

**CONWAY ZONING BOARD  
OF ADJUSTMENT**

**MINUTES**

**APRIL 26, 2006**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 26, 2006 beginning at 7:30 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Jeana Hale; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to approve the Minutes of March 22, 2006 as written. Motion carried with Ms. Hale and Mr. Colbath abstaining from voting.**

**PUBLIC HEARINGS**

A public hearing was opened at 7:36 pm to consider a **VARIANCE** requested by **THE ROCK DEVELOPMENT, LLC** in regard to §147.13.8.6.1 of the Conway Zoning Ordinance to permit two freestanding signs on one lot at 19 & 53 Barnes Road, North Conway (PID 235-78 & 78.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 15, 2006. This application was continued from April 26, 2006.

Phil Hastings of Cleveland, Waters and Bass, John Kerekes of McCarthy Kerekes, LLC, and Roger Williams of Rock Development, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. Hastings stated that Home Depot has obtained conditional site plan approval, which includes \$2 million of off-site public improvements. Mr. Kerekes reviewed signage at Wal-Mart and Shaw's. Mr. Kerekes stated that the ordinance allows for one freestanding sign, if there are two entrances greater than 500 feet apart the ordinance allows for a second freestanding sign. Mr. Kerekes stated there is more than 500 feet between the location of the two freestanding signs, but not the driveways.

Mr. Kerekes stated that they are proposing a thirty-six square foot exterior illuminated freestanding sign at the entrance of Home Depot across from McMillan Lane. Mr. Bartolomeo asked if they would have to share the Staples sign if this sign was not permitted. Mr. Kerekes stated that they would be using the Staples freestanding sign as well. Mr. Bartolomeo stated that a store as enormous as this is not going to be missed. Mr. Kerekes stated that it might be enormous in area, but not in height. Mr. Bartolomeo stated that people don't go to Home Depot on impulse. Mr. Bartolomeo stated that the visibility is understated.

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Mr. Irving stated that the existing 282 square foot Staples sign is seven times the permitted size and given the history of this property it is not going to be the case of not being able to find the store once they get to the sign. Mr. Kerekes stated once people are on Barnes Road they need to be directed to the correct entrance. Mr. Irving stated he doesn't see people turning around before the intersection of Barnes Road and McMillan Lane. Mr. Hastings stated that it is a matter of safely navigating the area. Mr. Hastings stated the second freestanding sign would be permitted if Staples had an entrance on Route 16.

Mr. Bartolomeo stated that this property has a freestanding sign that is seven times the permitted area. Mr. Bartolomeo stated that the State wouldn't allow a curb cut on Route 16 during the Staples process and Home Depot knew this when looking at this property. James Yeager, Conway Code Compliance Officer who was in the audience, stated that the ordinance does allow entry signs that are smaller and a permit is not required. Mr. Hastings stated that we believe the entry sign would be inadequate at four square feet. Mr. Bartolomeo stated both Shaw's and Wal-Mart came before this Board looking for more signage and each did not prevail.

Mr. Hasting stated it is critical that the Board consider two factors, one, this property is unique in terms of location, elevation, size, configuration and scale of the building; and second, from a practical stand point the zoning ordinance does not work for a building of this type and location. Mr. Bartolomeo stated that the elevation works in the applicant's favor since the building will be 30-feet above the road. Mr. Kerekes stated there are other intervening structures in the way of the visibility of this store, such as existing landscaping and the proposed landscaping.

Mr. Kerekes stated since the sign is not on the corner of Route 16 and Barnes Road, but in front of Staples, it is more confusing. Mr. Bartolomeo stated that it is possible to miss the building. Mr. Bartolomeo stated he would be willing to consider the second freestanding sign if the Staples sign came into conformance. Mr. Kerekes stated that he did not have the authority to reduce the Staple sign.

Ms. Sherman asked for public comment; Conrad Briggs stated that he has been on the Planning Board for six years and one of the biggest complaints has been excessive signage. Mr. Briggs stated that it is time to draw the line. Hud Kellogg stated as an individual he doesn't think the applicant meets the test to grant a variance. Mr. Kellogg stated that the Town has a sign ordinance that is strict by citizen vote. Mr. Kellogg stated that signs are visual clutter and distracting and the Zoning Ordinance was implemented for the enjoyment of the Valley. Mr. Kellogg stated that he would urge the Board to deny the Variance requests.

Mr. Hastings reviewed the Supplemental Narrative. Mr. Hastings stated that this is a unique situation and granting the variance does not create any precedence. Mr. Hasting stated that he believes the applicant meets the five criteria's to grant a variance request. Mr. Kerekes stated that they are proposing a thirty-six square foot sign, which conforms to the ordinance, as the ordinance allows a forty square foot sign. Mr. Bartolomeo stated signage in the world of architecture is not that important any more.

Ms. Sherman asked for further public comment; Hudd Kellogg asked the height of the Staples building. Mr. Kerekes answered 35-feet. Mr. Kellogg stated that there is at least a 10 to 14 foot

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difference in elevation over Staples. Mr. Bartolomeo stated that the lack of visibility from the strip with a building that tall is not settling with him. Mr. Irving stated the trees referred to behind the Blueberry Muffin may not always be there and the only trees that can be relied on are the ones proposed by the developer.

Mr. Irving stated that this site is currently under review for a unit subdivision, but if it were to be subdivided into two-lots the applicant would be allowed their own freestanding sign, and a conforming sign can be bumped up in size. Mr. Irving stated that the increase in square footage also applies to wall signs if this were on it's own lot of land. Mr. Irving stated there are other reasonable approaches that are incorporated in the zoning ordinance.

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; Ms. Hale answered in the negative and stated there are other options. Mr. Bartolomeo answered in the negative and stated that he is unconvinced that the second freestanding sign is critical to the proposed use of the property. Mr. Chalmers answered in the negative and stated that there are other options rather than a sign of this size. Mr. Colbath answered in the negative and stated that the large area sign in the front is more than adequate and there is an option of a directional sign at the driveway entrance. Ms. Sherman answered in the negative and stated all they need is a directional sign at the driveway. **Motion unanimously defeated.**

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; Ms. Hale answered in the negative and stated there are other options. Mr. Bartolomeo answered in the negative and agreed with Ms. Hale. Mr. Chalmers answered in the negative and agreed with Ms. Hale. Mr. Colbath answered in the negative and agreed with Ms. Hale. Ms. Sherman answered in the negative and stated there are other options such as the sign incentive if there was a subdivision of land. **Motion unanimously defeated.**

**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 defeated.**

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; Mr. Colbath answered in the negative and stated that they have adequate signage with a sign that is seven times the permitted area. Ms. Hale answered in the negative and stated she agrees with

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Mr. Colbath as well as the Board has heard from the public that it is contrary to what they voted on. Mr. Bartolomeo answered in the negative because of the non-conforming sign. Mr. Chalmers answered in the negative and agreed with Mr. Bartolomeo. Ms. Sherman answered in the negative and stated that the ordinance does not want to increase the amount of signage in number or amount. **Motion unanimously defeated.**

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; Mr. Colbath answered in the negative and stated the applicant could decrease the size of the sign at the front of the property. Ms. Hale answered in the negative. Mr. Bartolomeo answered in the negative. Mr. Chalmers answered in the negative. Ms. Sherman answered in the negative and stated she does not think there is a significant safety issue. **Motion unanimously defeated.**

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; Ms. Hale answered in the negative. Mr. Bartolomeo answered in the negative and stated that the public interest trumps the developers concerns. Mr. Chalmers answered in the negative. Mr. Colbath answered in the negative and stated that the scale is greatly in favor of the public. Ms. Sherman answered in the negative and agreed with Mr. Colbath. **Motion unanimously defeated.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.6.1 of the Town of Conway Zoning Ordinance to permit two freestanding signs on one lot be granted. Motion unanimously defeated.**

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A public hearing was opened at 8:26 pm to consider a **VARIANCE** requested by **THE ROCK DEVELOPMENT, LLC** in regard to §147.13.8.6.2.3 of the Conway Zoning Ordinance to permit four wall signs (two more than the ordinance permits) on a single building and to permit the primary wall sign to be 194.66 square feet, the second permitted wall sign to exceed 20 square feet and to permit two additional wall signs to exceed 20 square feet at 19 & 53 Barnes Road, North Conway (PID 235-78 & 78.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 15, 2006. This application was continued from April 26, 2006.

Ms. Sherman read the application and the applicable section of the ordinance. Mr. Kerekes reviewed the proposed wall signs and their sizes. Mr. Kerekes stated this is a unique situation as you have about 14-stores in one building. Mr. Kerekes stated the ordinance allows one wall sign unless it is a multi-tenant building. Mr. Kerekes stated if this was broken up into different stores each would be allowed sizable wall signs. Mr. Kerekes stated that The Home Dept sign is usually 300 square feet and they are proposing a 194.66 square foot sign. Mr. Kerekes stated that the signs will be not be internally lit.

Mr. Irving stated that the applicant is entitled to a second wall sign, and if they conform they can take advantage of a bump up incentive. Mr. Bartolomeo stated that there is more merit to the

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additional wall signs, as he would want to be directed to the right door the first time. Ms. Hale stated that the garden center is obvious, however, she thinks the contractor's sign is necessary. Mr. Chalmers stated that this site is not that unique from the other sites and seems similar to other sites. Mr. Chalmers stated that he does not think many people will be confused.

Mr. Bartolomeo stated that he could support three of the proposed wall signs. Mr. Hastings stated the signs would enhance the safety of the site by directing people to the right location. Mr. Hastings stated that the ordinance does not adequately contemplate the size in terms of aesthetics and is designed in proportion with the architectural features. Mr. Hastings stated trying to shoe horn it would not be the optical look. Mr. Hasting stated that what is being proposed is reasonably adequate and necessary and they are not opposed to accepting a package for less than what is being asked, but they are not willing to give up one sign for another sign.

Ms. Sherman asked for public comment; Conrad Briggs stated he does not want to see more signage and the Board should stick to the Town regulations. Mr. Briggs stated that he doesn't think the signage is necessary and the people don't want to see any more signs. Hud Kellogg stated that the Board should deny the request and have the applicant comply with the regulations.

Mr. Bartolomeo stated directing people to the right door has value. Mr. Colbath stated that the public doesn't want more signage. Mr. Irving stated that they are entitled to a main sign and a secondary sign. Mr. Bartolomeo stated that he is for scale and he could support a smaller sign, but greater than what is allowed. Mr. Colbath agreed. Ms. Sherman stated the reason for signage is to identify and they are the only business that is there. Mr. Irving asked if any of the wall signs would meet the 20 square foot restriction. Mr. Kerekes answered in the negative. Mr. Yeager stated that Shaw's and Wal-Mart both have 100 square foot wall signs and they have survived.

**Mr. Bartolomeo made a motion, seconded by Mr. Colbath, to continue the public hearing until May 24, 2006 at 7:30 pm to allow the applicant to submit an amended application. Motion unanimously carried.**

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A public hearing was opened at 9:00 pm to consider a **VARIANCE** requested by **MT. WASHINGTON OBSERVATORY** in regard to §147.13.7.6.2 of the Conway Zoning Ordinance to allow a second wall sign measuring 6.75 square feet at 2779 White Mountain Highway, North Conway (PID 218-55). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006

Deirdra Foote of NH signs and Randy Cooper, Trustee for Mt. Washington Observatory, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated there are two principal doors in the back of the building and the one for Citizen's Bank is frequently used. Mr. Cooper stated that this is not a new sign, but they are trying to make it legitimate. Mr. Yeager stated they brought it to our attention when applying for new sign permits. Ms. Sherman asked if both tenants use the entrance. Mr. Cooper answered in the negative.

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Ms. Sherman asked for public comment; Barbara Bryant stated that it is difficult to determine which door to go in and it should be allowed to remain. Les Gunther asked if the back door is a legal entrance and should the public being going in that door. Mr. Cooper stated that both doors are on an approved site plan. Mr. Gunther stated then there should be a sign.

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; Mr. Colbath answered in the negative and stated that a sign is a sign and the public does not want more signage. Mr. Bartolomeo answered in the negative and stated that he agrees with Mr. Colbath. **Motion carried with Mr. Colbath and Mr. Bartolomeo voting in the negative.**

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 Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.7.6.2 of the Town of Conway Zoning Ordinance to allow a second wall sign measuring 6.75 square feet be granted. Motion unanimously carried.**

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A public hearing was opened at 9:15 pm to consider a **SPECIAL EXCEPTION** requested by **THE KENNETT COMPANY** in regard to §147.13.16.10.7 to allow the removal of culverts, construction of a new bridge and raising grade of approached on Dollof Hill Road across a wetland on Dollof Hill Road, Conway (PID 291-30 & 34 and 279-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

Larry Landry of the Arlington Group and Jay Poulin of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Colbath asked the acreage of lot 7. Mr. Poulin answered 2 acres. Mr. Poulin reviewed the dimensions of the new bridge on Dollof Hill Road.

Ms. Sherman asked for public comment; Al DeWitt reviewed the plans to see where the development was in relation to his property. Gary Bamberger stated that he does not have a concern with the bridge, but he is not sure what they are going to do with the approach to Dollof Hill Road as he thought the grade was going to be removed under the golf course application. Ms. Sherman asked if the problem was with Dollof Hill Road or Eaton Road. Mr. Bamberger stated Eaton Road. Mr. Poulin stated that they would be working on Eaton Road under the subdivision application.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** 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 the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the Town has discussed this with the Town Engineer. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the removal of culverts, construction of a new bridge and raising grade of approached on Dollof Hill Road across a wetland the be granted. Motion unanimously carried.**

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A public hearing was opened at 9:40 pm to consider a **SPECIAL EXCEPTION** requested by **THE KENNETT COMPANY** in regard to §147.13.16.10.7 to allow the construction, installation and maintenance of subdivision road, associated drainage structures, and underground utilities across a wetland on Dollof Hill Road, Conway (PID 291-30 & 34 and 279-

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2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

Larry Landry of the Arlington Group and Jay Poulin of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman asked for public comment; there was none. Mr. Irving asked if the applicant explored accessing off Modock Hill Road and not even crossing the wetland. Mr. Poulin stated that he wouldn't add any more traffic to Modock Hill Road since it is in such bad shape. Mr. Poulin stated that this is a wetland from a culvert discharge. Mr. Poulin stated that we are asking for one crossing in over 100 acres. Mr. Bartolomeo asked if this is a manmade wetland. Mr. Poulin answered in the affirmative. Mr. Bamberger stated that all of Rockhouse Mountain drains through there.

Roberta Timberman asked what would happen to Pea Porridge if the wetlands were impacted. Mr. Cooper stated that the private property owner is first burdened by the wetland, then the Town imposed a 50-foot buffer, which essentially takes 100-feet from the landowner. Mr. Cooper stated that the Town in turn allowed the crossing of a wetland via a Special Exception so the landowner could gain productive use of the upland. Mr. Cooper stated that the crossings have to be engineered in a way so that it is not impacting down stream or upstream wetlands. Mr. Poulin stated that there would be conservation easements on this land as well.

Mr. Landry stated cul-de-sacs on either side of the wetland is possible, as the cost would be the same, but the end product would be chopped up, and he thinks it would be more attractive with one road. Mr. Landry stated that they are proposing a 40-acre conservation easement. Mr. Bartolomeo stated that a contiguous road is more desirable than two cul de sacs.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Hale and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** 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 there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** 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 Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the construction, installation and maintenance of subdivision road, associated drainage structures, and underground utilities across a wetland on Dollof Hill Road across a wetland the be granted. Motion unanimously carried.**



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A public hearing was opened at 9:58 pm to consider a **SPECIAL EXCEPTION** requested by **THE KENNETT COMPANY** in regard to §147.13.16.10.8 to allow culvert end and rip rap apron at outlet of storm water drainage under proposed subdivision road within the 50' buffer from the head of a wetland drainage-way on Dollof Hill Road, Conway (PID 291-30 & 34 and 279-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

Larry Landry of the Arlington Group and Jay Poulin of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.16.10.8 of the Town of Conway Zoning Ordinance to allow culvert end and rip rap apron at outlet of storm water drainage under proposed subdivision road within the 50' buffer from the head of a wetland drainage-way on Dollof Hill Road across a wetland the be granted. Motion unanimously carried.**

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A public hearing was opened at 10:00 pm to consider a **SPECIAL EXCEPTION** requested by **THE KENNETT COMPANY** in regard to §147.13.16.10.7 to allow the driveway to proposed lot #7 within the 50' wetland buffer on Dollof Hill Road, Conway (PID 291-30 & 34 and 279-2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

Larry Landry of the Arlington Group and Jay Poulin of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for public comment; Barbara Bryant asked what would be the impact on the wetland. Ms. Sherman answered none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the use is essential to the productive use of land not in the District.** 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 the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** 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 there is no better feasible alternative, in keeping with State and Federal standards for the**

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**issuance of development permits in 404 jurisdictional wetlands.** 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 Special Exception pursuant to §147.13.16.10.7 of the Town of Conway Zoning Ordinance to allow the driveway to proposed lot #7 within the 50' wetland buffer on Dollof Hill Road across a wetland the be granted. Motion unanimously carried.**

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A public hearing was opened at 10:05 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **GREGG SAUNDERS** in regard to §147.16 of the Conway Zoning Ordinance to allow the storage of equipment for the operation of non-commercial tree farm and agricultural excavation at 166 Valley View Road, North Conway (PID 219-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

Mr. Irving stated that the applicant has requested a continuance due to illness. The Board agreed to take public comment; Jim Manoli of 176 Valley View Road stated that this operation is a nuisance to the neighborhood and the view has changed dramatically. Mr. Manoli stated that the noise is horrible and there is dust and diesel exhaust. Mr. Manoli stated that it is more of a safety issue as there are many children who live on this street. Mr. Manoli stated that the applicant has even knocked power lines down. Mr. Manoli stated that this is not a personal thing, it is a neighborhood and this type of operation is not for this area.

Angel Williams stated that the traffic is constant and there have been two accidents. Audley Williams stated that the applicant built the house two years ago and there are several trucks all day long.

Paul Hallett, Operations Manager for Conway Scenic Railroad, stated that this type of operation devalues the scenery in the area. Mr. Hallett stated that the crossing installed at Mr. Saunders property is a light duty crossing and not made to support construction equipment. Mr. Hallett stated that the tracks were hit, which the applicant did not contact them, and there was a potential for derailment, plus the property owner is not carrying liability insurance. Mr. Manoli stated if there was a derailment it would be in his back yard. The abutters thanked the Board for allowing them to speak.

**Mr. Colbath made a motion, seconded by Mr. Chalmers, to continue the public hearing for Gregg Saunders until May 24, 2006 at 7:45 pm. Motion unanimously carried.**

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A public hearing was opened at 10:15 pm to consider a **SPECIAL EXCEPTION** requested by **KURT AND CLARE GRABHER** in regard to §147.13.4.2.4.2 of the Conway Zoning Ordinance to allow an accessory apartment at 196 Mechanic Street, North Conway (PID 219-20). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

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Les Gunther of Gunther Home Improvements appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Gunther stated that the accessory apartment would not exceed 800 square feet. Ms. Sherman asked for public comment; Barbara Bryant reviewed the site in relation to her property.

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 unanimously carried.**

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 unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that precinct water and sewer service the subject property.** 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 apartment is architecturally compatibility with the neighborhood.** 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 sufficient parking is located on site.** 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. Chalmers, that an Accessory Apartment Application was submitted for the ZBA review.** 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 Special Exception pursuant to §147.13.4.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.**

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A public hearing was opened at 10:30 pm to consider a **SPECIAL EXCEPTION** requested by **DAVID AND JOANNE PANDORA/BEN AND ANGELA BATTLES** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance to allow an accessory apartment at 45 Fein Lane, Conway (PID 254-8). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

David Pandora and Ben and Angela Battles appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Pandora stated that he obtained a special exception for a mobile home for a family member in 1994.

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Mr. Bartolomeo stated the applicant could purchase a mobile home in the square footage that they want, but what they really want is a stick built. Mr. Irving stated the applicant is requesting two separate special exceptions. Mr. Irving stated that they could have a mobile home regardless of size where an accessory apartment has a size limit. Mr. Chalmers stated that this decision could be precedent setting. Mr. Irving stated that the Board has to take each application on a case-by-case basis. Mr. Bartolomeo stated the reason for limiting it to 800 square feet was to make affordable housing available and if it had a size restriction it would limit the rent. Ms. Sherman asked for public comment; there was none.

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 unanimously carried.**

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 unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the subject parcel is serviced by a well and has been issued a permit for construction for sewage or waste disposal by the New Hampshire Department of Environmental Services.** 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 apartment is architecturally compatibility with the neighborhood.** 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 sufficient parking is located on site.** 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. Chalmers, that an Accessory Apartment Application was submitted for the ZBA review.** 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 Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.**

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A public hearing was opened at 10:45 pm to consider a **VARIANCE** requested by **DAVID AND JOANNE PANDORA/BEN AND ANGELA BATTLES** in regard to §147.15.2 of the Conway Zoning Ordinance to allow an accessory apartment to be 1,600 square feet at 45 Fein Lane, Conway (PID 254-8). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 19, 2006.

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David Pandora and Ben and Angela Battles appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated there is no hardship as the applicant just wants a stick built home, but they could purchase a doublewide trailer. Mr. Chalmers stated this is a tough one because there are other options.

Ms. Battles stated that they have two young children and possibly a third and they would like a nice stick built home, as they don't want to go with another mobile home. Ms. Sherman stated that we cannot blame you, but how do we get that for you without ignoring the ordinance.

Ms. Hale stated the lot could be a subdivided. Mr. Chalmers stated that it is an option. Mr. Bartolomeo stated in order to subdivide the land the road would have to be brought up to Town road standards. Mr. Pandora stated that the intent of the ordinance was to give fair house pricing and we are accomplishing that goal with this application. Mr. Irving stated that people are committing to a structure that is permanent. Mr. Bartolomeo stated that this Board has granted variances in the past to increase the square footage, but they have all been existing structures. Ms. Hale stated he could construct a barn and then request an accessory apartment.

Ms. Sherman asked for public comment; there was no one in attendance.

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; Ms. Hale answered in the negative and stated there are other options even though a stick built would be better than a mobile home. Mr. Bartolomeo answered in the negative and agreed with Ms. Hale. Mr. Chalmers answered in the negative. Mr. Colbath answered in the negative and stated that he doesn't see any special conditions. Ms. Sherman answered in the negative. **Motion unanimously defeated.**

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; Ms. Hale answered in the negative and stated that the applicant can have a 1,600 square foot mobile home. Mr. Bartolomeo answered in the negative. Mr. Chalmers answered in the negative. Mr. Colbath answered in the negative. Ms. Sherman answered in the negative. **Motion unanimously defeated.**

**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 defeated.**

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 unanimous carried.**

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

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 carried with Mr. Colbath voting in the negative.**

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; Mr. Bartolomeo answered in the negative and stated the public is better served by upholding the ordinance. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the negative.**

**Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.15.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment to be 1,600 square feet be granted. Motion unanimously defeated.**

**OTHER BUSINESS**

**John Damore RE: Jonathan Wells (PID 219-104) – Motion for Rehearing – File #06-06:** **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the Motion for Rehearing pursuant to §147.15.68 of the Conway Zoning Ordinance be denied as there was neither technical error nor any new evidence provided. Motion unanimously carried.**

Meeting adjourned at 11:18 pm.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary