

ZONING BOARD OF ADJUSTMENT

MINUTES

JULY 23, 2008

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 23, 2008 at the Conway Town Office in Center Conway, NH, beginning at 7:37 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Jeana Hale-DeWitt; Sheila Duane; Alternate, Cynthia Briggs; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

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

PUBLIC HEARINGS

A public hearing was opened at 7:37 pm to consider a **VARIANCE** requested by **SIDNEY DEWITT** in regard to §147.13.14.3.1 of the Conway Zoning Ordinance **to allow a 12' x 20' shed within the Floodplain Conservation Overlay District** at 334 Eaton Road, Conway (PID 276-96). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008. This hearing was continued from June 25, 2008.

Sidney DeWitt appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. DeWitt stated that they need more room, especially for wood. Ms. Briggs stated that it appears there is enough space out of the floodplain for a shed. Ms. Duane asked if there are any other locations to locate the shed. Mr. DeWitt stated not very conveniently. Mr. Irving stated on both ends of the house there are expansions so there is not a practical location out of the floodplain to place the shed.

Ms. Briggs asked if the floodplain is controlled by a dam. Mr. Irving stated if there is a 100-year flood, then the dam is not doing anything. Ms. Sherman asked David Pandora, who was in the audience, if this is the least intrusive location. Mr. Pandora stated that he has been to the site several times and it is the least intrusive location. Ms. Briggs stated that the purpose for keeping the floodplain clear is to not flood someone else if a flood does occur. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, 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 Ms. Duane, 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 carried with Ms. Briggs voting in the negative and stating the purpose of the ordinance is to keep structures out of the water in case in floods.**

Adopted: August 27, 2008 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Ms. Duane, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Mr. Colbath made a motion, seconded by Ms. Duane, 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 Ms. Duane, 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 carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Mr. Colbath made a motion, seconded by Ms. Hale, that, based on the forgoing findings of fact, the variance from §147.13.14.3.1 of the Town of Conway Zoning Ordinance to allow a 12' x 20' shed within the Floodplain Conservation Overlay District be granted. Motion carried with Ms. Briggs voting in the negative.

A public hearing was opened at 7:54 pm to consider a **VARIANCE** requested by **SIDNEY DEWITT** in regard to §147.13.16.3.1 and §147.13.16.4 of the Conway Zoning Ordinance **to allow a 12' x 20' shed within the Wetland and Watershed Protection Overlay District** at 334 Eaton Road, Conway (PID 276-96). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, June 18, 2008. This hearing was continued from June 25, 2008.

Sidney DeWitt appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, that the zoning restriction as applied interferes with a landowner's reasonable use of the property,**

Adopted: August 27, 2008 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

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 Ms. Hale, 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 carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Ms. Hale, that the variance would not injure the public or private property rights of others.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Mr. Colbath made a motion, seconded by Ms. Hale, 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 carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, 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 carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of this variance will not adversely affect the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Ms. Briggs voting in the negative.**

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.14.3.1 of the Town of Conway Zoning Ordinance to allow a 12' x 20' shed within the Wetland and Watershed Protection Overlay District be granted. Motion carried with Ms. Briggs voting in the negative.

A public hearing was opened at 7:57 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 wetland buffer** off East Conway Road, Conway (PID 243-12). Notice was published in the Conway Daily Sun and

Adopted: August 27, 2008 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

certified notices were mailed to abutters on Wednesday, June 18, 2008. This hearing was continued from June 25, 2008.

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman stated that the abutter, Sharon Johnston, had asked at the last meeting time to research if there was another right-of-way. Mr. Burnell stated that they had to eliminate the abutter's driveway accessing the proposed road and the State required there to be at least 50-feet between the proposed road and the abutter's driveway. Mr. Burnell stated moving the road and eliminating the driveway connection has less of an impact on the wetland.

Randy Cooper of Cooper Cargill Chant representing Sharon Johnston stated that she wanted them to take her land and give her another piece of land, but the developer would not agree to that so they moved the road. Mr. Cooper stated that this is a self created hard ship. Mr. Cooper stated that this piece of land was originally a part of a larger subdivision that got into financial hardship and became a separate piece of land. Mr. Cooper stated when Ms. Johnston bought her land she thought she was getting a nice wooded lot behind her.

Mr. Cooper submitted copies of an 8-lot subdivision by Harold and Cynthia Gilmore approved by the Planning Board on January 29, 2004 and a 6-lot subdivision by Harold and Cynthia Gilmore approved by the Planning Board on September 9, 2004. Mr. Cooper stated in 2004 Harold and Cynthia Gilmore subdivided land on Southview Loop and they retained a right-of-way to serve this particular lot. Mr. Cooper stated then the Planning Board eliminated that right-of-way and there was no objection by the owner of this property. Mr. Cooper stated that this lot was created by the Shaw's due to difficulties of their own and then discarding the right-of-way eliminated by the Planning Board without any objection; the applicant should be forced to negotiate with his client.

Ms. Sherman stated it was a requirement of the Planning Board for the original subdivision proposed by the Shaw's to have a second access onto East Conway Road. Mr. Cooper stated that the secondary access is becoming a primary access. Ms. Sherman stated that this has been before the ZBA before, but she cannot remember why. Mr. Cooper stated during the Planning Board process in 2004 Whitaker/Fadden never objected to releasing the right-of-way. Mr. Burnell stated that Sharon Johnston was a part of this process from the get go and there was a State driveway permit still in effect when she purchased her property.

Mr. Burnell stated under the Gilmore Subdivision, there was never a legal right-of-way and it was asked that a corridor be reserved. Mr. Burnell stated during the second application, the Planning Board asked that it be removed. Mr. Burnell stated that it was all done on paper and there was never any legal right-of-way. Mr. Burnell stated despite the reserved access being eliminated, the applicant explored accessing Southview Loop Road and there was no one willing to negotiate.

Mr. Burnell stated that there have been many hours and offers and Ms. Johnston kept upping the ante. Mr. Burnell stated that Ms. Johnston didn't want to be connected to this road. Mr. Burnell stated that the applicant has been trying and they had easements and protective covenants in

Adopted: August 27, 2008 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

place and she rejected everything. Ms. Sherman asked if this is the same location as the original proposed loop road. Mr. Burnell answered in the affirmative.

Mr. Colbath asked if this is currently a logging road. Mr. Burnell answered in the affirmative. Mr. Cooper stated that his client didn't object to the temporary road, but objects to a permanent road. Ms. Hale asked if this road has less impact on the wetland now than what was proposed previously. Mr. Burnell stated that the driveway connection had more of an impact on the wetland, so this proposal has less of an impact on the wetland.

Mr. Cooper stated if her driveway was within a certain distance of the road, the applicant would have needed her approval, so they moved it so they wouldn't need her consent. Mr. Cooper stated the applicant could deal with her. Mr. Burnell stated that at some point it became unreasonable. Ms. Briggs stated that this layout has no standing with the NHDOT and the NHDES. Mr. Cooper agreed, but she does have standing as an abutter. Ms. Duane asked if there was an easement to the Southview Loop Subdivision. Mr. Cooper stated that there was never a deeded right-of-way to Southview Loop and then the Planning Board eliminated it.

Mr. Colbath asked if the abutter is saying there is a better feasible alternative. Mr. Cooper stated they could not find another deeded right-of-way, but someone cannot create their own hardship by creating the only entrance to cross over a wetland and not have another feasible way of accessing their land. Mr. Colbath asked does the abutter have a better feasible alternative. Mr. Cooper stated that applicant could purchase her property or trade with her for another lot. Mr. Cooper stated the need to access the land over a wetland is self created.

Ms. Hale-DeWitt stated the abutter created her own hardship when she thought it was a nice piece of land behind her, when the subdivision was on record. Mr. Cooper stated that it was dead. Mr. Colbath stated nothing is dead, even the abutter is saying, buy me out. Ms. Sherman stated at one point in time that access on the East Conway Road was a part of the road system. Mr. Cooper stated the Town adopted a wetland ordinance in the meantime.

Mr. Colbath stated that he could be empathetic, but all this Board is dealing with is the wetland issue. Ms. Sherman asked for public comment; there was none. Ms. Briggs stated the only reason the Board continued the hearing for a month was to allow Ms. Johnston the time to find another access. Mr. Cooper stated that they appreciate the opportunity to research it.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, 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. Duane, 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. Duane, that there is no better feasible alternative, in keeping with State and Federal standards for the issuance**

**Adopted: August 27, 2008 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008**

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 Ms. Duane, that item 4 is not applicable to this application.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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

A public hearing was opened at 8:32 pm to consider a **SPECIAL EXCEPTION** requested by **JAMES HILL, JR** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 1467 Brownfield Road, Center Conway (PID 283-25). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 16, 2008.

David Pandora appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Pandora stated that a State septic design has been approved and there is plenty of parking on site. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Duane, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Duane, that the subject property has a New Hampshire Department of Environmental Services septic permit for construction for sewerage or waste disposal system.** 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. Duane, that the apartment is architecturally compatibility with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Adopted: August 27, 2008 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Briggs, that an Accessory Apartment Application was submitted for the ZBA review.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Motion unanimously carried.

A public hearing was opened at 8:38 pm to consider a **VARIANCE** requested by **SC LOOKOUT, LLC/CLARK'S** in regard to §147.13.8.6.2 of the Conway Zoning Ordinance **to allow a second wall sign** at 1498 White Mountain Highway, Center Conway (PID 246-20.001). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 16, 2008.

Dot Seybold of OVP Management appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Seybold stated that the goal is to move traffic from one side to another without going back onto Route 16. Ms. Seybold stated that the location of the proposed second sign is the only visible entrance from the Irving site. Ms. Seybold stated that the goal is to keep traffic off Route 16 and moving. Ms. Seybold stated that they are proposing a 20 square foot sign. Mr. Colbath asked what size is the existing sign. Ms. Seybold answered approximately 23 square feet. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Duane, 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 Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary**

Adopted: August 27, 2008 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

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 Ms. Duane, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, 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 Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2 of the Town of Conway Zoning Ordinance to allow a second wall sign to be 20 square feet be granted. Motion unanimously carried.

A public hearing was opened at 8:48 pm to consider a **VARIANCE** requested by **FRAM DONUTS, INC** in regard to §147.12 of the Conway Zoning Ordinance to relocate the existing overhead utility service and replace it with a three-phase service which increases the number of lines from one to four at 402 West Main Street, Conway (PID 277-287). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 16, 2008.

Josh McAllister and Dough Burnell of HE Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. McAllister stated there is currently a residential overhead service and utility pole that the applicant would like to remove and install a new pole with a three-phase service. Mr. McAllister stated that they would bring the utilities overhead to the property and then run it underground from the pole. Mr. McAllister stated that they are replacing one location of service with another location of service. Ms. Sherman asked for Town opinion. Mr. Irving stated that it is an expansion of non-conformity.

Ms. Duane stated the road would probably have to be upgraded. Mr. Burnell stated that the intersection has been upgraded and is much wider than the rest of the road. Mr. McAllister stated in conversations with the State there has been no indication of upgrades to the road. Mr. McAllister stated they are in the process of reviewing the application with the NHDOT and there has not been a conversation to upgrade the road. Ms. Duane stated there is definitely an increase of loading to that intersection and she would think the NHDOT would require something as it cannot remain as it is. Ms. Duane stated that this may be premature.

Ms. Duane suggested continuing the public hearing to get more information from the NHDOT and the Town Engineer regarding any possible road upgrades. Mr. Burnell stated that the Town section doesn't start until after the railroad tracks. Mr. Irving stated it would still be a good idea to obtain Town Engineer comments as well.

Adopted: August 27, 2008 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

Mr. Colbath made a motion, seconded by Ms. Duane, to continue the Variance requested by Fram Donuts, Inc in regard to §147.12 until August 27, 2008 at 7:30 pm. Motion unanimously carried.

A public hearing was opened at 8:58 pm to consider a **VARIANCE** requested by **FRAM DONUTS, INC** in regard to §147.13.8.13.2 of the Conway Zoning Ordinance to allow a drive-up window with remote outdoor speakers, interactive signs and menu board within 300-feet of an abutting residential property at 402 West Main Street, Conway (PID 277-287). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 16, 2008.

Josh McAllister and Doug Burnell of HE Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. McAllister stated that this property does not support 600-feet. Mr. McAllister stated that they have maintained 125-feet to the property line and 250-feet to the building on the residential property. Mr. McAllister stated that it is all wooded between the menu board and the residential home. Mr. McAllister stated that the speaker box would probably pale in comparison to the Route 16 traffic noise. Ms. Briggs stated anything can take place on the abutter's property and cannot guarantee the trees will remain.

Ms. Hale asked if there were any other feasible locations on the lot for the speaker box. Mr. McAllister stated that this is the most efficient layout for the property in their opinion. Mr. Colbath stated that it is too close, but he is amazed that no abutters attended the meeting. Mr. Irving stated if this particular property had touched the Floodplain Conservation District the Planning Board could have reduced the setback. Ms. Duane stated that this site was approved as a car wash, which would have been more intrusive.

Mr. Irving stated the Board could require the applicant to submit a plan that demonstrates no sound would be leaving the property or have the plan done by a Sound Engineer that this would not create sound leaving the property. After a lengthy discussion, the Board agreed to a 6' x 75' solid fence at the edge of the proposed tree line centered to the call box. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Duane, that an area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Ms. Duane, that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that based on the findings of a and b above, denial of the variance would result in unnecessary hardship to the property owner

Adopted: August 27, 2008 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

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 Ms. Duane, 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 Ms. Duane, that the use contemplated by the petitioner as a result of obtaining this variance would not be contrary to the spirit and intent of the ordinance.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Duane, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Duane, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Irving asked if the Board wanted to restrict the hours of operation. After a brief discussion the Board agreed that they could operate before 9 am and after 5 pm and that they did not want to restrict the hours of operation.

Mr. Colbath made a motion, seconded by Ms. Duane, that, based on the forgoing findings of fact, the variance from §147.13.8.13.2 of the Town of Conway Zoning Ordinance to allow a drive-up window with remote outdoor speakers, interactive signs and menu board within 300-feet of an abutting residential property be granted with the condition that a 6' x 75' solid fence at the edge of the proposed tree line centered on the call box be installed. Motion unanimously carried.

A public hearing was opened at 9:42 pm to consider a **VARIANCE** requested by **MT. CRANMORE SKI RESORT, INC** in regard to §147.16 of the Conway Zoning Ordinance to allow an outdoor amusement, a Mountain Coaster Ride, in the Recreational Resort, Mountain Conservation and Special Highway Corridor Overlay Districts at 239 Skimobile Road, North Conway (PID 214-84). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, July 16, 2008.

Ben Wilcox of Mt. Cranmore Ski Resort, Inc appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Wilcox stated that they wanted to get summer going again at the Mountain as it is really important to establish year round activities that make them more viable. Mr. Wilcox stated that this would be a year round activity and is constructed specifically for ski areas. Mr. Wilcox stated that a lift brings you up and gravity

Adopted: August 27, 2008 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JULY 23, 2008

brings you down; very similar to skiing. Mr. Wilcox asked if the Board would consider the Mountain Coaster Ride as accessory to the existing use rather than a variance.

Ms. Duane made a motion, seconded by Mr. Colbath, for a finding of fact that the Mountain Coaster Ride is accessory to the existing use. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.** Mr. Wilcox withdrew the variance request.

Mr. Irving stated that he had suggested Mr. Wilcox ask the Board to consider this as accessory as a ski lift is an outdoor amusement and there are provisions within the ordinance that allows a lawful non-conforming use to expand. Ms. Duane stated that this use falls within an accessory use as they use to have an alpine slide.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Ms. Briggs, to approve the Minutes of June 25, 2008 as written. Motion carried with Ms. Hale and Mr. Colbath abstaining from voting.

Meeting adjourned at 10:00 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant