

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

APRIL 27, 2005

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, April 27, 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; Alternate, David Weathers, Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

NOMINATIONS

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to nominate Ms. Sherman as Chair. Motion unanimously carried.

Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, to nominate Mr. Colbath as Vice Chair. Motion unanimously carried.

PUBLIC HEARINGS

A public hearing was opened at 7:33 p.m. to consider a **SPECIAL EXCEPTION** requested by **AL HOSPERS AND ALYSSA FRANK** in regard to Article 147.13.1.2.4.2 of the Conway Zoning Ordinance to allow an accessory apartment at 92 Bow Lane, North Conway, NH (PID 216-36). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 20, 2005.

Al Hospers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Bartolomeo asked how old is the apartment. Mr. Hospers answered three years. Mr. Bartolomeo stated there is a regulation that requires an apartment to be 500 square feet. Mr. Irving stated that that requirement is for the conversion of older homes into four units, however, the accessory apartment definition requires at least 300 square feet.

Ms. Sherman asked if it is architecturally compatible with the neighborhood. Mr. Hospers submitted a photograph of the existing structure. Mr. Bartolomeo asked if there is enough room to park four cars. Mr. Hospers answered in the affirmative. Mr. Hospers stated that the apartment is also fully handicap accessible. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the apartment is accessory to an owner-occupied single-family dwelling. Motion unanimously carried.**

Adopted: May 25, 2005 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the apartment is no less than 300 square feet and no greater than 800 square feet and as noted in testimony it is 348 square feet. Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the subject parcel has been issued a permit for construction for a waste disposal system. Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the apartment is architecturally compatible with the neighborhood. Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Weathers, that sufficient parking is located on site. Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Weathers, that an accessory apartment application was submitted for the ZBA review. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Weathers, that, based on the foregoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 7:45 p.m. to consider a **VARIANCE** requested by **MICHAEL AND KAREN MURRAY** in regard to Article 147.15.2 of the Conway Zoning Ordinance to allow an accessory apartment to be greater than 800 square feet at 119 Depot Road, North Conway (PID 219-218). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, April 20, 2005.

Karen Murray and Michael Murray, Sr. appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Murray stated there is an existing foundation from an old school that they would like to use. Mr. Bartolomeo asked if the building burnt. Mr. Colbath answered in the affirmative. Mr. Bartolomeo stated that the intention of limiting the size of the apartment was to try to regulate monthly cost for wage earners. Mr. Bartolomeo stated, however, it makes sense to use an existing foundation. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Weathers, 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. Murray stated they would like to use the existing foundation. Mr. Bartolomeo stated that the existing foundation is the basis for the entire application. Mr. Colbath stated they have sizable acreage, too. **Motion unanimously carried.**

Adopted: May 25, 2005 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property.** Ms. Sherman stated that the limitation on the size was to keep the cost down to renters. Mr. Bartolomeo stated that is the intent, but the existing condition trumps everything. Mr. Bartolomeo stated that it is a wise move to use the existing foundation. **Motion unanimously carried.**

Ms. Sherman read item 1.c. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the variance would not injure the public or private property rights of others.** Mr. Bartolomeo stated there have been no objections from the abutters. Mr. Colbath stated there was an existing building that had a commercial use. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the findings of a, b, and c above, denial of the variance would result in unnecessary hardship to the property owner seeking it. Motion unanimously carried.

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Weathers, that there would not be a diminution in value of surrounding properties as a result of granting this variance.** Ms. Sherman stated there has not been any big outcry regarding this application. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Weathers, 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. Weathers, that the granting of this variance will not adversely affect the public interest. Motion unanimously carried.**

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

Mr. Colbath made a motion, seconded by Mr. Weathers, that, based on the forgoing findings of fact, the variance from §147.15.2 of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 8:02 p.m. to consider a **SPECIAL EXCEPTION** requested by **MICHAEL AND KAREN MURRAY** in regard to Article 147.13.1.2.4.2 of the Conway Zoning Ordinance to allow an accessory apartment at 119 Depot Road, North Conway (PID 219-218). Notice was published in the Conway Daily Sun and certified notices were mailed on Wednesday, April 20, 2005.

**Adopted: May 25, 2005 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005**

Karen Murray and Michael Murray, Sr. appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the apartment is accessory to an owner-occupied single-family dwelling. Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the apartment will be 960 square feet as allowed by a variance. Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the subject parcel is serviced by precinct water and has been issued a permit for construction for a waste disposal system. Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Weathers, that the apartment is architecturally compatible with the neighborhood. Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Weathers, that sufficient parking is located on site. Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Mr. Weathers, that an accessory apartment application was submitted for the ZBA review. Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Weathers, that, based on the foregoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 8:14 p.m. to consider a **VARIANCE** requested by **RIVER RUN COMPANY/LOBSTER TRAP RESTAURANT** in regard to Article 147.13.7.6.1 of the Conway Zoning Ordinance to allow a second freestanding sign (1'x4') at 2680 White Mountain Highway, North Conway (PID 218-42). Notice was published in the Conway Daily Sun and certified notices were mailed on Wednesday, April 20, 2005.

Sheila Duane appeared before the Board. Ms. Duane stated there are some mature growth trees that would block a wall sign plus it is difficult to attach a sign to the brick. Ms. Duane stated there was a sign that had been applied to the brick with glue, but it did not hold up very well. Mr. Chalmers stated that his concern is with the other businesses in the area wanting the same. Mr. Colbath stated that it can be confusing and this sign is intended for pedestrians.

Adopted: May 25, 2005 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005

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. Motion unanimously carried.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on this property. Motion unanimously carried.**

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

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

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 adversely affect 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 foregoing findings of fact, the variance from §147.13.7.6.1 of the Town of Conway Zoning Ordinance be granted. Motion unanimously carried.

A public hearing was opened at 8:31 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **RIVER RUN COMPANY** in regard to Article 147.13.7.6.2 of the Conway Zoning Ordinance to allow a 12-square foot roof sign at 2686 White Mountain Highway, North Conway (PID 218-43). Notice was published

Adopted: May 25, 2005 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005

in the Conway Daily Sun and certified notices were mailed on Wednesday, April 20, 2005. Ms Duane withdrew the Appeal from Administrative Decision application.

A public hearing was opened at 8:32 p.m. to consider a **VARIANCE** requested by **RIVER RUN COMPANY** in regard to Article 147.13.7.6.2 of the Conway Zoning Ordinance to allow a 12-square foot roof sign at 2686 White Mountain Highway, North Conway (PID 218-43). Notice was published in the Conway Daily Sun and certified notices were mailed on Wednesday, April 20, 2005.

Ms. Duane stated that this space became the victim of building codes for proper egress for lower level and upper level units. Ms. Duane stated people think the door the sign is on is the door to the store; however, the door is always locked from the outside, as it is a fire escape. Ms. Duane stated that this space is the only space that does not have a roof sign. Mr. Colbath asked if the intent is to remove the sign on the door and put it on the roof. Ms. Duane answered in the affirmative. Mr. Bartolomeo stated a special condition does exist.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.** Ms. Sherman stated that she doesn't think the location on the roof is going to make it any clearer then it is now. **Motion carried with Ms. Sherman voting in the negative.**

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. Bartolomeo stated that the ordinance does not deal with this type of condition. Ms. Sherman stated that the restriction that exists is the fact that there is no allowance for roof signs and she doesn't think a roof sign will naturally solve the problem. **Motion carried with Ms. Sherman voting in the negative.**

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. Chalmers stated if the Town wanted roof signs they would be permitted. Ms. Duane stated that the master plan addresses changes to the sign ordinance, but the Planning Board hasn't changed the regulations yet. Mr. Colbath stated that adding a roof sign where there are four other roof signs is not injurious.

Mr. Weathers answered in the negative and stated that it is going to be more confusing. Mr. Chalmers stated that this is a slippery slope and adding a roof sign will not make it any clearer on how to get into this space. Ms. Sherman stated that she doesn't feel that item 1.a. has been restricted or that they have met item 1.b., therefore, item 1.c. is moot.

Ms. Sherman stated she doesn't believe granting the variance would alleviate the confusion of the location of the access. Ms. Duane stated this space does not have an

Adopted: May 25, 2005 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005

exterior wall due to adherence to the fire codes. Ms. Duane stated that the applicant is asking for a sign the same as the other roof signs. Ms. Sherman stated essentially all of the entrances for those signs are through the double doors. Ms. Duane agreed. **Motion carried with Mr. Chalmers and Mr. Weathers voting in the negative.**

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 defeated with Mr. Weathers, Mr. Chalmers and Ms. Sherman voting in the negative. There was discussion on how the three-part test could pass, but fail in the summary motion. Mr. Irving stated that the summary is not part of the court appointed criteria's, therefore; the Board has the option of not making that motion. **Mr. Colbath withdrew his motion. Mr. Chalmers withdrew his second. Motion unanimously carried to withdraw the motion.**

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. Chalmers stated there would be a diminution to surrounding properties if they are not granted the same variance. Mr. Weathers agreed. Mr. Colbath stated that he does not think it will and there are no abutters in attendance. Mr. Bartolomeo stated that the surrounding properties are not close, plus this building already has four roof signs. **Motion carried with Mr. Chalmers and Mr. Weathers 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. Bartolomeo stated that the ordinance allows for a wall sign and this tenant does not have a wall. Mr. Bartolomeo stated that logic is to look to the roof where roof signs already exist. Mr. Chalmers stated that the sign on the fire door seems to work. Mr. Chalmers stated that the public has said they don't want roof signs by not allowing them in the ordinance.

Ms Sherman stated that the ordinance does not address roof signs; therefore, by allowing them it would be contrary to the ordinance. Mr. Irving stated the spirit and intent of the ordinance is to provide for reasonable signage while at the same time protecting the community from obnoxious or proliferation of too much signage. Mr. Irving asked is allowing this 12 square foot sign in lieu of the wall sign contrary to the spirit and intent of the ordinance. Mr. Colbath stated that the intent is to allow special exceptions and variances, which relieves them from the restrictions.

Mr. Bartolomeo stated that the sign is identifying the business to the parking lot at large. Ms. Duane stated that this space does not have an exterior wall and the fire door must remain. Ms. Sherman stated the ordinance states walls signs should be on a wall common to the interior and exterior of the business. Mr. Bartolomeo stated that the intent is to identify a business. Ms. Sherman stated that this is contrary because the ordinance states that wall signs shall have a wall common to the interior and exterior of the business and this does not have a wall. Ms. Sherman asked how does one address that issue. Mr.

Adopted: May 25, 2005 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – APRIL 27, 2005

Irving stated that this is for a roof sign. Ms. Sherman stated that the roof sign is in place of a wall sign. Mr. Irving stated that this is the reason why they're seeking a variance. Mr. Weathers stated that it is expanding the square footage of roof signs, which are not even allowed by the ordinance. Mr. Irving asked how is a 12 square feet of roof signage contrary to reasonable signage. Mr. Chalmers agreed with Mr. Weathers. **Motion defeated with Mr. Weathers, Mr. Chalmers and Ms. Sherman voting in the negative.**

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. Chalmers stated that roof signs are not allowed by ordinance. **Motion carried with Mr. Chalmers and Mr. Weathers voting in the negative.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done.** Ms. Sherman stated that she is not swayed one way or the other. **Motion carried with Mr. Chalmers and Mr. Weathers voting in the negative.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on the foregoing findings of fact, the variance from §147.13.7.6.1 of the Town of Conway Zoning Ordinance be granted. Motion defeated with Mr. Chalmers, Mr. Weathers and Ms. Sherman voting in the negative.

Ms. Duane stated that the proposed sign is not what we want it's what works. Mr. Irving asked the Board if the reasons for denying the variance was because the applicant failed to satisfy item 3 as the Board found it would be contrary to the spirit and intent of the ordinance because the ordinance requires wall signs on a wall common to the interior of the business and the variance would result in expansion of roof signs that are not permitted by the ordinance. The Board agreed. Ms. Duane stated that the existing sign on the door is non-conforming; this would change one non-conforming to another.

MS. Sherman explained the appeal process.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of March 30, 2005 as written. Motion unanimously carried.

Meeting adjourned at 10:08 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary