

ZONING BOARD OF ADJUSTMENT

MINUTES

MAY 19, 2010

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, May 19, 2010 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Dana Hysten; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Ms. Sherman appointed Ms. Tobin as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:35 pm to consider a **VARIANCE** requested by **REBECCA BISHOP** in regard to §147.13.8.4 of the Conway Zoning Ordinance **to allow an open carport within the side setback** at 12 North Road, Conway (PID 277-286). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2010.

Rebecca Bishop appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked what the encroachment to the property line is. Seth Winslow, builder, stated that it will be two-feet from the property line. Mr. Winslow stated there is a 20-foot buffer to the next structure on the property next door.

Mr. Colbath asked if it could go behind the house. Ms. Bishop answered in the negative. Mr. Winslow stated that Todd's automotive is on the right side of the building and he parks cars in front of his building. Mr. Irving stated the property hosts two commercial businesses and a single family house. Ms. Bishop stated she would like to be able to get from the car to the house without getting in the elements.

Ms. Sherman asked if they could still get to the back of the house via the commercial entrance. Ms. Bishop answered in the affirmative. Mr. Winslow stated that the roof line would be continued on the side of the house. Mr. Winslow stated behind the house is her living room and would create a freestanding structure.

Ms. Sherman asked how much snow from the roof will go onto the abutter's property. Ms. Bishop stated it depends on how much snow they get. Mr. Winslow stated there is ground cover in that area, so nothing will be crushed. Ms. Bishop stated it will not affect his house and the neighbor does not have an issue with this. Mr. Winslow stated that the driveway is within the setback.

Ms. Sherman asked for public comment; there was none. Mr. Chalmers stated that there is a substantial amount of space on the other side of the house. Ms. Sherman stated that that is the commercial side. Mr. Winslow stated that you would have to drive through the carport to get to the commercial businesses.

Mr. Hysten stated he is at Todd's almost on a daily basis and there is no possible way that could go on the other side of the house; it is not as wide as it looks. Mr. Colbath asked Mr. Hysten if it

is because of the space or the commercial activity. Mr. Hylen answered both. Mr. Irving stated to be on the commercial side would probably cause problems for the fire department.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** 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. Tobin, that the spirit of the ordinance is observed.** 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. Tobin, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Tobin, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath made a motion, seconded by Ms. Tobin, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.8.4 of the Town of Conway Zoning Ordinance to allow an open carport within the side setback be granted. **Motion unanimously carried.**

A public hearing was opened at 7:50 pm to consider a **VARIANCE** requested by **JGF PROPERTY MANAGEMENT, LLC** in regard to §147.14.3.2 and §147.14.3.3 of the Conway Zoning Ordinance **to increase a grandfathered sign from 50.48 square to 51.63 square feet** at 1561 White Mountain Highway, North Conway (PID 246-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2010.

Luigi Bartolomeo and Brian Eling appeared before the Board. Ms. Sherman read the application and the applicable sections of the ordinance. Mr. Bartolomeo stated that this is a 1.23 %

Adopted: June 16, 2010 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MAY 19, 2010

increase. Mr. Bartolomeo stated these are stock signs and this is as close as they could come to meeting the ordinance in Conway. Mr. Bartolomeo stated given the cost of a custom sign it would cost many times more than a sign off the shelf. Ms. Sherman stated this is a grandfathered sign that is already 10 square feet over the limit. Mr. Bartolomeo agreed.

Ms. Sherman asked Mr. Bartolomeo if he was here for the Burger King sign. Mr. Bartolomeo stated he doesn't think so. Mr. Bartolomeo stated that the sign used to be 100 square feet of internally lit but was reduced to 60 square feet internally lit; and he is not sure what happened between then and now to become what it is now.

Mr. Chalmers asked if this sign is totally a stock sign with no custom components at all. Mr. Bartolomeo answered in the affirmative. Mr. Colbath asked if the stock sign is fully internally lit. Mr. Bartolomeo answered in the affirmative. Mr. Chalmers asked what the next size down is. Mr. Eling stated they only have one other option and they would lose 9 square feet of signage to go down to the next size. Mr. Eling stated the increase is approximately an inch and a half around the entire sign. Mr. Eling stated that the sign will not look like a bigger sign on the strip.

Ms. Sherman asked for public comment; there was none. Ms. Sherman stated she cannot see granting any sign that increases the non-conformity. Mr. Hylen asked if this sign will be taller than the existing sign. Mr. Eling answered in the negative. Mr. Eling stated the sign is actually reduced as the oval has to be measured by putting a box around it, so the way it is measured it appears to be larger. Ms. Sherman stated that every sign is measured the same way. Mr. Irving stated the drawing shows three pieces, but one of the gaps will have to be eliminated so that there is a sign and one appendage. Mr. Eling stated that he is aware of that.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Sherman voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Ms. Sherman stated that the spirit of the ordinance is to reduce grandfathered signs to the square footage that is allowed. **Motion defeated with Mr. Chalmers and Mr. Colbath voting in the affirmative and Mr. Hylen, Ms. Tobin and Ms. Sherman voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Chalmers, Mr. Colbath and Ms. Tobin voting in the affirmative and Mr. Hylen and Ms. Sherman voting in the negative.**

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

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that no fair and substantial relationship exists between the general public purposes of the**

ordinance provision and the specific application of that provision to the property. Ms. Sherman asked for Board comment; Mr. Chalmers stated that the property could still be a viable commercial property. Mr. Colbath stated that this property does not have distinguishing features. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Sherman voting in the negative.**

Mr. Colbath made a motion, seconded by Mr. Hylen, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Chalmers voting in the affirmative and Mr. Colbath, Mr. Hylen, Ms. Tobin and Ms. Sherman voting in the negative.**

Ms. Sherman read item 5.a. **Mr. Colbath made a motion, seconded by Mr. Hylen, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Ms. Sherman stated this property does not have any distinguishable features from other properties and can be used as it was designed. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.14.3.2 and §147.13.3.3 of the Town of Conway Zoning Ordinance to increase a grandfathered sign from 50.48 square feet to 51.63 square feet be granted. Motion unanimously defeated.

A public hearing was opened at 8:13 pm to consider a **VARIANCE** requested by **JGF PROPERTY MANAGEMENT, LLC** in regard to §147.14.3.2, §147.14.3.3 and §147.13.8.6.10.1 of the Conway Zoning Ordinance **to increase the portion of the sign that is internally lit** at 1561 White Mountain Highway, North Conway (PID 246-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 7, 2010.

Luigi Bartolomeo and Brian Eling appeared before the Board. Ms. Sherman read the application and the applicable sections of the ordinance.

Mr. Bartolomeo stated he wrote an article in 2006 regarding internally lit signs and glare. Ms. Sherman stated at the time the ordinance was drafted the level of technology was so bad, but technology has changed. Ms. Bartolomeo stated there are better options now. Mr. Bartolomeo stated at the time of the article Mr. Irving wished he had the money for a sign study; the seeds have been planted, maybe we need to start reevaluating.

Adopted: June 16, 2010 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MAY 19, 2010

Mr. Irving asked the level of illumination of the proposed sign. Mr. Eling stated he did not know, but they just replaced the sign at the Glen Dairy Queen and even at twilight you cannot tell the sign is on, it has to be dark. Mr. Irving stated no matter how this turns out he would like those numbers for comparison. Ms. Sherman stated that she would agree that the technology has improved, but the Board has to go by the ordinance. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Ms. Sherman stated that the ordinance is very specific that internally lit signs are not allowed and this is a grandfathered sign with some internal lighting, but not all of it. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the spirit of the ordinance does not allow internally lit signs or allow signs to become more non-conforming. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated that the justice here is going with the public and staying with the ordinance. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Hysten voting in the negative.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Tobin, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; Mr. Colbath stated there is general need to fix the ordinance, but the Board cannot do that now. **Motion unanimously carried.**

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

Mr. Colbath made a motion, seconded by Ms. Tobin, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

Ms. Sherman read item 5.a. **Mr. Colbath made a motion, seconded by Ms. Tobin, that if the criteria in subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance**

Adopted: June 16, 2010 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – MAY 19, 2010

with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.14.3.2, §147.14.3.3 and §147.13.8.6.10.1 of the Town of Conway Zoning Ordinance to increase the portion of the sign that is internally lit be granted. Motion unanimously defeated.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Tobin made a motion, seconded by Mr. Hylen, to approve the Minutes of April 21, 2010 as written. Motion unanimously carried.

OTHER BUSINESS

Route 112 Realty, LLC (PID 264-35) – Motion for Rehearing (File #10-18): The Board agreed there was no new information nor was there any technical error. **Mr. Chalmers made a motion, seconded by Ms. Tobin, to grant the Motion for Rehearing requested by Route 112 Realty, LLC. Motion unanimously defeated.**

Meeting adjourned at 8:40 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant