

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

MARCH 30, 2005

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, March 30, 2005 beginning at 7:30 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Jeanna Hale; Alternate, David Weathers; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:34 p.m. to consider a **REHEARING/VARIANCE** requested by **CMF DEVELOPMENT, LLC** in regard to Article 147.13.19.13 of the Conway Zoning Ordinance to permit the construction of Building 5, Units A – J at the Village of North Conway on Village Way, North Conway (PID 235-51.001 – 51.044). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Randy Cooper of Cooper, Deans & Cargill representing the applicant and Peter Malia of Hastings Law Firm representing the Conway Board of Selectmen appeared before the Board. Earl Sires, Town Manger, was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bartolomeo stepped down at this time. Mr. Cooper stated that he did not want a member of the Board of Selectmen [Mr. Weathers] as a voting member. Mr. Weathers stepped down at this time. Mr. Cooper agreed to proceed with four-members.

Mr. Cooper stated back in 1983 or so the Village of North Conway was approved as a 42-unit development, which all but 10 were developed. Mr. Cooper stated that the Town took the remaining 10 building rights for failure of paying taxes. Mr. Cooper stated that the Town put the 10 building rights up for sale and advertised the development rights to be sold “as is”. Mr. Cooper stated that his client bid on the property and then the purchase and sale agreement stated that the units would have to comply with all current regulations. Mr. Cooper stated there is an issue out there of what that means and they are trying to avoid litigation on that issue.

Mr. Cooper stated that the applicant requested an area variance for the Special Highway Corridor Overlay District (SHCOD). Mr. Cooper stated except for the SHCOD this project would be a go. Mr. Cooper stated that the building falls within the area of the lot that is located in the SHCOD, which has lot coverage limitations.

Mr. Cooper stated that the variance was denied and the applicant filed a motion for rehearing because there was no finding of conclusion. Mr. Cooper stated that the Zoning Board of Adjustment granted the rehearing in order to make finding of facts. Mr. Cooper stated that he

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would love the Board to reverse their decision, but that is not what he read that the Board wanted to do. Mr. Cooper submitted two pages of additional evidence in regard to the tax sale advertisements and stated that he would be happy to answer any questions.

Mr. Bartolomeo asked if there was any time limit on the Planning Board approval. Mr. Cooper stated that it goes on forever, as it is a vested approval. Mr. Cooper stated that the Town says it is not a vested approval and he is not asking this board for a vested approval. Mr. Cooper stated that this lot has the density; the only issue is the SHCOD. Mr. Bartolomeo stated that the SHCOD is a new ordinance that needs to be met. Mr. Cooper stated that that is the reason why the applicant is seeking a variance.

Ms. Hale stated under #27 of the Motion for Rehearing it states that the Board defeated the motion that this could not be achieved by some other method. Ms. Hale asked if the applicant could request a zoning change or purchase additional land. Mr. Cooper stated with respect to the zoning change, it has not been contemplated; whether that was a method the applicant could pursue, that would be true for any variance. Mr. Cooper stated he does not believe the building could be located some other place on the lot, and not sure if the applicant could purchase more land. Mr. Cooper stated part of the unique characteristics of this lot is that he thinks it complies with the current variance standards from when it was approved to now. Mr. Cooper stated with the other buildings there, it couldn't be put someplace else; this is the only place to put it.

Mr. Cooper stated they could look at the front of the lot, but there is no place to put it out of the area. Mr. Cooper stated that the SHCOD states density is not supposed to be lost, however, there is no other place to put the building. Mr. Irving stated that it is the lot coverage that is affected not the lot density. Mr. Cooper stated with the 100-foot buffer, the lot density is not lost as you can still use it.

Ms. Sherman asked if the building could be constructed anywhere else on the lot, could any common land be switched for this land. Mr. Cooper stated that he doesn't think so. Tom Merrill, President, stated that he does not think it can go somewhere else. Mr. Cooper stated that his client would have an issue with the members of the condominium other than where it was placed.

Mr. Irving stated it does not preclude the building from going somewhere else. Mr. Cooper stated if the Board goes through the variance criteria's and grants them all, but this one, then he would request a continuance to specifically address where else the building could fit. Mr. Cooper stated it is his understanding that it doesn't fit. Ms. Sherman asked if there are any other points the Board would like to ask about; there was none.

Ms. Sherman asked for anything else from the Town; Peter Malia, Town Council, stated that he was representing the Board of Selectmen this evening and not the ZBA. Mr. Malia stated that he agrees with granting a rehearing to correct any mistakes. Mr. Malia stated that one mistake that Mr. Cooper alleges the Board made was not explaining the reason for denial in enough detail.

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Mr. Malia stated that this property is located in the SHCOD. Mr. Malia stated the last time there were mainly two points of the variance criteria; not adverse to the public interest and spirit and intent of the ordinance. Mr. Malia stated due to the SHCOD the Board of Selectmen didn't feel a variance would be in the public interest or in the spirit and intent of the ordinance. Mr. Malia referred to the purpose of the SHCOD [§147.13.19.1]. Mr. Malia referred to pages 3 and 4 of the Motion for Rehearing. Mr. Malia stated that Mr. Cooper alleges that the Board didn't apply the correct standard or burden of proof. Mr. Malia suggested that the Board clarify that the burden of proof was the civil standard and that the word compel didn't mean to apply any other standard on the applicant.

Mr. Malia submitted a copy of the Agreement of Sale and the 2002 Conway Tax Sale document to the Board. Mr. Cooper asked Mr. Malia, for the record, if the 2002 tax sale document was something he read, but not distributed, prior to the sale. Mr. Malia answered correct. Mr. Irving asked if the 2002 Tax Sale document was read prior to the signing of the purchase and sale. Mr. Malia answered in the affirmative. Mr. Cooper agreed. Mr. Irving stated that he wanted to know if the applicant knew this prior to the sale. Mr. Cooper answered in the affirmative. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read 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. Hale voted in the negative. Mr. Chalmers voted in the negative and stated that there were no conditions existing in the property when it was purchased. Mr. Colbath voted in the negative and stated he is disappointed in the Association as it is unclear if there is reasonable area on this property where this building can be built or whether additional abutting property could be purchased to put the building elsewhere. Mr. Colbath stated that the Board has only heard that they want to put the building where it was originally proposed.

Ms. Sherman voted in the negative and stated there were no special conditions at the time of purchase as they were already there. Ms. Sherman stated she realizes this will be fought elsewhere, but she considers the variance as if this building was a new building that has no vestment of rights. Ms. Sherman stated that those vested rights were either given away at the time of the tax sale or that this was a new building and that the conditions would be such that it would not be allowed because the fact the property has already been built beyond the ordinance. Ms. Sherman asked if Ms. Hale had a reason for voting in the negative. Ms. Hale stated that she agrees with Ms. Sherman and that there are other routes that can be sought here. **Motion unanimously defeated.**

Ms. Sherman read 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant couldn't be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Hale voted in the negative and stated there are other avenues that can be pursued. Ms. Hale stated that she doesn't think this is the last resort and would like to see what else is feasible on this property. Mr. Chalmers voted in the negative and stated that it has not been shown that this building couldn't be located somewhere else. Mr. Colbath voted in the negative and stated that it hasn't been demonstrated that there are no other feasible alternatives to the right that was

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purchased. Ms. Sherman voted in the negative and stated that there has not been any indication that any other reasonably feasible method had been pursued other than obtaining an area variance. **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. 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.** Mr. Colbath voted in the affirmative and stated there has been no testimony on value of surrounding properties. Ms. Hale voted in the affirmative and stated that she agrees with Mr. Colbath and she doesn't think it will affect the surrounding properties, as they are the same. Mr. Chalmers voted in the affirmative and stated he agrees with Mr. Colbath and Ms. Hale. Ms. Sherman voted in the negative and stated anybody with a residential property in the same district is going to be affected by not being able to have the same coverage. **Motion carried with Mr. Colbath, Ms. Hale, and Mr. Chalmers voting in the affirmative and Ms. Sherman voting in the negative.**

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.** Mr. Chalmers voted in the negative and stated that it is contrary to the ordinance. Ms. Hale voted in the negative and stated for the same reason the zoning ordinance was written, to protect this from happening. Mr. Colbath answered in the negative and stated this is specifically addressed in the SHCOD; although not feasible to go back to the public and the Town to change the zoning, but the reason it was voted in is because they did not want encroachment. Ms. Sherman answered in the negative and stated based on her reading of the purpose of the SHCOD, it was put in place to specifically limit the type of development that occurred in this area and that was basically the only intent. **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 to the public interest.** Ms. Hale voted in the negative and stated the public voted on this regulation and put it into effect for this specific reason. Ms. Hale stated when a sign was erected in the district the Board was nearly tarred and feathered. Mr. Chalmers voted in the negative and stated that it is pretty clear why the SHCOD was implemented and it should be upheld. Mr. Colbath voted in the negative and stated the sign Ms. Hale referred to was legally allowed, but there was such controversy over a sign could you imagine what it would be if a building were allowed. Ms. Sherman voted in the negative and stated that the public passed this ordinance for a particular reason, to protect the corridor aesthetics. Ms. Sherman stated allowing the encroachment would be in the applicant's interest. **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.** Mr. Colbath voted in the negative and stated that this is the one we always toy with; is justice to the individual greater

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than the justice to the public. Mr. Colbath stated that the greater justice lies with the public. Mr. Colbath stated for this property owner there is recourse. Mr. Chalmers voted in the negative and stated that he agrees with Mr. Colbath. Ms. Hale voted in the negative and stated that she agrees with Mr. Colbath.

Ms. Sherman voted in the negative and stated that this is the one that has always been fairly difficult to figure out as to what exactly it is suppose to mean. Ms. Sherman stated that the applicant has not fully explored all of the leads to achieve what he wants without having the variance. Ms. Sherman stated that she cannot see a full injustice to the applicant, but here again it is subjective. Ms. Sherman stated that it is difficult to put into words, but the public deserves more consideration than the applicant as far as having the will of the people taken into account. **Motion unanimously defeated.**

Mr. Cooper stated due to the condominium declaration, the applicant could not do anything, such as add other land or move the building, without obtaining permission from the Association. Mr. Colbath asked if he had approached the Association. Mr. Cooper stated that his client has spoken to and the Association is agreeable to do this. Mr. Cooper stated that he is surprised there have been no comments from the Association this evening. Mr. Merrill stated there was no other options offered or discussed and was insulted because they did not come with any other alternatives. Mr. Merrill stated there are other options for the additional units and if the client would like to contact them, they would be happy to discuss it with him.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the forgoing findings of fact, the variance from §147.13.19.13 of the Town of Conway Zoning Ordinance be granted. Motion unanimously defeated. Mr. Sires and Mr. Malia left at this time.

A public hearing was opened at 8:21 p.m. to consider a **SPECIAL EXCEPTION** requested by **RIVER VALLEY REALTY TRUST** in regard to Article 147.13.17.2.1 of the Conway Zoning Ordinance to allow an existing roadway in the Wetland Conservation Overlay District to be widened on Passaconaway Road, Conway (PID 263-1). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Jon Howe of Ammonoosuc Survey Company appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bartolomeo rejoined the Board at this time as a voting member. Mr. Weathers rejoined the Board as a non-voting member. Mr. Bartolomeo asked if this is currently a woods road. Mr. Howe answered in the affirmative. Mr. Howe stated that this is the only access point for this land and a right-of-way to the Allard property. Mr. Chalmers asked if there was a gravel pit in the area. Mr. Weathers stated the gravel pit is located next to the West property and it has been graded and reseeded.

Mr. Howe stated that a State Wetland approval and a State Subdivision approval have been obtained. Ms. Sherman asked for public comment; there was none. Mr. Colbath asked Mr. Irving's position. Mr. Irving stated that the Town has no issue. Mr. Weathers stated there

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should be more care taken to the site prior to any more construction as there is no place for the snow to go and there is a lot of degrading of water quality. Mr. Bartolomeo asked if silt fencing would help. Mr. Weathers stated fencing would be nice, but may be to late now. Mr. Bartolomeo asked if this happens every year. Mr. Weathers stated that this road has never been maintained in the winter, but now there are homes there.

Ms. Sherman asked if this is in an area of minimal impact. Mr. Weathers stated that the permit states it will be stabilized. Mr. Irving stated there is a site construction standard through the Planning Board process that needs to be adhered to. Mr. Irving asked does something need to be done now. Mr. Weathers answered in the affirmative and stated that the damage is being done now. Mr. Howe suggested hay bales along the side of the road. Mr. Bartolomeo asked if the entire road would be widened. Mr. Howe answered in the affirmative and stated that it would be paved as well.

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. 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. 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 §147.13.17.2.1 of the Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 8:34 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **BERLIN LEASING/HILDEGARD LINAKIS** in regard to Articles 147.13.8.6, 147.13.8.6.2, 147.13.8.7 & 147.13.8.7.7 of the Conway Zoning Ordinance to allow an existing wall sign for a home occupation to remain “as is” at 3504 White Mountain Highway, North Conway (PID 202-17). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. James Yeager, Code Compliance Officer, was in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron stated the property owner owns and operates the business. Mr. Bergeron stated that the wall sign that is mounted down on the house has been in place since 1995, but was not permitted. Mr. Bergeron stated the applicant applied and received approval for the freestanding sign, but she did not apply for the wall sign. Mr. Bergeron stated in 1987 or 1988 a home occupation permit was issued by Dale Frizzell.

Mr. Bergeron stated current Town Staff, as well as himself when he was the code compliance officer for the Town, have questioned whether or not this was a home occupation in the commercial district and because there was no site plan that she is restricted to a three square

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foot sign. Mr. Bergeron stated that he doesn't necessary agree as a freestanding sign was applied for and permitted. Mr. Bergeron stated there is a difference for a home occupation in the Highway Commercial District. Mr. Bergeron referred to §147-13.8.7 and read what is allowed for signage. Mr. Bergeron stated that he agrees with that and can be done by right. Mr. Bergeron stated that the situation in 2005 is that the applicant has a home occupation in the commercial district and by right she can have a 3 square foot sign and has the right to apply for other signage allowed in the Highway Commercial District.

Mr. Bergeron referred to §147.13.8.6 and stated historically for home occupations in the highway commercial district they may have the signage for a home occupation, but can also apply for other signage that they could not have if located in the Residential/Agricultural District. Mr. Bergeron stated that the applicant should have applied for a sign permit, but don't believe the Town could deny it.

Mr. Irving stated it has been common practice whenever there is a conflict in the regulations the most restrictive shall prevail. Mr. Irving read the interpretation on page 2 of the Zoning Ordinance, which is contrary to what may have been prior to the current administration. Mr. Bergeron asked if Mr. Irving was interpreting §147.13.1.6.8.12 as the only signage allowed for a home occupation. Mr. Irving answered in the affirmative.

Mr. Bergeron referred to §147.13.1.6.8. Mr. Irving stated they are only for that activity and most to do with freedom of expression and personal beliefs. Mr. Bergeron stated the language does not state that home occupations can only have this; the ordinance states that it may have these signs. Mr. Bergeron stated a lot without commercial tenants does not exclude home occupations. Mr. Bergeron stated that the applicant is entitled to the signage allowance within the Highway Commercial District and should be able to apply for and be permitted for a wall sign.

Mr. Yeager stated when staff reviewed the signage at this location there was a permit for the freestanding sign, but it was not dated. Mr. Yeager stated that it was not indicated why the sign was permitted and it could have been there prior to needing a permit. Mr. Yeager stated that he did not focus on that because there was a permit on file. Mr. Yeager stated that what the applicant has is a roof sign, which is not allowed by the ordinance. Mr. Yeager stated that there is no permit nor has there ever been a permit for this sign. Mr. Yeager stated that the applicant admitted to erecting the sign without a permit. Mr. Yeager stated that another passage in the home occupation regulation is that a sign of that size on top of the house is not keeping with the characteristic of a neighborhood. Mr. Yeager stated that it looks like a business and that is why home occupations are restricted to a three square foot sign. Mr. Yeager stated that that is all the signage allowed without going through the site plan process.

Mr. Bergeron stated that he has a problem when someone says if you go to site plan review you can have this type of signage. Mr. Bergeron stated that signage is in no way part of the site plan regulations. Mr. Bergeron stated that signage is only controlled by the zoning ordinance and there is no interrelationship. Mr. Bartolomeo stated that it is a clear assumption that a home occupation takes place somewhere other than the commercial zone, but because

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this takes place in the Highway Commercial District, Mr. Bergeron is making a case for this particular applicant.

Ms. Sherman stated there were considerable changes to the home occupation portion of the ordinance and the applicant might have opened during those changes. Ms. Sherman stated that the reason for having a home occupation was for people to utilize, particularly in the Residential/Agricultural District, the use of their home for some commercial activity. Ms. Sherman stated the way she sees it, the use that the applicant has is not incompatible, but disallowed. Ms. Sherman stated by not going through site plan review, the applicant is giving up some of her rights. Ms. Sherman stated the applicant would have to go through a site plan review to have the signage allowed in the Highway Commercial District. Mr. Bergeron stated that that reference does not exist.

Ms. Sherman stated that basically by being designated as a home occupation, your giving up some signage. Mr. Yeager stated the 1980-zoning ordinance included the 3 square foot sign, and there was nothing about retail sales. Mr. Yeager stated in 1990, home occupations were not allowed in the commercial districts, but the 3 square foot sign has remained. Mr. Bartolomeo asked what would be allowed if this were a commercial use and not a home occupation. Mr. Irving answered a 20 square foot wall sign, which can be increased, but the ordinance does not allow roof signs. Mr. Bartolomeo stated that the Town thinks the freestanding sign is immaterial, but he thinks it supports Mr. Bergeron's case.

Ms. Sherman asked if this use is to be granted something larger than a 3 square foot sign then the rest of it has to apply. Mr. Bartolomeo asked if that is applying for site plan. Ms. Sherman answered in the affirmative. Mr. Bartolomeo asked if it would have to be a commercial occupation. Ms. Sherman stated to operate as commercial, and not a home occupation, a site plan review would be required. Mr. Yeager stated that the freestanding sign is non-conforming and by allowing the wall/roof sign you would be adding to the non-conformity. Mr. Bartolomeo stated if it is a home occupation then a three square foot wall sign is all that is allowed, as the ordinance does not say that the zone allows all the signs that come with the zones.

Mr. Bergeron asked when the zoning ordinance was reorganized were there any changes to the sign elements. Mr. Irving stated that this particular sign would not have been permitted before or after the reorganization of the ordinance. Mr. Irving stated that the intent of the reorganization was not to change the ordinance. Ms. Hale asked how this became an issue. Mr. Yeager stated that he received a complaint through town staff and he had to follow up. Mr. Bartolomeo asked how large is the roof sign. Mr. Bergeron answered 15 square feet. Ms. Sherman asked for public comment; there was none.

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the Appeal from Administrative Decision pursuant to §147.13.8.6, 147.13.8.6.2, 147.13.8.7 & 147.13.8.7.7 of the Conway Zoning Ordinance be granted. Motion defeated with Ms. Sherman, Mr. Colbath, Mr. Chalmers and Ms. Hale voting in the negative and Mr. Bartolomeo voting in the affirmative.

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A public hearing was opened at 9:08 p.m. to consider a **VARIANCE** requested by **BERLIN LEASING/HILDEGARD LINAKIS** in regard to Articles 147.13.8.7 and 147.13.8.7.7 of the Conway Zoning Ordinance to allow an existing wall sign for a home occupation to remain “as is” at 3504 White Mountain Highway, North Conway (PID 202-17). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron stated that the arguments for the previous application apply to this application.

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.** Mr. Bergeron read item 1.a. from his memorandum. Ms. Hale voted in the negative and stated that the sign does not interfere with the use of the property. Ms. Hale stated that she thinks the sign is redundant and doesn’t think it will cause a dramatic loss of business. Mr. Bartolomeo voted in the affirmative and stated that signs are permitted by zone. Mr. Chalmers voted in the negative and stated that the applicant is entitled to the same signage allowed for a home occupation, which is what she claims she is. Mr. Colbath voted in the negative and stated that the use is a unique setting as it has undated permits and a home occupation selling retail, which is not allowed. Mr. Colbath stated that the applicant is beyond reasonable use of this property. Ms. Sherman voted in the negative and stated that the use of the property is a home occupation, which carries certain restrictions. **Motion defeated with Ms. Hale, Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

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.** Mr. Bergeron read item 1.b. from his memorandum. Ms. Hale voted in the affirmative. Mr. Colbath voted in the negative and stated that the restriction is that it is a home business that is only allowed 3 square feet. Mr. Colbath stated to allow anything more would be unfair. Mr. Bartolomeo voted in the affirmative and stated that the language of a home occupation does not specifically exclude signage in the commercial district. Mr. Chalmers voted in the negative and stated that the regulations for a home occupation are clear and only entitled to a 3 square foot sign. Ms. Sherman voted in the negative and stated that she agrees with Mr. Chalmers. Mr. Colbath stated that he doesn’t think the applicant can have it both ways. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo and Ms. Hale voting in the affirmative.**

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.** Mr. Bergeron read item 1.c. from his memorandum. Mr. Bartolomeo voted in the affirmative. Mr. Chalmers voted in the negative and stated that he believes that the signage is contrary to the intent of the ordinance because this property is set up as a home occupation. Ms. Hale

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voted in the negative and stated that it injures the private property rights of other home occupations. Mr. Colbath voted in the negative and stated that this property is already well signed, which the Town is willing to leave. Mr. Colbath stated that it is a redundant sign. Ms. Sherman voted in the negative and stated that she believes the private property rights of other home occupations in the commercial district would be injured, as they would not be allowed to have the same thing. **Motion defeated with Mr. Chalmers, Ms. Hale, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

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. 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.** Mr. Bergeron read item Diminution of Value from his memorandum. **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.** Mr. Bartolomeo voted in the affirmative. Mr. Chalmers voted in the negative. Mr. Colbath voted in the negative and stated that it is overkill in signage. Ms. Sherman voted in the negative and stated that home occupations are designated to have a certain amount of signage. Ms. Hale voted in the affirmative. **Motion defeated with Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo and Ms. Hale voting in the affirmative.**

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.** Mr. Bergeron read Public Interest from his memorandum. Ms. Hale voted in the negative. Mr. Bartolomeo voted in the affirmative. Mr. Chalmers voted in the negative. Mr. Colbath voted in the negative and stated that the public interest lies, as it is a home occupation, with others that are not allowed the same signage. Ms. Sherman voted in the affirmative. **Motion defeated with Ms. Hale, Mr. Chalmers and Mr. Colbath voting in the negative and Mr. Bartolomeo and Ms. Sherman voting in the affirmative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Mr. Bergeron read Substantial Justice from his memorandum. Mr. Colbath voted in the negative and stated there is no issue with justice to the individual. Ms. Hale voted in the negative and stated that she agrees with Mr. Colbath that the public's interest outweighs the property owner. Mr. Bartolomeo voted in the affirmative. Mr. Chalmers voted in the negative and stated there are other options to change to be granted all the signage allowed under the commercial district. Ms. Sherman voted in the negative and stated this would allow greater signage for all home occupations, where now all home occupations are allowed no greater than 3 square feet. Ms. Sherman stated there is justice to them, for one is not fair. **Motion defeated with Mr.**

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Colbath, Ms. Hale, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.7 and 147.13.8.7.7 of the Town of Conway Zoning Ordinance be granted. Motion unanimously defeated.

A public hearing was opened at 9:33 p.m. to consider a VARIANCE requested by MOUNTAIN HIGH MARKETPLACE, LLC in regard to Articles 147.13.8.6 and 147.13.8.6.1 of the Conway Zoning Ordinance to permit a second freestanding sign at 1857 White Mountain Highway, North Conway (PID 235-40). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bergeron stated that this site is a unique setting as the Town of Conway has lost most of the old architecture on the strip. Mr. Bergeron stated that the applicant has tried to maintain the old front of the building. Mr. Bergeron stated that the applicant is proposing a second sign directly in front of the old historical building. Mr. Bergeron stated that the balance of the property seems to be doing very well and the true desire is to get signage in front of the old building.

Mr. Bergeron stated there is a significant amount of glazing and the ordinance allows 50% of windows to be covered with signage. Mr. Bergeron stated there is 250 square feet of window signage allowed as 500 square feet of window space exists. Mr. Bergeron stated that window signage is unattractive and uncontrollable. Mr. Bergeron stated that the ZBA has the authority to apply conditions to an approval and the property owner is receptive to giving up window signage for the second freestanding sign. Mr. Bergeron stated that the applicant is willing to give up 80 square feet of window signage.

Mr. Bergeron referred to purpose and intent of signage under the old ordinance. Ms. Sherman asked if the house is a single occupant business. Mr. Bergeron answered in the negative and stated that there are three floors; the middle floor is office space, the main floor is retail; and he is not sure what is located on the third floor. Mr. Irving stated there is nothing to preclude multiple tenants in that building. Mr. Irving cautioned the Board regarding the proposal for window signage. Mr. Irving stated that there is an opportunity for 250 square feet of signage, however, he would recommend that the Board, as with any variance, to follow through the merits of the test, and if satisfied and still a concern, then impose restrictions if warranted.

Ms. Sherman stated this lot has 317-feet of road frontage. Mr. Colbath stated there is a back entrance. Mr. Irving stated that the back entrance is on a private road. Ken Vance, resident of the Village of North Conway and here on behalf of the Board of Directors, stated there is already a grandfathered sign and a variance should not be granted for any other signage. Mr. Bergeron asked Mr. Vance which sign is grandfathered. Mr. Vance answered the existing

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freestanding sign. Mr. Yeager stated that the freestanding sign is 60 square feet due to a sign incentive allowed by the ordinance.

Mr. Yeager stated that the former Bear Crossing Restaurant had a sign on the north side of the building. Mr. Irving stated they have two wall signs on that structure with the second wall sign being grandfathered. Mr. Vance stated the property has been done over beautifully, but he just feels under the current ownership if given too much leeway it can come back to haunt you. Mr. Irving stated that the existing freestanding sign has already taken advantage of a sign incentive.

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.** Mr. Bergeron read item 1.a. from his memorandum. Mr. Bartolomeo stated the grand old house has been destroyed. Mr. Colbath voted in the negative and stated that he doesn't think it is a unique setting. Mr. Colbath stated that he agrees with Mr. Bartolomeo, the applicant has already taken advantage of a sign incentive and there is a grandfathered wall sign. Mr. Colbath stated plus each business will be allowed a wall sign.

Mr. Chalmers voted in the negative and stated that he agrees with Mr. Colbath. Mr. Bartolomeo voted in the negative and stated there are no special conditions for this property, plus they don't meet the frontage requirement. Ms. Hale voted in the negative and stated that they already have adequate signage with the larger sign incentive. Ms. Hale stated the uniqueness of the building lends itself to more visibility. Ms. Sherman voted in the negative and stated that this property is not more unique than other properties within the vicinity that would have the same argument. **Motion unanimously defeated.**

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.** Mr. Bergeron read item 1.b. from his memorandum. Mr. Colbath voted in the negative and stated that fair and substantial relationship already exists and it is not allowed due to frontage or entry way. Mr. Chalmers voted in the negative and stated that he agrees with Mr. Colbath. Mr. Bartolomeo voted in the negative and stated that he agrees with Mr. Colbath. Ms. Hale voted in the negative. Ms. Sherman voted in the negative. **Motion unanimously defeated.**

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.** Mr. Bergeron read item 1.c. from his memorandum. Mr. Chalmers voted in the negative and stated that the zoning ordinance was written to prevent this. Mr. Bartolomeo voted in the affirmative. Ms. Hale voted in the negative and stated that it does injure the private property rights of others as if there may be another property on the strip that may not have the road frontage either. Mr. Colbath voted in the negative and stated that he agrees with Mr. Vance. Ms. Sherman voted in the negative and stated that other properties that are similar to this property would not be served by this variance granted. **Motion defeated with Mr.**

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Chalmers, Ms. Hale, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.

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. 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.** Mr. Bergeron read Diminution of Value from his memorandum. Ms. Sherman stated there has been no testimony regarding property values. **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.** Mr. Bergeron read item Contemplated Use from his memorandum. Mr. Bartolomeo voted in the negative and stated that a second street sign doesn't meet the criteria. Ms. Hale voted in the negative and stated that the sign ordinance is very clear as to what type of signage is to be permitted. Mr. Chalmers voted in the negative and stated that the applicant has been granted an incentive for the existing freestanding sign and they don't meet the requirements for a second sign. Mr. Colbath voted in the negative and stated there has been a lot of work done to this property and he commends the owners and they should stay with that. Ms. Sherman voted in the negative and stated that they should be minimizing the proliferation of signage instead of encouraging it. **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 adversely affect the public interest.** Mr. Bergeron read Public Interest from his memorandum. Mr. Bartolomeo voted in the negative and stated that there are a lot of properties that could come in for this variance. Ms. Hale voted in the negative and stated that she agrees with Mr. Bartolomeo. Mr. Chalmers voted in the negative and stated that he agrees with Mr. Bartolomeo. Mr. Colbath voted in the negative and stated that it would affect the public interest, as this lot has what is permitted. Ms. Sherman voted in the negative and stated that it is an attempt to proliferate the signage. **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.** Mr. Bergeron read Substantial Justice from his memorandum. Ms. Hale voted in the negative and stated justice of the public over ways the justice to the property owner. Mr. Bartolomeo voted in the negative and stated that it does not rise to the level of the standards. Mr. Chalmers voted in the negative and stated that it doesn't qualify. Mr. Colbath voted in the negative and stated that the substantial justice lies with the public. Ms. Sherman voted in the negative and stated that she agrees with Ms. Hale and Mr. Colbath. **Motion unanimously defeated.**

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Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.6 and 147.13.8.6.1 of the Town of Conway Zoning Ordinance be granted. Motion unanimously defeated.

A public hearing was opened at 10:10 p.m. to consider a **VARIANCE** requested by **MABEL POTTER HEIRS/TRAFFORDS RV** in regard to Article 147.13.16.4 of the Conway Zoning Ordinance to allow a reduction of the 50-foot wide buffer along the edge of a wetland at 1571 East Main Street, Center Conway (PID 260-48). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Maureen McGlone of H.E. Bergeron Engineers appeared before the Board. Mr. Chalmers stepped down at this time. Mr. Weathers was appointed a voting member. Ms. Sherman read the application and the application section of the ordinance. Ms. McGlone stated there is alleged filling of wetlands on this site and the owner of Trafford's is trying to mitigate and restore some wetland areas. Ms. McGlone stated that a retaining wall needs to be constructed around the wetland, which would encroach into the 50-foot wetland buffer. Ms. McGlone stated that the applicant is working with NHDES and the site will be graded so everything stays on the site. Ms. McGlone stated that the applicant would be improving the situation far beyond what is there today. Ms. McGlone stated the variance is for the retaining the wall, the building, the detention pond and the RV storage.

Mr. Weathers asked if there would be a 50-foot buffer on the west side. Ms. McGlone answered in the negative and stated everything is tapered into the site. Mr. Weathers stated that this is a win-win situation. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Hale, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. McGlone stated that this is making the site better and they are working through NHDES. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Hale, 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.** Mr. Irving stated that the proposed layout of operation is critical to the operation of the business. Mr. Colbath stated that the effort is commendable. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Hale, 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. Motion unanimously carried.

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Hale, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Mr. Irving stated it is evident that there would be an enhancement. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Hale, 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.** Mr. Irving stated with the mitigation effort this site is moving nearer to compliance. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Hale, that the granting of this variance will not be contrary the public interest. Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Weathers made a motion, seconded by Mr. Colbath, that by granting this variance, substantial justice would be done. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the variance from §147.13.16.4 of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 10:28 p.m. to consider a **VARIANCE** requested by **MAXINE GOLDMAN** in regard to Article 147.13.4.4 of the Conway Zoning Ordinance to permit the reduction of the side setback to 9.5 feet at 76 Patten Court, North Conway (PID 219-135). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on March 16, 2005.

Joe Difiore appeared before the Board. Mr. Weathers left and Mr. Chalmers rejoined the Board at this time. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Difiore read his memorandum. Mr. Irving stated the adjacent property has a wetland setback. Mr. Bartolomeo stated that the wetland setback is giving more protection than the side setback requirement. Mr. Irving agreed.

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. 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. 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. 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. Motion unanimously 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. 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 be contrary the public interest. 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. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.4.4 of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of February 23, 2005 as written. Motion unanimously carried.

Meeting adjourned at 10:44 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary