

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

FEBRUARY 28, 2007

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, February 28, 2007 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; Alternate, Hud Kellogg; Alternate, Cynthia Briggs; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Mr. Kellogg as a voting member; however, Mr. Colbath joined the meeting before the first hearing began. Therefore, Mr. Colbath remained the voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **PLR REAL ESTATE DEVELOPMENT AND IRVING OIL CORPORATION** in regard to §147.13.8.6 of the Conway Zoning Ordinance to appeal the decision that the proposed signage are not window signs, rather they are internally lit wall signs at 1500 White Mountain Highway, North Conway (PID 246-21.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, January 17, 2007. This public hearing was continued from January 24, 2007.

Paul Pietropaoli of Perkins Thompson representing Irving Oil Corporation appeared before the Board. Dot Seybold of OVP Management and Jim Yeager, Conway Code Enforcement Officer, were in attendance.

Mr. Pietropaoli stated in the notice for the hearing there was an additional rationale so the applicant has submitted a variance request. Mr. Pietropaoli stated that the Irving Oil Corporation had another location in Conway and recently relocated to the existing facility. Mr. Pietropaoli stated this is a nice design, but after opening, the Irving Oil Corporation determined that the signage was woeful. Mr. Pietropaoli stated there are no identifying characteristics at this time on their existing site. Mr. Pietropaoli stated there is a wall sign on the convenience store, there is one freestanding sign for the complex and if traveling south you are unable to see the sign until after you've passed it. Mr. Pietropaoli stated that there is this one small sign at the driveway entrance to identify this business.

Mr. Pietropaoli stated in order to brand this new facility, the applicant explored ways to identify the property through signage. Mr. Pietropaoli stated that they came up with and

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developed a proposal to install windows in the canopies and install behind those windows the Irving logos. Mr. Pietropaoli stated that the Town of Conway allows window signs without permits. Mr. Pietropaoli stated that even though the Town does not require permits for window signs, the applicant decided to contact the Town with their intentions and was told that the applicant was trying to circumvent the ordinance and they are not window signs. Mr. Pietropaoli stated from that decision, which was issued on December 1, the Irving Oil Corporation submitted this appeal.

Mr. Pietropaoli read Mr. Yeager's email. Mr. Pietropaoli stated that the applicant is not trying to trying to circumvent the ordinance, but trying to improve a relatively stark site. Mr. Pietropaoli stated that the applicant is not trying to fight against an ordinance or get around the ordinance, but to see what is workable and permissible. Mr. Pietropaoli stated that windows are not defined in the ordinance, but common dictionary definitions give common knowledge of a window. Mr. Pietropaoli read a definition of a window.

Mr. Pietropaoli stated rather than circumvent the ordinance the applicant is trying to comply. Mr. Pietropaoli stated that the Code Enforcement Officer is also stating that these signs are internally lit signs, which he doesn't understand since the lights are behind the glass but in front of the sign. Mr. Pietropaoli stated that another issue was the Town believed the applicant was trying to circumvent the number of signs. Mr. Pietropaoli stated that the ordinance does not preclude taking advantage of other signs such as window signs. Mr. Pietropaoli stated that the notice of hearing indicated that there was a conclusion of wall signs and not window signs, but they are not wall signs, they are window signs.

Mr. Pietropaoli stated that the ordinance provides a definition of a wall sign and these proposed signs do not meet that definition. Mr. Pietropaoli asked that the Board turn over the Code Enforcement Officer's decision and allow the proposed signs as window signs.

Mr. Bartolomeo stated that it is a clever approach and a well-designed solution, but he does see it as a circumvention of the ordinance. Mr. Bartolomeo stated that a window needs to be translucent looking in from out and looking out from in. Mr. Bartolomeo stated that he does disagree that the proposed signs are internally lit. Mr. Bartolomeo stated that he does have trouble seeing these as window signs, but it is a good solution. Mr. Pietropaoli stated that there would be windows that you could see in, but would not be able to look out due to the plain.

Mr. Yeager stated that he stands by his original interpretation of the ordinance that these are not a window signs and not attached to the glass, which is a requirement to be a window sign. Mr. Yeager stated that it is a circumvention of the ordinance as it is a wall sign with a glass front and the light is on the inside, therefore, being internally lit. Mr. Yeager stated that it is creative, but not allowed. Mr. Yeager stated that the applicant does have the signage that is permitted, a freestanding sign and a wall sign on the convenience store. Mr. Pietropaoli stated that the ordinance speaks of multiple tenants and allows wall signs for each tenant. Mr. Pietropaoli stated that there are two separate structures with two businesses. Mr. Chalmers stated you do go into one door and pay at

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one cash register. Mr. Chalmers asked if it is two separate entities. Mr. Pietropaoli stated that he was drawing an analogy to the center, obviously it is one company all leased to the Irving Oil Corporation.

Ms. Sherman asked for public comment; Dot Seybold stated that she thinks some of this discussion is for the variance request. Ms. Seybold stated that the real crust of this application is whether these are considered window signs. Ms. Seybold stated that there are multiple examples where the Planning Board has required the installation of a window to nowhere and they don't really care. Ms. Seybold stated that latest example is on the same property. Ms. Seybold stated that Cold Stone Creamery has faux windows with signs in those windows. Ms. Seybold stated if this were designed for the Planning Board they would have approved the windows in the canopy. Ms. Seybold stated that she doesn't believe the ordinance limits the amount of windows.

Ms. Hale stated that even if this is a window the Town believes it is a wall sign as it is attached to the wall behind the window and the ordinance requires it to be attached to the window. Mr. Bartolomeo stated that the windows discussed for the Cold Stone Creamery are on the building framed in real walls. Mr. Bartolomeo stated that they have rooms behind them. Mr. Bartolomeo stated that you are constructing the window to install a sign. Mr. Pietropaoli stated that the ordinance allows what it allows and to take advantage of that is not a circumvention of the ordinance.

Mr. Kellogg stated that it is a circumvention of the regulation and the pictures of the competitors are grandfathered, older structures so that argument is moot. Mr. Bartolomeo stated that this part of the application suffers since there is not a definition of a window in the Town's ordinance. Mr. Bartolomeo stated that we have to rely on our own definition. Mr. Pietropaoli stated that he did site a definition at the beginning of the meeting.

Mr. Colbath made a motion, seconded by Mr. Chalmers to uphold the Administrative Decision that the proposed signage are wall signs. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Pietropaoli stated that there are two elements to this application. Mr. Irving stated that it was disallowed because it was not a window sign, but there are two elements to this application; are they wall signs or window signs and is this design internally lit or not internally lit. Mr. Irving suggested that the Board make a finding of fact in regard to internally lit.

Mr. Bartolomeo stated that all externally lit is outside of the sign throwing light on the sign this is just behind a sheet of glass. Mr. Chalmers stated that it is internally lit. Mr. Yeager stated if they are not legally window signs then they don't even need the glass. Mr. Yeager stated that the glass is an element of the sign. Mr. Pietropaoli stated that lighting usually illuminates the external sign message area, this just happens to be behind a pane of glass. Mr. Irving stated the Town staff interpretation was there is a sign box that had the lettering on one side and glazing on the other side with a light in between. Mr. Irving asked is the sign and the glazing with the lighting an internally lit sign.

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Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the lighting submitted by the applicant is internal and violates the ordinance. Ms. Sherman asked for Board comment; there was none. **Motion defeated with Ms. Hale, Mr. Bartolomeo and Ms. Sherman voting in the negative and Mr. Chalmers and Mr. Colbath voting in the affirmative.**

A public hearing was opened at 8:02 pm to consider a **VARIANCE** requested by **PLR REAL ESTATE DEVELOPMENT AND IRVING OIL CORPORATION** in regard to §147.13.8.6.2 of the Conway Zoning Ordinance to exceed the number of permitted wall signs at 1500 White Mountain Highway, North Conway (PID 246-21.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

Paul Pietropaoli of Perkins Thompson representing Irving Oil Corporation appeared before the Board. Dot Seybold of OVP Management and James Yeager, Code Enforcement Officer, was in attendance.

Ms. Sherman asked how large are the proposed signs. Mr. Pietropaoli referred to the application and stated that the gable facing the road is different from the gables facing north and south. Mr. Bartolomeo stated that he drove up the strip after dark and the applicant is correct there is an identification problem. Mr. Bartolomeo stated that the lighting under the canopy is recessed lighting so it goes directly down. Mr. Bartolomeo stated relative to other facilities this is the most under lit site on the strip.

Mr. Bartolomeo stated that he agrees with the applicant that they have an identification problem. Mr. Bartolomeo stated that he likes what they have done and he could support one on the north and one on the south but not the large one. Ms. Hale stated that the biggest problem with the site is the gas prices; they are not visible. Ms. Hale stated that she thinks that anyone who lives in New England can identify an Irving station. Mr. Chalmers stated that the site is visually branded with the design of the gas pumps. Mr. Pietropaoli stated that may be accurate, but this site doesn't share the similar branding that is consistent branding for it's other sites. Mr. Pietropaoli stated that this site is just a gas station.

Ms. Briggs stated if you drive by the one in Glen there is no signage. Mr. Pietropaoli stated he is not familiar with that site. Frank Daniels of the Irving Oil Corporation stated that the site in Glen does have the blue canopy with the red line. Mr. Colbath stated this is the third time this commercial property has been before the Board for more signage. Mr. Kellogg stated that there are more ways to market your property; less is more. Mr. Kellogg stated just because the applicant decided to change the branding doesn't mean you can thrust yourself into the community. Mr. Bartolomeo stated that this canopy is so understated compared to other gas stations.

Mr. Pietropaoli stated that the Conway Master Plan acknowledges the need for signs. Mr. Pietropaoli stated that the applicant is not trying to over reach its just that the property is stark. Mr. Chalmers stated that the applicant is requesting three times the

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allowed amount of signage. Ms. Seybold stated that properties are allowed to come to this board and ask for a variance based on a particular situation. Ms. Seybold stated that there have been second and third wall signs granted recently and this board does look at each application individually. Ms. Seybold stated that they have an existing wall sign that is undersized. Mr. Colbath asked why the applicant hasn't taken advantage of what they are allowed. Mr. Pietropaoli stated that it just doesn't fit well. Mr. Pietropaoli stated that they are dealing with two separate structures.

Brian Woodward with Irving Oil Corporation stated they have heard from their customers and always get asked why they don't have a site in North Conway. Mr. Woodward stated that their customers tell them that it is not branded well. Dick Klement stated that he would like to echo that he is more interested in the cost of the gas than in the logo. Mr. Klement stated that he is not concerned with brand; he is concerned with cost. Mr. Yeager stated that there is an a-frame with the prices by the freestanding sign.

Ms. Briggs stated that the existing wall sign could be larger than. Mr. Irving stated that the applicant is requesting more sign area and more signs than what is permitted by the ordinance. Ms. Seybold asked if the Board could support reducing the size under this application. Ms. Briggs asked what is the size of the existing wall sign and suggested the maximum square footage allowed on two signs, one on the blue canoe building and one on the east side of the canopy. Mr. Kellogg stated that the bank was denied a variance for an additional sign on the north side of the building. Ms. Sherman stated that the Board reviews each application on it's own merits.

Mr. Irving stated that the tenant has an approved 17.3 square foot sign and they are entitled, with the bump up, to a 38.38 square foot wall sign. Mr. Irving stated that the applicant could increase the wall sign by 21 square feet. Ms. Sherman polled the Board to see if they would allow more than one wall sign within the allowable square feet or allow one on the north and one on south with no size mentioned. Mr. Colbath stated that he would prefer to see the 41 square feet. Ms. Hale stated that she would be agreeable to a sign on the north and south side of the canopy, but not on the east side. Ms. Sherman stated she would be agreeable to one on the north and one on the south. Ms. Briggs stated that she knows she does not get a vote, but she would prefer that the applicant stay within the area that is legally allowed.

Mr. Pietropaoli stated that he would like to request a continuance to clarify and resubmit the application. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to continue the public hearing for a Variance requested by PLR Development and Irving Oil Corporation until March 28, 2007 at 7:30 pm. Motion unanimously carried.**

A public hearing was opened at 9:15 pm to consider a **VARIANCE** requested by **PLR REAL ESTATE DEVELOPMENT AND IRVING OIL CORPORATION** in regard to §147.13.8.6.8.1 of the Conway Zoning Ordinance to permit internally lit signs at 1500 White Mountain Highway, North Conway (PID 246-21.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

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Paul Pietropaoli of Perkins Thompson representing Irving Oil Corporation appeared before the Board. Dot Seybold of OVP Management and James Yeager, Code Enforcement Officer, were in attendance. Mr. Pietropaoli withdrew the application.

A public hearing was opened at 9:16 pm to consider a **VARIANCE** requested by **MT. WASHINGTON VALLEY ECONOMIC COUNCIL** in regard to §147.13.8.6.3 of the Conway Zoning Ordinance to allow off-premise signage on Technology Lane, Conway (PID 262-86.2). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

Jac Cuddy appeared before the Board. Mr. Cuddy stated that the existing sign is on the north side of the Technology Lane and on the property in which the college is located. Mr. Cuddy stated that a permitted second sign is on the south side of Technology Lane, which is owned by MWVEC and Granite State College is not a part of the second lot. Mr. Cuddy stated that it is a marketing aspect so it could be seen if driving south. Ms. Sherman asked for public comment; there was none. Ms. Sherman asked for Board comment; Mr. Kellogg stated that it is an important need that they have and the sign is needed.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.** 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 no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance would not injure the public or private property rights of others.** 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, b, and c 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**

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would not be contrary to the spirit and intent of the ordinance. 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 granting of this variance will not adversely affect 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 §147.13.86.3 of the Town of Conway Zoning Ordinance to allow off-premise signage be granted. Motion unanimously carried.

A public hearing was opened at 9:27 pm to consider a **SPECIAL EXCEPTION** requested by **PASTUREVIEW DEVELOPMENT, LLC** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to cross a wetland buffer for a 10-foot road and a 40-foot right-of-way off Davis Hill Road, Center Conway (PID 283-22.1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

Mia Gannon of Thaddeus Thorne Surveys appeared before the Board. Ms. Gannon stated in order to access the three lots there is a proposal for a 40-foot right-of-way over the poorly drained soils. Ms. Gannon stated that there is ground that gets water near the surface, but it is not usually above the surface. Ms. Gannon stated that the applicant would be asking for a waiver from the Planning Board to have a 40-foot right-of-way instead of a 50-foot right-of-way. Ms. Gannon stated that the Town Engineer has already indicated that a 40-foot right-of-way could be put there.

Ms. Sherman asked if the construction of the road would have a detrimental impact upon the wetlands. Mr. Irving stated that the road is crossing the wetland buffer not the actual wetland. Ms. Sherman asked for Board comment; Mr. Colbath asked if there was any better feasible alternative. Ms. Gannon answered in the negative.

Ms. Sherman asked for public comment; Dick Klement asked if the normal procedure for a hearing is to notify abutters via a certified hearing. Mr. Irving answered in the affirmative and stated that this is the applicant's first application to the Zoning Board of Adjustment. Mr. Klement stated in April it is wet at the back of the property.

Rodney King stated if this road is allowed by the Board it would impact 10-feet of his property as it would increase the setback requirement. Mr. King stated there is standing water five-feet below the proposed location of the road. Mr. King stated that he walked the field in June prior to purchasing his home and it was wet. Mr. King stated that if the road is not constructed to Town specifications it could impact his well and effect drainage onto his property. Mr. King stated if he understands correctly there is no policy

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governing the construction of the road. Mr. Irving stated during the Planning Board review the applicant would be requesting a waiver for a paper road to not construct the road to current town standards. Mr. King stated if the applicant is allowed to construct the road it would in effect affect 10-feet of his property. Mr. King stated when the applicant purchased this property they should have made sure it could be accessed correctly. Mr. King stated that he would have no recourse if it impacts his property.

Mr. King asked if there has been a soil scientist on this property. Mr. King stated that he is concerned if this road is allowed he could lose his well and affect the drainage around his new foundation. Ms. Gannon stated that Barry Keith has mapped the wetlands and there are limited areas for the houses and septic systems while meeting town setbacks from wetlands. Ms. Gannon stated that standing water five-feet below the surface is not a criterion for a wetland; also this was a very wet year. Ms. Gannon stated that the wetlands have been mapped and the issue before the Board is only the road. Ms. Gannon stated that this is a glorified driveway with three houses. Mr. King stated that this property couldn't hold three houses so the developer should put the road in correctly.

Mr. Klement stated the applicant is proposing to drive over someone else's property to go to another building site. Mr. Bartolomeo asked about the swailing on the driveway and how to protect the King's property. Ms. Gannon stated that the applicant is not expecting to be pouring water onto Mr. King's property, but they would be constructing swails along the driveway. Mr. Bartolomeo stated that the drainage is a Planning Board issue. Mr. Irving stated that they are valid concerns and should be addressed at the Planning Board level. Mr. Irving stated that Mr. King has a valid point and it would have an impact on him with the increased setback.

Mr. King asked if the Board grants the special exception, does it just grant access to the property and not the three properties'. Ms. Sherman answered in the affirmative. Mr. Irving stated that the approval is limited to access the three proposed lots. Mr. Klement asked the reason for the location of the road. Ms. Gannon stated that it is the only location that does not require crossing a wetland. Mr. Chalmers questioned the productive use of the land.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Hale, 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 Mr. Bartolomeo, Mr. Colbath, and Ms. Sherman voting in the affirmative and Ms. Hale and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Hale, that the use is so located and constructed as to minimize the detrimental impact upon the wetlands.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated there are limited areas, but there are areas that will support both homes and septic systems. Ms. Sherman stated that the use is the road. Mr. Bartolomeo agreed that the use was the road. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Hale, 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.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that a site plan review approval is not applicable for this application.** 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 cross a wetland buffer for a 10-foot road and 40-foot right-of-way be granted. Motion unanimously carried.

A public hearing was opened at 9:55 pm to consider a **SPECIAL EXCEPTION** requested by **PASTUREVIEW DEVELOPMENT, LLC** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to cross an intermittent stream and a wetland buffer to access a building site off Davis Hill Road, Center Conway (PID 283-22.1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

Mia Gannon of Thaddeus Thorne Surveys appeared before the Board. Mr. Bartolomeo asked if this is a culvert crossing. Ms. Gannon answered in the affirmative. Mr. Bartolomeo asked if NHDES has approved the subdivision. Ms. Gannon answered in the affirmative. Mr. Irving asked if there was an area for development without crossing the wetland why was the applicant proposing to cross the wetland. Ms. Gannon stated that the prime spot is over the wetland. Ms. Sherman stated if there is an area that is usable without getting into the district then the Board has to give consideration to that area. Ms. Briggs asked how many wells are proposed for this property. Ms. Gannon answered three.

Ms. Sherman asked for public comment; Mr. Klement asked if this was in the best interest of the Town, as this would harm something. Mr. Klement stated that this is a dirt road in a rural area that a developer wants to stick in three homes. Mr. King asked if the Board would vote no as there is another usable area without crossing the wetland. Ms. Sherman stated that that is up to the Board.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Hale, that the use is essential to the productive use of land not in the District.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it has been demonstrated that there is sufficient area for a home, septic and well without crossing the wetland. **Motion defeated with Mr. Bartolomeo, Ms. Hale, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Hale, that the use is so located and constructed as to minimize the detrimental impact upon the**

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wetlands. Ms. Sherman asked for Board comment; Mr. Chalmers stated that there is no need for the special exception if there is productive land without crossing the wetland. **Motion carried with Mr. Bartolomeo, Ms. Hale, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Hale, 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; Mr. Bartolomeo stated that there is no need to cross the wetland. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that a site plan review approval is not applicable for this application.** 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 cross an intermittent stream and a wetland buffer to access a building site be granted. Motion unanimously defeated with Mr. Colbath referring to item 3.

A public hearing was opened at 10:16 pm to consider a **SPECIAL EXCEPTION** requested by **HAROLD WHITAKER AND THOMAS FADDEN** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow a roadway to cross a wetland and buffer off East Conway Road (PID 242-12). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. Mr. McAllister stated that the road currently exists as a logging road and the applicant is looking to reuse the access system for a Town of Conway standard road. Mr. McAllister stated that the frontage on East Conway Road is just over 80-feet. Mr. McAllister stated that the applicant is currently working with NHDES for mitigation in other parts of the area and watershed. Mr. Chalmers asked if this is the only access to the site. Mr. McAllister answered in the affirmative.

Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; Robert Smith stated that the existing road has been there since 2003 and a wetland had to be filled for that road to be constructed. Mr. Smith asked why is the applicant asking for this now when it exists. Ms. Sherman stated for the road to become something other than a logging road it has to go through this procedure. Mr. Smith asked what was the process to install the road in the first place. Mr. Irving stated that it goes through NHDES and not the Town. Mr. McAllister stated that the applicant is responsible for the wetland mitigation. Mr. Irving stated that it would have been the responsibility of the State to have the road removed once the logging was complete.

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Sharon Johnston asked about the location of a culvert on the existing road. Mr. McAllister reviewed the existing location and the proposed location of the culvert. Mr. Chalmers asked if the applicant has looked at purchasing another piece of property in the area for access. Mr. McAllister answered in the negative. Mr. Chalmers stated before the Board approves this the application should review all their options in obtaining another piece of property for access.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Hale, 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 Ms. Hale, 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 Ms. Hale, 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 carried with Mr. Chalmers voting in the negative and stating that there are other alternatives to explore before crossing the wetland.**

Ms. Sherman read item 4. **Mr. Bartolomeo made a motion, seconded by Ms. Hale, that a site plan review approval shall be required prior to construction.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

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 a roadway to cross a wetland and buffer be granted. Motion carried with Mr. Chalmers voting in the negative.

A public hearing was opened at 10:31 pm to consider a **SPECIAL EXCEPTION** requested by **HAROLD WHITAKER AND THOMAS FADDEN** in regard to §147.13.16.10.7 of the Conway Zoning Ordinance to allow the construction of a detention basin in a wetland buffer off East Conway Road (PID 242-12). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, February 21, 2007.

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. Mr. McAllister stated that the proposed design is to avoid creating a dam. Mr. Irving asked if the application provides for pretreatment before getting to the wetland. Mr. McAllister answered in the affirmative.

CONWAY ZONING BOARD OF ADJUSTMENT – FEBRUARY 28, 2007

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Hale, 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 Ms. Hale, 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 Ms. Hale, 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 carried with Mr. Chalmers voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Hale, that a site plan review approval shall be required prior to construction.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

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 construction of a detention basin in a wetland and buffer be granted. Motion carried with Mr. Chalmers voting in the negative.

OTHER BUSINESS

Review and Acceptance of Minutes: Mr. Chalmers made a motion, seconded by Mr. Colbath, to approve the Minutes of January 24, 2007 as written. Motion carried with Ms. Hale and Mr. Bartolomeo abstaining from voting.

Meeting adjourned at 10:40 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant