

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

JULY 26, 2006

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, July 26, 2006 at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Jeana Hale; Alternate, Hud Kellogg; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **SANDRA KIDDER, ANDREW KIDDER AND WENDY DODD** in regard to §147.13.16.3.1 & 147.13.16.3.2.1 of the Conway Zoning Ordinance to allow an expansion of the existing footprint and replacement of the existing septic system with in the Wetland and Watershed Protection Overlay District at 2520 East Conway Road and 54 Garland Pit Road, Conway (PID 214-3.1 & 3.001). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006. This application was continued from June 28, 2006

The applicant withdrew the application.

A public hearing was opened at 7:35 p.m. in regard to a **SPECIAL EXCEPTION** requested by **DORIS D'ANGELIS** in regard to §147.13.4.2.4.1 of the Conway Zoning Ordinance to add a fourth unit with an approximate 400 square foot addition to an existing three-unit building at 22 Oak Street, North Conway (PID 219-6). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on July 19, 2006.

Doris D'Angelis appeared before the Board. Mr. Bartolomeo stepped down and Ms. Sherman appointed Mr. Kellogg as a voting member for this application. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if there would be an addition to the back of the existing building rather than going up. Ms. D'Angelis answered in the affirmative.

Ms. Sherman asked if the front part of the structure is over 50 years old. Ms. D'Angelis answered in the affirmative. Ms. Sherman asked if this would change the parking. Ms. D'Angelis stated that the driveway width would need to conform and the parking would need to be extended in the back a bit. Mr. Irving stated that he met Josh Brustin on the site and there would be sufficient parking on the property. Mr. Irving stated that it would be at the Planning Board level on how the parking would be laid out.

Ms. Sherman asked if there was an accessory structure. Ms. D'Angelis answered in the negative. Ms. Sherman asked for public comment; Andy Narducci stated there is another neighbor across

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the street, Jane Seavey, and himself who have issues regarding parking and greenspace. Ms. Sherman asked Mr. Narducci if he thinks there is adequate parking. Mr. Narducci stated that it is to be debated. Mr. Narducci stated that it would be required to have a site plan review and greenspace needs to be reviewed. Mr. Narducci stated there is another multi-unit building near his home that went through site plan and they are parking on the greenspace. Ms. D'Angelis stated that she certainly does not want them parking on her greenspace. Mr. Irving stated that the Town is taking enforcement action in regard to that other property and the Town is still holding bonding for that other property.

Mr. Colbath stated under the previous special exception for this site would a site plan review have been required. Mr. Irving answered in the affirmative, but the applicant has not submitted a Planning Board application to date as they decided to lay it out differently. Ms. Sherman asked what is the additional footprint. Mr. Irving answered approximately 200 square feet. Ms. Hale stated the plans indicate an 11'x 21' addition. Ms. Sherman asked for further public comment; there was none.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantially all of the structure is at least fifty (50) years old. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that the modification of the interior does not exceed four (4) units. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that no significant changes to the exterior lines or architectural detail are made, which would diminish the historical or architectural heritage of the structure. Ms. Sherman asked for Board comment; Mr. Chalmers asked if the addition would be similar to what exists. Ms. D'Angelis answered in the affirmative and stated it would be the same architecture. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that adequate area is available for parking and sewage disposal provided by the precinct. Ms. Sherman asked for Board comment; there was none. **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 §147.13.4.2.4.1 of the Town of Conway Zoning Ordinance to add a fourth unit with an approximate 400 square foot addition to the existing three-unit building be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 7:47 to consider a **VARIANCE** requested by **ELIAS BURR NYBERG** in regard to §147.13.1.3 of the Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage at 1515 Eaton Road, Conway (PID 291-3). Notice was published in the Conway Daily Sun and certified notices mailed to abutters on June 20, 2006. This application was continued from June 28, 2006.

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Ms. Hale stepped down. Mr. Bartolomeo and Mr. Kellogg became voting members. Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Smith stated one of the critical items was the NHDOT driveway permit, which the applicant has received. Ms. Sherman stated that NHDOT would not allow a separate curb cut for the proposed parcel. Mr. Irving stated the new lot does not have access to the road in which it fronts; therefore, the road frontage does not qualify.

