

ZONING BOARD OF ADJUSTMENT

MINUTES

APRIL 15, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 15, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Vice Chair, John Colbath; Andrew Chalmers; Jeanne Hale-DeWitt; Alternate, Cynthia Briggs; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Ms. Briggs as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **SETTLER'S R2, INC** in regard to §147.13.8.4 Conway Zoning Ordinance to allow the re-build of existing "F" building with roof overhang 16-feet from Settler's Green Drive right-of-way at 25 Settler's Green Drive, North Conway (PID 235-89). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, April 6, 2009.

James Rines of White Mountain Survey and Roger Williams, Project Manager, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Colbath stated there are only four members present and the applicant is entitled to a five member Board. Mr. Colbath asked if the applicant would like to proceed with four members or continue until there was a five member Board. Mr. Rines agreed to proceed with four members.

Mr. Rines stated that they plan on razing the existing Orvis Building and constructing a new building. Mr. Rines stated that there is an existing non-conformity as the back of the building is within the side setback and they would like to relocate the non-conforming square footage to be within the front setback. Mr. Rines stated that Settler's Green Drive is privately owned by Settler's Green. Mr. Rines stated that this would not injure the property rights of others as there is no increase of non conformity, the use is the same, it is within the intent and spirit of the ordinance as it is entirely within the Highway Commercial District and the adjacent uses are similar. Mr. Rines stated that the new non conformity is no greater than the existing non conformity.

Ms. Briggs stated the original non conformity was part of the hanger. Mr. Rines answered in the affirmative. Ms. Briggs stated that this was the original hanger and it was a selling point to the Planning Board that they were keeping the building, but now they are not; just a point.

Mr. Colbath asked for public comment; John Cohen owner of North Conway Grand Hotel stated that he is in opposition of this application. Mr. Cohen stated that it is not clear that there is any hardship or if there is one it is self created. Mr. Cohen stated that they are tripling the size of the

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building and they haven't provided any explanation on why the building cannot be smaller. Mr. Cohen stated that there does not appear to be any hardship or if there is it is of the applicant's own making. Mr. Cohen stated that the setback that is being corrected by this new encroachment is a less important setback as it is at the back of the building. Mr. Cohen stated that this is a busy intersection and site lines are important. Mr. Cohen stated the encroachment being created is not any better than the one being resolved. Mr. Cohen stated that the applicant is trying to point out that the area of encroachment is no greater than the original encroachment, but the degree of the new encroachment is greater. Mr. Cohen stated that this is a more visible encroachment.

Mr. Cohen stated that this building will be closest to the road out of all the buildings at the Settler's Green complex. Mr. Cohen stated that the road is 70-foot wide because it is a very busy intersection, and they should want to be more careful. Mr. Cohen stated that it does not appear to be anything unique about this property to justify granting the variance. Mr. Cohen stated that this side is similar to the south side of Settler's Green Drive and that site meets the setbacks. Mr. Cohen stated that the applicant has not demonstrated that it could be reconfigured to meet the setbacks.

Mr. Cohen stated that the variance runs against the spirit and intent of the ordinance. Mr. Cohen stated that it would appear the only benefit to the applicant is an economic one and that benefit does not out burden the public at a very busy intersection when there are alternatives by making changes to the building.

Mr. Rines stated in terms of the building area and size, the building could be closer to Route 16, so it is not an accurate comment that the building is too large. Mr. Rines stated that it cannot be compared to the Applebee's site [on the south side of Settler's Green Drive]. Mr. Rines stated to say that the existing encroachment is a less important violation than the new encroachment; the existing encroachment violates other properties where the new encroachment is a roadway and not as offensive.

Mr. Rines stated to say that there isn't anything unique about this property, there is a substantial amount of parking behind the building. Mr. Rines stated by making the building narrower, longer and closer to Route 16 would not provide adequate sight distance, to make the building narrower and closer to Route 16 would only exasperate the situation. Mr. Rines stated for those reasons we feel this is unique. Mr. Rines stated that the non conformity is less offensive and not self created. Mr. Rines stated they are trying to put a decent building away from Route 16.

Mr. Cohen asked who owns the property north of building F. Mr. Irving stated that it is the Rite Aid building. Mr. Rines answered Airport Square Liability. Ms. Briggs stated that she is not looking at the existing non conformity as the building does not have to be this size. Mr. Rines stated that they could narrow the building and bring it closer to Route 16. Ms. Briggs stated that she understood.

Ms. Hale-DeWitt read item 1.a. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Mr. Colbath asked for Board comment; Mr. Chalmers

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stated that the applicant can still use the building for retail without the variance. **Motion unanimously defeated.**

Ms. Hale-DeWitt read item 1.b. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, 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. Colbath asked for Board comment; Mr. Chalmers stated that the applicant could achieve their goals without the variance. **Motion unanimously defeated.**

Ms. Hale-DeWitt made a motion, seconded by M., 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. Mr. Colbath asked for Board comment; there was none. **Motion unanimously defeated.**

Ms. Hale-DeWitt read item 2. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Hale-DeWitt read item 3. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, 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. Colbath asked for Board comment; Ms. Briggs stated that it would be contrary to the spirit and intent of the ordinance as the setbacks were adopted for a reason and there is a safety issue at this corner. **Motion defeated with Ms. Briggs and Mr. Chalmers voting in the negative and Ms. Hale-DeWitt and Mr. Colbath voting in the affirmative.**

Ms. Hale-DeWitt read item 4. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, that the granting of this variance will not be contrary the public interest.** Mr. Colbath asked for Board comment; Ms. Briggs stated that this would be contrary to the public interest as the regulations are in place to enhance the Town and provide safe traffic patterns. Mr. Colbath stated that there is room for the building without the variance. **Motion defeated with Ms. Briggs, Mr. Chalmers and Mr. Colbath voting in the negative and Ms. Hale-DeWitt voting in the affirmative.**

Ms. Hale-DeWitt read item 5. **Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, that by granting this variance, substantial justice would be done.** Mr. Colbath asked for Board comment; Ms. Briggs stated the applicant has other options and denying the variance would not create an injustice. Ms. Hale-DeWitt stated she thinks it would be worse if the building moved closer to Route 16. **Motion defeated with Ms. Briggs, Mr. Chalmers and Mr. Colbath voting in the negative and Ms. Hale-DeWitt voting in the affirmative.**

Ms. Hale-DeWitt made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.8.4 of the Town of Conway Zoning Ordinance to allow the re-build of existing “F” building with roof overhang 16-feet from Settler’s Green

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Drive right-of-way be granted. Motion defeated with Ms. Briggs, Mr. Chalmers and Mr. Colbath voting in the negative and Ms. Hale-DeWitt voting in the affirmative.

A public hearing was opened at 7:55 pm to consider a **SPECIAL EXCEPTION** requested by **LEWIS L. WHITMAN** in regard to §147.13.16.10.7 Conway Zoning Ordinance to allow the construction of a driveway across a wetland and to consider a **VARIANCE** requested by **LEWIS L. WHITMAN** in regard to §147.13.16.3.1 Conway Zoning Ordinance to allow the construction of a residential dwelling within the Wetland and Watershed Protection Overlay District on Cranmore Circle, North Conway (PID 219-118). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, April 6, 2009.

Randall Cooper of Cooper Cargill Chant appeared before the Board. Mr. Colbath read both applications and the applicable sections of the ordinance. Mr. Colbath stated there are only four members present and the applicant is entitled to a five member Board. Mr. Colbath asked if the applicant would like to proceed with four members or continue until a five member Board is available. Mr. Cooper stated that he would proceed with four members.

Mr. Cooper reviewed the plan. Mr. Cooper stated that they are proposing a 1,184 square foot building and have kept within the 15 foot setback in respect to the abutters, but must encroach within the 75 foot wetland structure setback. Mr. Cooper stated that the 50 foot wetland buffer protects the filter bed. Mr. Cooper stated that they looked at the other homes in the area and this is a reasonably sized residence on a residential lot. Mr. Cooper stated that this is a relief valve variance. Mr. Cooper stated that they tried to minimize and balance the impact on the abutters. Mr. Chalmers asked how long they have owned this property. Mr. Cooper answered since 1978.

Ms. Brigg stated that the regulations have changed since then and water is a valuable resource. Mr. Cooper stated unless the Town is prepared to purchase the lot this is a constitutional relief when regulations eliminate the use of land. Mr. Colbath asked if the lot has been used at all. Mr. Cooper answered in the negative. Mr. Colbath asked how this lot has been taxed. Mr. Cooper answered residential.

Mr. Irving asked what the encroachment into the 50 foot buffer is. Mr. Cooper answered there is not one that he knows. Mr. Irving asked if there would be any parking within the buffer. Mr. Cooper answered in the negative. Mr. Irving stated that is what is being represented. Mr. Cooper stated he wasn't quite sure if the lower wetland was protected by the district. Mr. Irving stated that it does not show up as a statutory wetland, unless the wetland scientist found that it did meet our criteria. Mr. Cooper stated that he thought it was a part of the Kearsarge Mill Brook watershed. Mr. Irving stated that a variance may be needed to allow parking in the buffer.

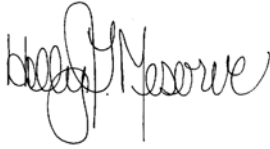
After a brief discussion regarding the two maps submitted by the applicant and finding discrepancies between the two, Mr. Irving suggested continuing the hearings so the applicant could reconcile the two plans. **Ms. Briggs made a motion, seconded by Ms. Hale-DeWitt, to continue both hearings for Lewis Whitman until May 20th, 2009 at 7:30 pm. Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of March 18, 2009 should be amended as follows: page 1, third paragraph, line 6 should read, "...not have residential ~~codes~~ inspections. Mr. Packard...". **Ms. Hale-DeWitt made a motion, seconded by Mr. Chalmers, to approve the Minutes of March 18, 2009 as amended. Motion unanimously carried.**

Meeting adjourned at 8:40 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Planning Assistant