

ZONING BOARD OF ADJUSTMENT

MINUTES

OCTOBER 18, 2017

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 18, 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; Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:03 pm to consider a **VARIANCE** requested by **RICHARD VANDERVEER** in regards to §190-20.F(7)(g) of the Conway Zoning Ordinance **to allow window signs to exceed 50% of the window area** at 2028 White Mountain Highway, North Conway (PID 230-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 6, 2017.

Greg Vanderveer appeared before the Board. Luigi Bartolomeo was not present for this hearing. Ms. Sherman stated only four members are 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 until a five-member Board is present. After a brief discussion, Mr. Vanderveer agreed to proceed with four members.

Ms. Sherman read the application and the applicable section of the ordinance. Mr. Vanderveer stated it was a painted window before, and not aware that we were violating any regulation; it was a \$2,000 investment. Mr. Vanderveer stated it wasn't his intention to create a sign. Mr. Vanderveer stated the nature of the business is to create a village scene and it is Christmas Eve; lighting has always been a real issue as we want it to appear that you are stepping into a nighttime atmosphere.

Mr. Vanderveer stated the windows were mostly painted before and we used blinds in the upper windows; we were trying to make the outside nice. Mr. Vanderveer stated if the blinds are up you lose the effect of the store which has become a big attraction and what people look forward to. Mr. Vanderveer stated we understand that you think we are trying to advertise Christmas, but the woodland image is just a nice image not really advertising Christmas. Mr. Vanderveer stated it really wasn't about advertising, it was about making it pretty and nice. Mr. Vanderveer stated people are enjoying it, and he has not heard any negative comments.

Mr. Colbath stated it is beautiful, but it meets the Town's definition of a sign and it does enhance the business, therefore, that is not allowed. Mr. Vanderveer stated the doors have been completely covered for 23 years. Mr. Vanderveer asked if it was just a woods scene would it still be considered advertising. Mr. Colbath stated it is still images that would enhance your business so it is, therefore, signage. After a brief discussion, Mr. Irving stated that Town staff would assist Mr. Vanderveer with guidance in interpretation of what would be considered and not considered signage.

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Mr. Vanderveer stated we are not a normal retail store. Ms. Sherman stated we don't differentiate from what one retail store to another retail stores does inside. Mr. Steiner stated this is a business that caters to Christmas and they are trying to make it look better; it is an enhancement to our community. Mr. Steiner stated he would support the variance. Ms. Sherman asked Mr. Steiner if he would like the car auto place to cover their windows with an automobile. Mr. Steiner answered in the negative. Ms. Sherman asked where do you draw the line.

Ms. Sherman stated this Board has turned down a hand-painted mural that had nothing to do with the business, but it exceeded what they were allowed for signage. Mr. Colbath asked if this is to cover the light. Mr. Vanderveer answered in the affirmative. Mr. Vanderveer stated the intent is to stop the light and to do it in a pretty way. Mr. Vanderveer stated they are a unique business; we are not a typical business, with how we use our square footage and how we advertise.

Ms. Sherman asked for public comment; Ronald Briggs stated he is trying to block the light and he is not advertising what they are selling. Mr. Briggs stated they are just trying to block the light with a pretty picture. Bryan Parrell stated he likes it and it looks really nice.

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; Mr. Chalmers stated the ordinance is very clear and the public has voted on the ordinance. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

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; Mr. Colbath stated the spirit of the ordinance is to uphold the sign definition and this does not do it. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

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; Mr. Colbath stated substantial justice is greater for the public with the sign ordinance then the applicant. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

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. Chalmers stated the nature of this business requires the interior to be blacked out, and that is different from most other retail establishments. Mr. Chalmers asked if the requirement impedes on and creates an unnecessary hardship for this establishment. Ms. Sherman stated there are other ways to create darkness without the decals.

Mr. Colbath stated the windows can be taken out. Mr. Irving stated there is a requirement for 5% glazing, but the Planning Board can grant a waiver for faux windows which is done through the site plan review process. Mr. Colbath stated he does not think there is anything that distinguishes this establishment from other retail establishments in the area. **Motion defeated with Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner and Mr. Chalmers voting in the affirmative.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

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 defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

Mr. Colbath made a motion, seconded by Mr. Steiner, 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; Mr. Colbath stated there is a reasonable use on the property and there are other alternatives. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.**

Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(7)(g) of the Town of Conway Zoning Ordinance to allow window signs to exceed 50% of the window area be granted. Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Steiner voting in the affirmative.

A public hearing was opened at 7:38 pm to consider a **SPECIAL EXCEPTION** requested by **MARIE JOLINE RICH** in regards to §190-13.B(4)(b) of the Conway Zoning Ordinance **to allow an accessory apartment** at 58 Crossbow Lane, North Conway (PID 216-55). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 6, 2017.

Luigi Bartolomeo joined the meeting at this time. Ron Briggs of Briggs Land Surveying appeared before the Board. Marie Joline Rich was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Briggs stated the space over the garage is 780 square feet, there are four parking spaces provided, and a septic system has been designed. Ms. Sherman asked if this is an existing building. Mr. Briggs answered in the affirmative. Mr. Chalmers asked if this is owner-occupied. Ms. Rich answered in the affirmative.

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Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Brian Parrell of 38 Crossbow Lane stated he was not aware of this petition until a couple of days ago; this area has been zoned for single-family homes, it is a quiet area with not a lot of traffic passing through it. Mr. Parrell stated this lot already has a building and one out building. Mr. Parrell stated there are also two driveways to this lot. Mr. Parrell stated his questions are regarding occupancy and septic design, which has been addressed and the generation of a bit more noise and contribution to the density in the neighborhood.

Ms. Rich stated because the garage is close to her own home she is concerned with excessive noise and would be looking to find renters that would not disturb her peace. Mr. Parrell stated he understood that this lot was up for sale and the usage of the apartment may change. Ms. Rich stated the neighborhood already has vacation rentals, however, she would rather not be in the rental business. Mr. Chalmers stated this ordinance is not to create short-term vacation rentals, it is to help provide year-round housing.

Timothy Goodson stated it is his understanding that the State passed a law to allow accessory apartments with certain regulations. Mr. Irving stated the Town of Conway has a special exception that provides for accessory dwelling units and is in complete compliance with the State Statutes and has been in effect 15 years prior to a state statute requiring such regulations. Mr. Briggs stated the intention of the proposal is to have a permanent resident and not a short-term rental.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the apartment is accessory to an owner-occupied single-family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the apartment is architecturally compatible with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory apartment be granted. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of September 20, 2017 as written. Motion carried unanimously.

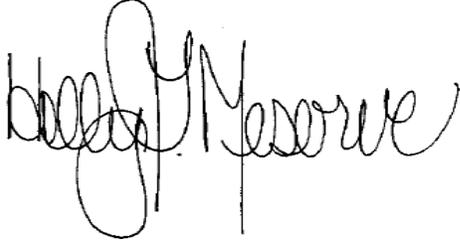
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2018 ZBA Dates and Submittal Deadlines: Mr. Colbath made a motion, seconded by Mr. Steiner, to approve the 2018 ZBA Dales and Submittal Deadlines. Motion carried unanimously.

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