abstaining from voting.**

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **EASTERN SLOPE INN VACATION OWNERSHIP TRUST** in regard to §147.13.14.3.4 of the Conway Zoning Ordinance **to allow a propane tank to remain in the Floodplain Conservation District** 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 Friday, June 3, 2011. This was continued from June 15, 2011. Mr. Irving stated that the applicant has withdrawn the application.

**Adopted: September 21, 2011 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 20, 2011**

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **EASTERN SLOPE INN VACATION OWNERSHIP TRUST** in regard to §147.13.16.4 of the Conway Zoning Ordinance **to allow temporary vegetation removal within the wetland buffer for LP tank installation** 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 Friday, June 3, 2011. This was continued from June 15, 2011. Mr. Irving stated that the applicant has withdrawn the application.

A public hearing was opened at 7:35 pm to consider a **VARIANCE** requested by **RALPH CRONIN** in regard to §147.13.7.6.1.4.1 of the Conway Zoning Ordinance **to allow a 30 square foot sign within the 10-foot sign setback** at 64 Kearsarge Road, North Conway (PID 218-106). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, July 8, 2011.

Ralph Cronin appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Cronin stated that he applied for a sign permit to increase the size of the sign and it was denied due to the right-of-way. Ms. Sherman asked the size of the existing sign. Mr. Cronin answered 14 square feet. Ms. Sherman asked how close the sign was to the right of way. Mr. Cronin answered 1-foot and stated when the sidewalk was reconstructed by the Town it was moved further away from the building. Mr. Cronin stated there are multiple tenants on site and he would like to be able for each to have their own sign.

Ms. Tobin asked if there is any signage anywhere else for these businesses. Mr. Cronin answered in the negative. Mr. Chalmers asked if the semi circle on the proposed sign was included in the 30 square feet. Mr. Cronin answered in the affirmative. Ms. Sherman asked how far the building is from the right-of-way. Mr. Cronin answered approximately 20-feet, but he does not know the exact distance. Mr. Cronin stated that the new sign would not obstruct any view for vehicular or pedestrian traffic.

Ms. Sherman stated the ordinance allows a 20 square foot projecting sign in lieu of a freestanding sign. Mr. Chalmers asked if the site line has been looked at. Mr. Irving stated that you would still have the site line and it is a straight road. Mr. Irving stated that there are other signs in your package that are similar to what he would like to do and they are grandfathered.

Ms. Tobin stated she thinks it can be accomplished in 20 square feet. Mr. Cronin stated that it is only 5 square feet larger than what he has now. Mr. Colbath stated to meet the 10-foot setback the sign would be right up next to the building. Mr. Cronin stated when the Town moved the sidewalk he gained depth. Mr. Colbath stated that the new proposed sign is not any closer to the right of way. Mr. Cronin stated that is correct.

Mr. Hylan stated that he cannot see any unnecessary hardship and there is no distinction between this property and any other property.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** 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. Hylen, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Ms. Tobin stated that the spirit of the ordinance is that you are given a certain amount of signage area. Mr. Chalmers stated that the spirit is part of the intent to keep signs back from the right-of-way; so by granting the variance we are not upholding the ordinance. Ms. Sherman stated that the ordinance was trying to reduce the amount of signage, particularly in the village and this will increase it. **Motion defeated with Ms. Tobin, Mr. Hylen, Mr. Chalmers and Ms Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Hylen, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Ms. Tobin, Mr. Hylen and Mr. Chalmers voting in the negative and Mr. Colbath and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Tobin abstaining from voting.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Hylen, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; Ms. Sherman stated there is no difference between this and other properties that are located close to the right-of-way. **Motion defeated with Ms. Tobin, Mr. Hylen, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Hylen, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Ms. Sherman stated that the property can have signage. **Motion defeated with Ms. Tobin, Mr. Hylen, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

**Adopted: September 21, 2011 – As Written
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Mr. Colbath made a motion, seconded by Mr. Hylen, that, based on the forgoing findings of fact, the variance from §147.13.7.6.1.4.1 of the Town of Conway Zoning Ordinance to allow a 30 square foot sign within the 10-foot sign setback be granted. Motion unanimously defeated.

Meeting adjourned at 8:15 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Planning Assistant