Mr. Bartolomeo stated that sharing a driveway is a good idea. Mr. Kellogg stated that this property is darn near vertical and asked how is it going to be accessed. Mr. Irving stated that the Town Engineer would review the structural design of the road during the Planning Board process. Mr. Irving stated that the question to the ZBA is will the Board allow the applicant to create a lot that requires a shared driveway.

Mr. Kellogg stated that the existing driveway is steep. Mr. Irving stated that it has to meet certain standards. Mr. Irving stated that the question before this board is whether or not the Board is going to grant a variance to allow unqualified road frontage. Mr. Chalmers asked what is to prevent this from being further subdivided. Ms. Irving stated to be further subdivided the applicant would have to submit another application to the ZBA or construct a road. Mr. Irving stated think they have met a geographical limitations for building a road, but that doesn't preclude a unit subdivision. Mr. Chalmers stated there are other avenues.

Ms. Sherman stated there has also been some abutter opposition. Mr. Kellogg stated that there is no fire equipment that will be able to access these lots. Mr. Irving stated under the original application the Fire Chief had an issue, but he has not responded in regard to the second design, as he hasn't seen it yet.

Mr. Bartolomeo stated that one abutter claims that the proposed building area is too close to his property, but it would have to meet the setbacks. Mr. Irving agreed. Mr. Kellogg stated in order to make these buildable lots, each abutter had to put a lot of fill and he is concerned as it brings the fill in the abutter's direction. Mr. Irving stated that putting fill in the setback is not precluded; if it affects drainage then it would be an issue.

Ms. Sherman asked for public comment; Rob Cornila asked what is the difference between a unit subdivision and a lot subdivision. Mr. Irving explained the difference. Mr. Cornila stated he and his wife sold this property to the Nyberg's and they purposely did not have deed restrictions because they felt anyone investing \$100,000 in a property, they would not want to subdivide the land. Mr. Cornila stated that the intent of the larger lots was for privacy.

Mr. Cornila stated that he knows the driveway in question and to put another house there would be too close to the other properties. Mr. Cornila stated if one of the abutters had realized the lot could be subdivided he would not have purchased his property as he was looking for openness. Mr. Cornila stated that the runoff would run off to the abutter's road, which he paid to have improved. Mr. Cornila stated that he does not abut directly to this lot, they are two five-acre lots away and the intent was not to create a subdivision with smaller lots.

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Mr. Irving asked if Mr. Cornila's position is if the variance is granted it would reduce the property values. Mr. Cornila stated possibly. Mr. Cornila stated there are three five-acre lots with gorgeous houses and then your going to try to put another house in between them. Ms. Hale stated that the applicant is actually affecting the value of his own home with this subdivision. Ms. Hale stated who is going to want to purchase a home with someone else's driveway going around it. Mr. Bartolomeo asked Mr. Cornila if someone convinced him against the covenants and restrictions. Mr. Cornila stated that with the expense of the property he didn't think we would encounter someone wanting to subdivide the land again. Ms. Hale stated Mr. Cornila received top dollar for those lots because they didn't have any restrictions. Mr. Bartolomeo stated he is surprised there are no restrictions.

Mr. Chalmers stated under a unit subdivision that doesn't become an issue. Mr. Irving stated with a unit subdivision the variance would be a moot point. Mr. Chalmers stated he sees other options that are available to the applicant. John and Tracy Fay stated that everything in this area are large lots and a five acre lot is rather small for this area. Ms. Fay stated that the applicant used snowmobiles in the winter to get to the existing house. Mr. Colbath stated that he finds this one difficult, but he thinks it would fail at the Planning Board level. Ms. Sherman stated that a single driveway is the only way it can be developed. Mr. Chalmers stated there is another way for this to be done.

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. Sherman asked for Board comment; Mr. Chalmers stated the applicant has other options to use this property with a unit subdivision being one of them. **Motion defeated with Mr. Chalmers, Mr. Kellogg and Mr. Bartolomeo voting in the negative and Mr. Colbath and Ms. Sherman voting in the affirmative.**

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. Sherman asked for Board comment; Ms. Sherman stated the applicant has not explored other methods. **Motion defeated with Mr. Kellogg, Mr. Bartolomeo, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

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. Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

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. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated with the amount of fill needed to make a buildable area there would be a lot of destruction on the lot. **Motion defeated with Mr. Kellogg, Mr. Bartolomeo, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

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. Ms. Sherman asked for Board comment; Mr. Chalmers stated there are other avenues for the applicant to pursue rather than obtaining a variance, therefore, it would be contrary to the spirit and intent of the ordinance. **Motion carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Kellogg and Mr. Chalmers voting in the negative.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not be contrary the public interest. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that even though there may have been an expectation to maintain larger lots in this area, the minimum lot size has been met. Mr. Chalmers stated that it is contrary to the public interest as there are other avenues for the applicant to pursue. Ms. Sherman stated that foremost this is a safety issue and more use is going to make the situation worse until the State does something. **Motion defeated with Mr. Kellogg, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Bartolomeo and Mr. Colbath voting in the affirmative.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that by granting this variance, substantial justice would be done. Ms. Sherman asked for Board comment; Mr. Chalmers stated for the above aforementioned reasons this would be contrary and substantial justice would not be done. Mr. Bartolomeo stated that the applicant does not meet the letter of the law and it is a safety issue. **Motion defeated with Mr. Kellogg, Mr. Bartolomeo and Mr. Chalmers voting in the negative and Mr. Colbath and Ms. Sherman voting in the affirmative.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.1.3 of the Conway Zoning Ordinance to allow a two-lot subdivision with unqualified road frontage be granted. Motion unanimously defeated.

A public hearing was opened at 8:26 pm to consider a **VARIANCE** requested by **KGI MOUNTAIN VALLEY MALL, LLC** in regard to §147.13.8.6.2 of the Conway Zoning Ordinance to allow relief from the size and quantity of wall signs at 32 Mountain Valley Boulevard, North Conway (PID 246-38). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on July 19, 2006.

Mr. Colbath, Mr. Bartolomeo, Mr. Chalmers, Ms. Hale and Ms. Sherman were the voting members for this application. Randy Cooper of Cooper, Deans and Cargill and Kevin Letch of KGI Properties, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Letch stated Todd Landry and Mark Reinhold of JC Penney, Mary Gamache of Hannaford and Jane Noble of Fashion Bug were in attendance.

Mr. Letch reviewed the sign package. Mr. Cooper reviewed the attached summary. Mr. Bartolomeo stated he remembers Arliss Hill applied for a sign variance to face the North-South Road and was denied. Ms. Sherman stated that this is a deficiency in the ordinance as there is not a regulation for businesses that front two different roads. Ms. Sherman stated that there are

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deficiencies in the sign ordinance. Ms. Sherman stated that the signs should be sensitive to scale and proportion as well.

Mr. Cooper stated that JC Penney has an interesting separate issue with respect to the sign over the door. Mr. Cooper stated that JC Penney currently has a non-conforming, internally lit sign, which is located on a building that is being demolished. Mr. Cooper stated he would suggest that there is a basis to allow this sign to change how it looks and its location as long as it is less non-conforming. Ms. Sherman stated she thought another business in Town was allowed to move their non-conforming sign as long as it did not become anymore non-conforming. Mr. Cooper stated the applicant would like to install a new sign, but make it less non-conforming. Ms. Sherman stated that the same size and the lighting could be moved without any problems to the new location. Mr. Cooper stated that the ordinance allows a reduction in non-conformity aspects in order to make a change.

Mr. Bartolomeo asked if there is a public entrance in the vicinity of J2. Mr. Letch stated there is a mall entrance, but not an entrance to JC Penney. Mr. Cooper stated there is logic to have the signs visible from both directions. Mr. Chalmers asked if they were losing the directional sign at the road. Mr. Cooper answered in the negative.

After a lengthy discussion, the Board unanimously agreed that J1 was grandfathered, to reduce J2 to 52.5 square feet, that F1 is grandfathered, that F2 is acceptable as proposed, that H1 is grandfathered, that H2 is not acceptable and H3 should be reduced by 50%.

The Board next discussed the signage for Lowe's. Mr. Cooper stated that the two extra wall signs are there for the exposure to the highways. Mr. Kellogg asked if there is entry through the garden center. Mr. Letch answered in the affirmative. Mr. Bartolomeo stated if L4 moved to the middle of the building then L5 would not be necessary. Mr. Colbath stated there are freestanding signs on Route 302 and Route 16 and asked if Lowe's would be indicated on those signs. Mr. Letch answered in the affirmative.

Mr. Colbath stated if the renderings are drawn to scale then the signs are not disproportionate to the building, but the sign is 3.5 times larger than what is allowed by the ordinance. Ms. Hale and Mr. Bartolomeo stated that they could not support both L4 and L5. The Board agreed that L1 should be reduced to 245 square feet, that L2 and L3 are acceptable; that L4 should be reduced to 100 square feet and moved to the center of the building and L5 is not acceptable.

Mr. Cooper requested a continuance. **Mr. Colbath made a motion, seconded by Mr. Chalmers, to continue the variance request for KGI Mountain Valley Mall, LLC until August 23, 2006 at 7:30 pm. Motion unanimously carried.**

A public hearing was opened at 10:21 pm to consider a **VARIANCE** requested by **KGI MOUNTAIN VALLEY MALL, LLC** in regard to §147.13.8.6.8.1 of the Conway Zoning Ordinance to allow internally lit signage at 32 Mountain Valley Boulevard, North Conway (PID 246-38). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on July 19, 2006.

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Randy Cooper of Cooper, Deans and Cargill and Kevin Letch of KGI Mountain Valley Mall, LLC appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Cooper stated that lighting has changed significantly since the adoption of the ordinance. Mr. Cooper stated that internal lighting would have no adverse effect, as it is actually better lighting. Mr. Cooper stated that there would not be an impact on surrounding property values and it is in the spirit and intent of the ordinance, as it would not impact the environment.

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 asked for Board comment; Mr. Colbath stated that the site has been used as a mall and has been reasonably used as a mall without internally lit signs. **Motion unanimously defeated.**

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 asked for Board comment; Ms. Sherman stated that the general purpose of the ordinance is to not allow internally lit signage and this property is no different from any other property in the Town. **Motion defeated with Ms. Hale, Mr. Chalmers, 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 the variance would not injure the public or private property rights of others. Ms. Sherman asked for Board comment; Mr. Colbath stated that the public would feel injured if there were loud internally lit signs and they've voted not to allow them. **Motion carried with Mr. Bartolomeo, Ms. Hale and Mr. Chalmers voting in the affirmative and Mr. Colbath and Ms. Sherman 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. Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

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. Ms. Sherman asked for Board comment; Ms. Sherman stated that other properties would want internally lit signs. **Motion carried with Ms. Hale, Mr. Bartolomeo, Mr. Chalmers and Mr. Colbath voting in the affirmative and Ms. Sherman voting in the negative.**

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. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it would definitely be contrary to the spirit and intent of the ordinance. **Motion unanimously defeated.**

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Mr. Colbath made a motion, seconded by Mr. Chalmers, that the granting of this variance will not adversely affect the public interest. Ms. Sherman asked for Board comment; Mr. Colbath stated that the Town voted to not allow internally lit signs. **Motion defeated with Ms. Hale, Mr. Chalmers, 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 by granting this variance, substantial justice would be done. Ms. Sherman asked for Board comment; Mr. Colbath stated that this is where you way the justice to the individual against the public. **Motion defeated with Ms. Hale, Mr. Chalmers, 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 forgoing findings of fact, the variance from §147.13.8.6.8.1 of the Town of Conway Zoning Ordinance to allow internally lit signage be granted. Motion unanimously defeated.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Ms. Hale, to approve the Minutes of May 24, 2006 as written. Motion carried with Ms. Sherman abstaining from voting.

The Minutes of June 28, 2006 should be amended as follows: page 11, last paragraph, last line, should read, “..campground owns a sliver of land between...”. **Mr. Kellogg made a motion, seconded by Mr. Colbath, to approve the Minutes of June 28, 2006 as amended. Motion unanimously carried.**

Meeting adjourned at 10:38 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant