

## ZONING BOARD OF ADJUSTMENT

### MINUTES

FEBRUARY 17, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 17, 2021 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Alternate, Jonathan Hebert was in attendance.

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **FRED AND KAREN JOHNSON** [FILE #21-02] in regards to §190-14.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 80 Mill Street, Center Conway (PID 260-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

Fred and Karen Johnson appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Johnson stated the apartment is constructed. Mr. Bartolomeo asked if they live on the property. Mr. Johnson answered in the affirmative. Mr. Steiner asked if this is located in a detached garage. Ms. Johnson answered in the affirmative. Mr. Colbath asked for public comment; there was none.

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

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

Mr. Colbath read item 3. **Mr. Chalmers made motion, seconded by Mr. Steiner, that the accessory dwelling unit is architecturally compatible with the neighborhood.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that both the primary single-family dwelling and the accessory dwelling unit shall be used for long-term residency, and short-term transient occupancy of either dwelling unit is prohibited.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-14.B.(4)(b) of the Town of Conway Zoning Ordinance for an accessory dwelling unit be granted. Motion carried unanimously.**

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A public hearing was opened at 8:19 pm to consider a **SPECIAL EXCEPTION** requested by **KATHLEEN KIESMAN/TIMOTHY KIESMAN** [FILE #21-03] in regards to §190-13.B.(4)(b) of the Conway Zoning Ordinance **to allow an accessory dwelling unit** at 77 Heath Road, Center Conway (PID 260-65). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

The applicant was not in attendance. **Mr. Chalmers made a motion, seconded by Mr. Steiner, to continue the public hearing for Kathleen Kiesman/Timothy Kiesman until March 17, 2021 at 7:00 pm. Motion carried unanimously.**

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A public hearing was opened at 7:10 pm to consider a **SPECIAL EXCEPTION** requested by **MARY JANE DIGREGORIO/GSSG NEW HAMPSHIRE, LLC** [FILE #21-04] in regards to §190-13.K.(14) of the Conway Zoning Ordinance **to develop a commercial scale solar collection system** at 2069 East Main Street, Center Conway (PID 259-104). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

Michael Redding representing GSSG New Hampshire, LLC and Michael DiGregorio representing the land owner appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Redding stated it is a one-megawatt project on roughly 8 acres of leased land with 12-acres in total with tree clearing and access. Mr. Redding stated this is a fixed array with an east/west orientation with panels facing due south at a 25-to-30-degree angle; posts are driven into the ground avoiding any major grading activities.

Mr. Redding stated they are proposing to use the existing driveway; there will be a common driveway easement. Mr. Redding stated the transformer and the switch gear sometimes make a hum noise similar to a commercial air conditioner; the noise will dissipate within the first 100-feet. Mr. DiGregorio stated if it hums at all, which it shouldn't, it would only be during the day as it is not making power at night.

Mr. Redding stated the solar panels are surrounded by a fence, and they like to maintain a 100-foot distance from the edge of panels to the edge of trees on the east, west and south sides. Mr. Redding stated they have decided to maintain a 100-foot no cut buffer zone from the property line, so where 50-feet is required they are going to use 100-feet.

Mr. Redding stated Eversource wants five poles that are theirs and one pole that will be for the array. Mr. Redding stated about every 50-feet along the drive there will be a new pole. Mr. Redding stated the electrical will go underground from the last pole to the transformer and switch gear pad.

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Mr. Colbath asked for Board comment; Mr. Steiner stated his biggest concern is the neighborhood and asked if there are enough trees so they cannot see it. Mr. DiGregorio stated from the south side there are no houses that will see the array at all; on the east side two houses from the second floor may see the array in the winter time. Mr. DiGregorio stated he can't imagine being able to see it when leaves are on the trees. Mr. DiGregorio stated they did go over and above the town standards; they added an additional 50-foot buffer.

Mr. Bartolomeo asked how tall are the panels above the ground. Mr. Redding stated the low side is approximately 3-feet off the ground, and close to 13-feet on the back side. Mr. Bartolomeo asked if it would be maintained and mowed. Mr. Redding answered in the affirmative. Mr. Bartolomeo stated there is a greater setback from the array to the property line on the south and asked if they plan on a more aggressive cutting of coniferous trees. Mr. Redding answered in the negative.

Mr. Colbath asked for public comment; Allan Hannon [who owns PID 259-103.1] stated there are no trees located behind his lot. Mr. DiGregorio stated they are located more south. Mr. Hannon was concerned with the number of driveway cuts along that section of road. Mr. Pierce asked if they were utilizing the existing driveway cut. Mr. Redding answered in the affirmative, and stated they would be applying for a NHDOT Driveway Permit. Mr. Hannon stated he probably won't be able to sell his property with a grid behind it.

Alex Patuto stated her biggest concern is the noise; when the trees were cut the noise increased in the neighborhood quite a bit. Ms. Patuto stated she's heard that the noise from the drilling is unbelievable. Ms. Patuto stated the noise from Route 302 will reflect off this and zoom into our neighborhood. Ms. Patuto stated she is also concerned for their property values.

Mr. DiGregorio stated the land was cleared for timber harvesting; the area where the array will sit will obviously be clear cut and the rest of the property along the boundary lines the trees will stay just the way they are. Mr. Hannon stated when he purchased his property in 2017 and the trees were there.

Jon Hebert asked what is the elevation of the lot where the array is going to be and what is the highest amount of development that will be put on top of that. Mr. Redding answered 448 is the highest point plus 13-feet will be 461.

Jim McAllister of 47 Jefferson Road stated he and his wife, Donna, are opposed to having this in their back yard and they don't think this will help the value of their house. Mr. McAllister stated the view from the array to the houses will be different from the houses looking at the array. Mr. McAllister stated he believes they are going to see the array.

Brenda Olivier of 33 Jefferson Road stated she is opposed to the project; start to finish how long will it take to construct. Mr. Redding answered four to six months. Ms. Olivier stated after the array is built the noise will not be heard. Mr. Redding stated that is correct. Ms. Olivier stated she is also concerned about property values.

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Tom Collins of 28 Shady Lane asked about the glare factor. Mr. Redding stated since we are only clearing trees to within 200-feet of this array there will be a tremendous amount of buffer so it will be very hard for any type of glare; there also is an anti-glare material built into the glass.

Mr. Collins stated the trees there are small, there really is not a buffer there. Mr. Collins asked what is the average size of the existing trees. Mr. Redding stated it varies, everything from the six to eight-foot range to a couple of really tall pines; there is a good mix of evergreens both tall and short. Mr. Collins asked what, if anything, will be done here or just relying on what is there now. Mr. Redding stated we feel what is there is substantial. Mr. Redding stated they could put a green mesh around the fencing. Mr. Collins stated he doesn't want to have to rely on his buffer to be their buffer.

Ms. Patuto asked what is the degradation to the soil; this is a low area and she is concerned with the water shed and the water quality. Ms. Patuto asked if they would be digging deep enough to tap into our water. Mr. Redding stated the deepest penetration from the post is 6-feet, and any trenching would be no more than 40 inches. Mr. Redding explained the drainage.

Daymond Steer of the Conway Daily Sun asked if there is more likely to be turtles because of the reservoir/detention pond. Mr. Redding stated we are required by the State regulations to do a wildlife habitat assessment to look for indigenous, endangered or threatened species, so were looking for the spotted and Blanding's turtles which were not identified here. Mr. Redding stated we are still required to rest any issues that would impact wildlife migration.

Mr. Colbath read items 1 through 3. The Board agreed that items 1 through 3 would be a condition of approval.

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has demonstrated land clearing is limited to what is necessary for the installation and operation of the system and to insure sufficient all-season access to the solar resource given the topography of the land. Following construction, cleared land areas must be restored with native species that are consistent with the use of the site as a solar collection system. Erosion control measures during construction shall be detailed as required.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has provided a detailed pre-construction and post-construction plan identifying existing vegetation and areas to be cleared with specific identification of locations of buffer areas adjacent to abutting properties and roads; and a post construction plan demonstrating compliance with vegetation restoration requirements.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has provided a statement detailing potential significant glare onto abutting properties, structures and roadways estimating the interaction of sun to panel angle, time of year and visibility locations.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has provided an evaluation of the view impacts from elevated viewpoints from which the facility is likely to be seen.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has provided estimates of any equipment noise on the site based on equipment specification materials and has demonstrated that noise levels at the property line does not exceed 50 dBA.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 9. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the applicant has demonstrated that the existing utility infrastructure has the capacity to host the proposed facility and that there are no substantive changes to the off-site infrastructure.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-13.K.(14) of the Town of Conway Zoning Ordinance to develop a commercial scale solar collection system be conditionally granted with the following conditions to be met prior to application to the Planning Board: 1) submitting a plan certified by a New Hampshire licensed land surveyor that shows no part of the solar collection system is on land above the six-hundred-foot elevation limit; 2) submitting a plan certified by a New Hampshire licensed land surveyor that shows the minimum front setback from roads is at least 100 feet; and 3) the side and rear setbacks from all adjacent properties are at least 50 feet; and submitting a plan certified by a New Hampshire licensed land surveyor that shows the minimum perimeter buffer depth is at least 50-feet. Motion carried unanimously.**

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A public hearing was opened at 8:21 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **ALAN DOUCET** [FILE #21-05] in regards to §190-13.D. of the Conway Zoning Ordinance **to allow an existing second floor deck to encroach into the front setback** at 111 Valley View Road, North Conway (PID 231-125). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

Kevin Tilton of HEB Engineers appeared before the Board. Mr. Colbath read the application and the section of the ordinance. Mr. Tilton stated Mr. Doucet purchased the property in 2011 and the garage was existing at the time. Mr. Tilton submitted an aerial photo from 2006. Mr. Tilton stated this situation was inherited, there is no ill will; he would like to keep the deck which is about 8-feet into the setback.

Mr. Chalmers asked what would the cost be to correct it. Mr. Colbath stated it would have to be removed. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that in lieu of the findings required by the board under subparagraphs 1. and 2. (above), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Mr. Colbath asked for Board comment; Mr. Chalmers stated the cost to remove the deck does not outweigh the cost for compliance. Mr. Bartolomeo agreed with Mr. Chalmers. **Motion carried with Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the equitable waiver from §190-13.D. of the Town of Conway Zoning Ordinance to allow an existing second floor deck to encroach within the front setback be granted. Motion carried with Mr. Chalmers and Mr. Bartolomeo voting in the negative.**

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A public hearing was opened at 8:37 pm to consider a **VARIANCE** requested by **MICHAEL MCMAHON** [FILE #21-06] in regards to §190-30.D.(2) of the Conway Zoning Ordinance **to allow a boundary line adjustment on the subject parcel without changing the frontage, which is 1.03-feet less than the required 150-feet** at 2234 White Mountain Highway, North Conway (PID 230-11). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

Kevin Tilton of HEB Engineers appeared before the Board. Mr. Colbath read the application and the section of the ordinance. Mr. Tilton stated the lot did meet the road frontage until the owner deeded the Payson Tucker watering trough to the town. Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

**Mr. Chalmers 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.** **Motion carried unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 5 is not applicable.** **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-30.D.(2) of the Town of Conway Zoning Ordinance to allow a boundary line adjustment on the subject parcel without changing the frontage, which is 1.03-feet less than the required 150-feet be granted. Motion carried unanimously.**

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A public hearing was opened at 8:52 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC [FILE #21-07]** in regards to §190-20.F.(2)(a) of the Conway Zoning Ordinance **to allow a 60 square foot freestanding sign** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

A public hearing was opened at 8:52 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC [FILE #21-08]** in regards to §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to allow a freestanding sign 2-feet from the platted right-of-way** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

A public hearing was opened at 8:52 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC [FILE #21-09]** in regards to §190-20.F.(2)(b) of the Conway Zoning Ordinance **to allow a freestanding sign message area 18-feet above the undisturbed ground** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, February 5, 2021.

Keith Wehmeyer, Project Manager for OVP Management, appeared before the Board. Mr. Colbath read the applications and the applicable sections of the ordinance. Mr. Wehmeyer stated they are constructing a 6,000 square foot mixed-use commercial building, and there are some unique qualities to the property that make it difficult for visibility. Mr. Wehmeyer stated the lot has minimal road frontage, it has some neighboring buildings that are within the front and side setback boundaries, is surrounded by several signs that are within the setback boundaries, and surrounded by several signs that are non-conforming and grandfathered due to size.

Mr. Wehmeyer stated there is a 40-square foot sign on the lot now that is not visible, it is completely obstructed. Mr. Wehmeyer stated the view is completely obstructed in both directions. Mr. Wehmeyer stated the first time the sign comes into view when driving north is 235-feet from the entrance; rolling stopping speed at 35 mph is 135 feet, you move 100-feet in 2 seconds. Mr. Wehmeyer stated from when you first see our sign you have two seconds to make a decision. Mr. Bartolomeo stated you only need to be located once.

Mr. Wehmeyer stated the Chipotle restaurant proposed for this site has a drive through lane that is going to be for on-line ordering only; there could be an event that you have ordered through this Chipotle restaurant but you don't know where it is exactly, you are looking for that sign. Mr. Bartolomeo stated with franchise restaurants the building becomes the sign.



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Mr. Wehmeyer stated that is still an issue as the building is not visible because there is a neighboring building that is within the 25-foot setback from the highway and within the 10-foot setback of the sideline. Mr. Wehmeyer stated it is close to the road and close to them as they can get so the building cannot be seen until your right in front of it.

Mr. Bartolomeo stated because of a compilation of non-conforming signs and non-conforming buildings within setbacks makes your building less visible. Mr. Wehmeyer stated the building is located as close to the road as it possibly can; it did have to be moved back due to a NHDOT driveway location, we had to align the driveway in a way so the building had to be moved back.

Mr. Wehmeyer stated the size of the sign is not out of the norm for the area. Mr. Wehmeyer stated in the corridor from Mountain Valley Boulevard to Settlers Green Drive the signs are all relative in size; 155 square feet, 140 square feet and 85 square feet. Mr. Wehmeyer stated at the size and location that is being proposed we are not going to be extreme; we will blend in with the existing signage.

Mr. Colbath stated most of the signs there are non-conforming grandfathered, and now comes the new guy to be stuck in the middle. Mr. Wehmeyer stated and their non-conformities were made worse with the widening of Route 16.

Mr. Bartolomeo stated his general feeling is the presence of non-conforming buildings and signs does not justify more non-conformity. Mr. Wehmeyer stated their argument is that their non-conformity is obstructing us, they are blocking the view of our sign and their building is blocking the view of our building and sign.

There was no public in attendance. Mr. Pierce knowing the applicant's family stepped down at this time. Mr. Colbath appointed Mr. Hebert as a voting member.

In regard to §190-20.F.(2)(a), Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Chalmers stated this is much larger than the allowed size; this is aggressive. **Motion defeated unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Chalmers stated is it clear that it is much larger than what the ordinance allows. **Motion defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Chalmers stated justice is to the public and not to the property owner; substantial justice is not done. **Motion defeated unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion defeated with Mr. Chalmers, Mr. Steiner, Mr. Bartolomeo and Mr. Hebert voting in the negative and Mr. Colbath voting in the affirmative.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; Mr. Colbath stated this property is not distinguishable from other properties in the area, there is no hardship in the lot. **Motion defeated unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated a bigger sign closer to the road is not a reasonable use. **Motion carried with Mr. Chalmers, Mr. Steiner and Mr. Colbath voting in the affirmative and Mr. Bartolomeo and Mr. Hebert voting in the negative.**

**Mr. Chalmers 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. Motion unanimously defeated.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that if the criteria is 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.** Mr. Colbath asked for Board comment; Mr. Chalmers stated the property can still be used with a compliant sign. **Motion defeated unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(2)(a) of the Town of Conway Zoning Ordinance to allow a 60 square foot freestanding sign be granted. Motion defeated unanimously.**

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In regard to §190-20.F.(2)(d)[1], Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion defeated unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Colbath stated a sign two-feet from the platted right-of-way is not in line with public interest and is against the spirit of the ordinance; it is much closer than what is allowed. **Motion defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated there is no public benefit, the benefit goes to the applicant. **Motion defeated unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Chalmers, Mr. Bartolomeo, Mr. Hebert and Mr. Colbath voting in the affirmative and Mr. Steiner voting in the negative.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; Mr. Chalmers stated this property can still be used without a variance, there is no hardship. Mr. Colbath stated there is nothing that distinguishes this property from other properties in the area. **Motion defeated unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated a sign closer to the road, bigger and taller is not a reasonable use. **Motion defeated unanimously.**

**Mr. Chalmers 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. Motion defeated unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated they can still operate with a conforming sign. **Motion defeated unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(2)(d)[1] of the Town of Conway Zoning Ordinance to allow a freestanding sign 2-feet from the platted right-of-way be granted. Motion defeated unanimously.**

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In regard to §190-20.F.(2)(b), Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Chalmers stated it is considerably higher than what is allowed. **Motion defeated unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated it is substantially higher than what is allowed. **Motion defeated unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Colbath stated substantial justice is greater to the applicant, not the public. **Motion defeated unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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.** Mr. Colbath asked for Board comment; Mr. Chalmers stated there is no hardship inherit or any special conditions in the property that would make it not possible to operate as a retail establishment. **Motion defeated unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; Mr. Hebert stated it goes against the ordinance. **Motion defeated unanimously.**

**Mr. Chalmers 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. Motion defeated unanimously.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that if the criteria is 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.** Mr. Colbath asked for Board comment; Mr. Colbath stated they will have reasonable use of the property regardless of the sign. **Motion defeated unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(2)(b) of the Town of Conway Zoning Ordinance to allow a freestanding sign message area 18-feet above the undisturbed ground be granted. Motion defeated unanimously.**

#### REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert stepped down. Mr. Pierce rejoined the Board at this time. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of January 20, 2021 as written. Motion carried unanimously.**

Meeting adjourned at 9:30 p.m.  
Respectfully Submitted,



Holly L. Whitelaw, Planning Assistant