

ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 20, 2017

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 20, 2017 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** requested by **VICKY VALENTINO AND STEPHEN JOHNSON** in regards to §190-13.B of the Conway Zoning Ordinance **to allow an existing garage to remain within the side setback** at 290 Ash Street, North Conway (PID 202-238). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, September 7, 2017.

Mr. Irving stated that the applicant has withdrawn the application.

A public hearing was opened at 7:05 pm to consider a **SPECIAL EXCEPTION** requested by **JOURNEY CHURCH/SANDRA BROWN/MWV MOBILE VETERINARY CLINIC** in regards to §190-30.A.(2) of the Conway Zoning Ordinance **to change one non-conforming use, a church, to another non-conforming use, a veterinary hospital**, at 296 East Main Street, Conway (PID 265-202). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, September 7, 2017.

Sandra Brown and Jim Doucette 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 hearing. Ms. Brown agreed to proceed with four members.

Mr. Doucette submitted a photo showing greenspace to be planted and that the driveway would be paved up to the new greenspace. Ms. Brown stated the use would be equal to or have lesser impact than the Church. Ms. Brown stated we do not plan on boarding dogs; if they do have to stay overnight, they will be inside. Ms. Brown stated they may install motion detector lights for late night emergencies.

Mr. Bartolomeo asked the hours. Ms. Brown stated staff is in the building 7:30-5:30, however, she is on call 24-7. Mr. Bartolomeo asked if they would be adding a crematorium. Ms. Brown answered in the negative.

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Mr. Colbath asked what is the zone. Mr. Irving answered Village Residential. Ms. Sherman asked if this is the same lot of record. Ms. Brown answered in the affirmative. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the proposed use is confined to the same lot to which the original nonconforming use would be confined.** 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. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to public health, safety and/or welfare.** 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. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to impact on property values of adjacent properties.** 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. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to traffic.** 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. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to nuisance to neighbors.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to noise.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 7. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the proposed use has the same or lesser impact on the neighborhood relative to nighttime lighting.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-30.A.(2) of the Town of Conway Zoning Ordinance to change one non-conforming use, a church, to another non-conforming use, a veterinary clinic, be granted. Motion unanimously carried.

A public hearing was opened at 7:17 pm to consider a **VARIANCE** requested by **1675 WMH, LLC** in regards to §190-20.F.(2) of the Conway Zoning Ordinance **to allow a wall sign to exceed the height restriction** at 1699 White Mountain Highway, North Conway (PID 235-85).

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Dot Seybold of OVP Management 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 hearing. Ms. Seybold agreed to proceed with four members.

Ms. Seybold stated this is building N; it was designed to look like an industrial/repurposed mill building. Ms. Seybold stated the sign is 88% from the sidewalk to the peak of the sign and the ordinance allows 75%. Ms. Seybold stated this building has a peak and it is creating a problem for this building in regard to signage. Ms. Seybold stated the natural place to put this sign, which is not a huge sign to begin with, is where we are proposing it. Ms. Seybold showed pictures of where the sign would be if it met the ordinance.

Ms. Seybold stated they looked at putting signage on awnings, but snow and ice would be an issue. Ms. Seybold stated that the main entrance is under the sign. Ms. Seybold stated that the intent of the sign is to be a natural part of the building, rather than putting it in a crazy spot. Mr. Colbath asked if the top of the sign would be 24" from the top of the building. Ms. Seybold answered in affirmative. Ms. Seybold stated literal enforcement of it doesn't meet the writer's intention; approving the variance does not give us any advantage, the building is well off the road.

Mr. Bartolomeo stated he thinks hanging the sign over the glass would be dreadful. Mr. Steiner asked if there were any signs on Route 16. Ms. Seybold answered there is a pylon sign for this near the south end driveway. Mr. Colbath asked the proposed height of the sign. Ms. Seybold answered 22'6" above grade.

Ms. Sherman asked for public comment; Rick Luciano of Merlino's Steakhouse asked what is the actual hardship for this variance. Ms. Seybold stated the hardship is the unique design of the building and it is an asset to the community. Ms. Seybold stated it is a beautiful building and designed to be a restaurant. Ms. Seybold stated there are no other buildings in the area that share this design.

Ms. Sherman stated do any of the other buildings in the complex have a flat roof and would not meet the height requirements. Ms. Seybold answered maybe the Sketchers building, but that is a taller building and the Think Kitchen building is only 25' and had no choice but to meet the restriction. Mr. Luciano suggested making the sign smaller to meet the ordinance. Ms. Seybold stated we are entitled to a sign that is properly sized.

Ms. Sherman stated the sign is 17" tall. Ms. Seybold stated it is pretty small; it is a comfortable sized sign, it is not overly big. Mr. Colbath stated the size of the sign is acceptable it is the height. Mr. Irving stated that is correct. Ms. Sherman stated it is 30" out of conformity and the sign is only 17" high. Mr. Bartolomeo asked if they looked at a vertical sign. Ms. Seybold answered in the affirmative and stated it is not a vertical logo. Mr. Bartolomeo agreed.

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Mr. Luciano stated they have done a wonderful job with this project, but he believes everyone has to play by the same rules. Mr. Luciano stated that the architect should have thought of that before designing a multi-million building. Ms. Seybold stated that Mr. Luciano has a sign that exceeds the ordinance and he is entitled to keep that sign, just as we are entitled to come before this Board to seek a variance. Ms. Seybold stated limiting it to the strict adherence of the law doesn't make sense.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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. Steiner, that the spirit of the ordinance is observed.** 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. Steiner, that substantial justice is done.** 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. Steiner, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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; Mr. Bartolomeo stated a solution could be found that would be in strict conformance with the sign ordinance, but it would be an inferior solution. Mr. Bartolomeo stated it would block that nicely sprung brick arch and actually block the tops of those windows as well. Mr. Bartolomeo stated he would rather have a well-placed and well-designed sign that's only slightly out of compliance with the ordinance. **Motion unanimously carried**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, 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. Steiner, 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 carried.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that item 5.b. is not necessary.** **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(2) of the Town of Conway Zoning Ordinance to allow a wall sign to exceed the height restriction be granted. **Motion unanimously carried.**

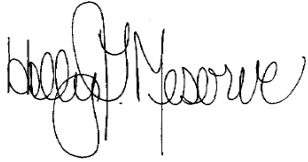
REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Steiner, to approve the Minutes of July 19, 2017 as written. Motion unanimously carried.

Mr. Colbath made a motion, seconded by Mr. Steiner, to approve the Minutes of August 16, 2017 as written. Motion unanimously carried.

Meeting adjourned at 8:00 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
Recording Secretary