

**CONWAY ZONING BOARD
OF ADJUSTMENT**

MINUTES

SEPTEMBER 27, 2006

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 27, 2006 at the Conway Town Office in Center Conway, NH. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Alternate, Sheila Duane; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Chalmers, to approve the Minutes of August 24, 2006 as written. Motion unanimously carried.

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:32 pm to consider a **VARIANCE** requested by **36 KEARSARGE ROAD REALTY/JOHN AND LINDA RAFFERTY/RAFFERTY'S RESTAURANT & PUB** in regard to §147.13.7.6.1.6 of the Conway Zoning Ordinance to allow a projecting sign at 36 Kearsarge Road, North Conway (PID 218-102). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, August 15, 2006. This application was continued from August 23, 2006.

Linda Rafferty appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Rafferty stated that the proposed development next door would completely block the vinyl area where it was suggested to put a sign. Ms. Rafferty stated that this is a brand new business bearing the brunt of the construction and there have been two other businesses in this location that have failed.

Mr. Bartolomeo asked why they wouldn't change the existing sign. Ms. Rafferty stated that the existing sign is visible from the North-South Road. Mr. Bartolomeo asked if this was a normal year without construction would the normal traffic come from the lights. Ms. Rafferty answered in the negative and stated that you would need to know we're there.

Mr. Irving asked what are the specific dimensions of the proposed second sign. Ms. Rafferty answered a 2' x 3' sign. Mr. Bartolomeo asked what is the size requirement for the village. Ms. Sherman answered six square feet. Mr. Colbath asked what is the size of

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the current sign. Ms. Rafferty answered 32 square feet. Mr. Bartolomeo suggested elongating the sign. Mr. Irving stated that there is a height restriction.

Mr. Chalmers stated that the only thing you see when looking up that street is their signage. The Board discussed the possibly eliminating a window and replacing it with a wall sign. Ms. Rafferty agreed to try window signage and look into replacing the window with a wall sign. Ms. Rafferty withdrew the application.

A public hearing was opened at 8:03 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **DAVID AND MARGARET MORRISON** in regard to §147.13.1.4 of the Conway Zoning Ordinance to appeal the stop work order for a garage within the front setback at 42 Fairview Avenue, Conway (PID 277-246). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, September 20, 2006.

David Morrison appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. David Pandora, Building Inspector, was in attendance. Mr. Morrison read the attached statement. Ms. Sherman asked how far into the setback is the garage encroaching. Mr. Morrison stated approximately 10.5-feet. Ms. Sherman asked what is the width of the right-of-way. Mr. Morrison stated that the road is not straight; it curves. Mr. Pandora stated that it is 50-feet wide, but don't believe the road is in the middle of the right-of-way. Mr. Pandora stated that the garage is 39.6-feet from the centerline.

Mr. Bartolomeo stated that there is no bad faith. Mr. Bartolomeo asked how he determined the side setback if there are no pins. Mr. Morrison stated that his neighbor had their property surveyed. Mr. Irving submitted a letter from Joseph Ilaria to the Board. Mr. Morrison stated that the telephone pole is a property marker. Mr. Morrison stated that they take pride in their property and this garage will match the other buildings on the property.

Ms. Sherman asked Mr. Pandora if the road was plotted on a Town map. Mr. Pandora stated that there were no reference pins set. Mr. Chalmers stated if the neighbor has a pin then there would be a communal boundary. Ms. Sherman asked for public comment; there was none.

Mr. Colbath made a motion, seconded by Mr. Chalmers, to grant the Appeal from Administrative Decision in regard to §147.13.1.4 of the Conway Zoning Ordinance to appeal the stop work order for a garage within the front setback. Motion unanimously defeated.

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A public hearing was opened at 8:20 pm to consider an **EQUITABLE WAIVER REQUEST OF DIMENSIONAL REQUIREMENTS** requested by **DAVID AND MARGARET MORRISON** in regard to §147.13.1.4 of the Conway Zoning Ordinance to allow a garage to remain within the front setback at 42 Fairview Avenue, Conway (PID 277-246). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, September 20, 2006.

David Morrison appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. David Pandora, Building Inspector, was in attendance. Mr. Morrison stated that it was a good faith error.

Mr. Colbath made a motion, seconded by Mr. Chalmers, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.

Ms. Sherman asked what is the cost of the construction of the garage. Mr. Morrison answered \$25,000. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the amount of work done would not constitute as substantially complete. Ms. Duane stated that the foundation in the ground now is not in compliance by 10.5-feet. Ms. Duane stated moving the foundation back is not going to change what it is or what the neighbor's looking at. Mr. Chalmers stated if you use that argument everyone would want to build up to the road. Ms. Duane stated if your not is this business you might not know what a street right of way is. Mr. Chalmers stated that he is in this business. Mr. Morrison stated that he has never had to deal with setbacks as either the home owner has obtained the building permit or it has been interior renovations. **Motion defeated with Mr. Chalmers, Mr. Bartolomeo, Ms. Duane 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 violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the error of interpretation was not on a Town Official, as it was assumed that it was measured from the road right-of-way. Mr. Colbath stated that it was a good faith error of measurement. Ms. Sherman stated if the application specifically stated right-of-way instead of street it would have gone another way, and it was a contributing factor. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that item 3 was not applicable to this application. Motion unanimously carried.

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Mr. Colbath made a motion, seconded by Mr. Chalmers, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that if you move into a neighborhood where the expectation is that all new construction has to meet setbacks then an encroachment would be a nuisance. Mr. Colbath stated that the Board did receive a letter from an abutter. Mr. Chalmers asked if there were any covenants. Mr. Morrison stated that there were, but they were good for thirty years, ended in 1999 and were not renewed. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. Ms. Sherman asked for Board comment; Mr. Bartolomeo stated at this stage if the building had been complete he might have voted in favor of it, but it is not complete. Mr. Chalmers agreed. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the equitable waiver from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow a garage to remain in the front setback be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously defeated.**

A public hearing was opened at 8:37 pm to consider a **VARIANCE** requested by **DAVID AND MARGARET MORRISON** in regard to §147.13.1.4 of the Conway Zoning Ordinance to allow a garage to remain within the front setback at 42 Fairview Avenue, Conway (PID 277-246). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, September 20, 2006.

David Morrison appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. David Pandora, Building Inspector, was in attendance.

Ms. Sherman read item 1.a. **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. Irving asked if there were any steep slopes or wetlands that would preclude the garage from being moved back. Mr. Morrison answered in the negative. Mr. Colbath stated that there are no special conditions and the garage could be moved back. **Motion unanimously defeated.**

Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the benefit sought by the applicant cannot be achieved by some other method**

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reasonably feasible for the applicant to pursue, other than an area variance. Ms. Sherman asked for Board comment; Mr. Colbath stated that the garage is only in the beginning stages and should be reasonable to move it back. **Motion unanimously defeated.**

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 defeated.**

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.** Ms. Sherman asked for Board comment; Mr. Colbath stated that this is hard as we have a letter of testimony and there are other surrounding properties that are not represented tonight. Mr. Chalmers stated that when you move into a neighborhood you expect compliance with the setbacks. Mr. Bartolomeo stated that the neighbor is bothered, but don't believe there is a direct diminution. Mr. Irving stated that the question is whether the applicant has demonstrated that there is no diminution in value. **Motion defeated with Mr. Colbath, Mr. Chalmers and Ms. Sherman voting in the negative and Mr. Bartolomeo and Ms. Duane voting in the affirmative.**

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.** Ms. Sherman asked for Board comment; Ms. Sherman stated that the purpose of setbacks is to separate properties. **Motion unanimously defeated.**

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; Mr. Chalmers stated that the public has voted on setbacks and this is contrary to that ordinance. Mr. Bartolomeo stated that this is a 10.5-foot encroachment. **Motion defeated with Mr. Chalmers, Mr. Bartolomeo and Ms. Duane voting in the negative and Mr. Colbath and Ms. Sherman voting in the affirmative.**

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; Mr. Colbath stated that this is the one that puts justice to the public to the justice of the applicant. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.1.4 of the Town of Conway Zoning Ordinance to allow a garage to remain in the front setback be granted. Mr. Colbath stated that there are substantial findings of fact in the negative. **Motion unanimously defeated.**

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A public hearing was opened at 8:47 pm to consider a **VARIANCE** requested by **LIGHTBOWN HOLDINGS, LLC/BARRY AND DONNA LIGHTBOWN/LICKETY SPLITZ** in regard to §147.13.8.6.7 and §147.15.88 of the Conway Zoning Ordinance to allow two trash barrels to look like ice cream cones at 2252 White Mountain Highway, North Conway (PID 230-13). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, September 20, 2006.

Barry Lightbown 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.

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 carried with Mr. Colbath, Mr. Bartolomeo, Ms. Duane and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative and stating that the applicant would still be allowed to operate an ice cream shop.**

Mr. Chalmers 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 carried with Mr. Colbath, Mr. Bartolomeo and Ms. Duane voting in the affirmative and Mr. Chalmers and Ms. Sherman 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; Ms. Sherman stated that it could increase the values by not having trash around. **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.**

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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 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 §147.13.8.6.7 and §147.15.88 of the Town of Conway Zoning Ordinance to allow two trashcans that look like ice cream cones be granted. Motion unanimously carried.

A public hearing was opened at 8:54 pm to consider a **SPECIAL EXCEPTION** requested by **BARRY AND ELLANORE HILL/US CELLULAR** in regard to §147.13.1.11.12 of the Conway Zoning Ordinance to allow the construction of a 180-foot wireless facility within a 75' x 75' compound with associated equipment shelter and generator with a base elevation of 911-feet on Libby Mountain Road, Conway (PID 291-9). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, September 20, 2006.

Kenneth Kozyra of KJK Wireless and Steve Grill, Attorney for US Cellular, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Kozyra reviewed the plans. Mr. Chalmers asked if this is a good location. Mr. Kozyra answered in the affirmative. Mr. Chalmers asked if 180-feet is the minimum. Mr. Kozyra stated dropping the height of a tower lowers the coverage.

Ms. Sherman stated that one of requirements is that other municipalities be they notified. Mr. Irving stated that the applicant has met the regional notification requirement. Mr. Bartolomeo asked at 900 feet does the Mountain Conservation District apply. Mr. Irving stated that it would take effect on elevations over 800 feet north and east of the Saco River; the Mountain Conservation District does not affect this property.

Mr. Bartolomeo asked what is future tenant location indicated on the plans. Mr. Kozyra stated that it would be space for other competitors to lease. Ms. Sherman asked for public comment; Dot Seybold asked if there is a tower located in Edelweiss in Madison that is owned by Coleman's or is there another tower available that would provide coverage for this area. Mr. Kozyra answered in the negative and stated that the closest tower to this location would be the radio tower, which is three miles away and would duplicate what the Albany tower covers.

John Fay stated that he lives directly across the street from this site and it is something he will see. Mr. Fay stated that he is concerned with health issues with four young children. Mr. Grill stated that the Federal Government has taken away any health related issues from the local government and Federal Statute states that health issues are regulated at the Federal level. Mr. Grill stated that the locals can ask and the applicant would agree that they will not exceed what the Federal Government allows. Mr. Grill stated in terms of health factors, it is a legitimate concern, but this board cannot regulate via Federal

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Law. Mr. Grill stated if you have young children, baby monitors and light bulbs emit electronic magnetic energy and these are not harmful via the Federal Government. Mr. Kozyra stated that this is a very low wattage facility. Mr. Grill stated that information could be obtained at www.fcc.gov.

Mr. Fay asked what it would do to his property value. Mr. Kozyra stated that they have three or four reports on property values, which he would be happy to supply to Mr. Fay and the Board. Mr. Fay stated that he would not have purchased his property if there had been a cell tower already there. Mr. Kozyra stated that just because one individual doesn't like it doesn't mean it would drop property values. Mr. Kozyra stated that the balloon test was not visible from the road; however, they were not allowed onto private property so he does not know if it could be viewed from Mr. Fay's property.

Mr. Fay asked what the coverage would be if the tower were in Eaton. Mr. Kozyra stated that it would create an island and not cover the area that the one proposed would cover. Ms. Duane asked what is the capacity of the proposed tower. Mr. Kozyra answered 192 phone calls. Ms. Duane asked what are the requirements for a cell tower location. Mr. Kozyra answered population and travel patterns. Mr. Grill stated there are 240-million cell phones today, which is more than one phone per person old enough to use them. Mr. Grill stated that there so wide spread now that cell phones are used in homes in lieu of land lines and ideally, from a carrier standpoint, the coverage would be everywhere.

Ms. Duane asked why not add another location to an existing tower. Mr. Kozyra stated that it does not work that way. Mr. Grill stated when a cell tower is constructed it has a different channel. Mr. Bartolomeo stated there is great public benefit eliminating these dead zones. Mr. Bartolomeo stated that the public benefit far outweighs any individual's hardship. Ms. Seybold stated that Mr. Hill is being compensated for allowing a cell tower on his property and Mr. Fay is not being compensated. Mr. Bartolomeo stated that someone may not buy a house if there is no cell reception.

Mr. Irving asked if there is a decommissioning agreement with the Hill's. Mr. Kozyra stated that the applicant has a 30-year lease with the stipulation that everything above ground would need to be removed. Mr. Kozyra stated that the applicant would be willing to post a removal bond. Mr. Irving stated that the primary concern is to protect the property owner, but it seems they have that protection already in place. Mr. Irving asked if a light is required at the top of the tower. Mr. Kozyra stated that the applicant has filed the paperwork with FAA and have not received a response yet.

Mr. Irving stated that the applicant has offered to perform another balloon test if the Board would like another one. Mr. Chalmers stated if the applicant is offering then it should be done for the abutter. Ms. Sherman polled the Board in regard to another balloon test; Mr. Colbath, Ms. Sherman, Ms. Duane and Mr. Bartolomeo agreed that another balloon test was not necessary and Mr. Chalmers thought another balloon test should be conducted. It was a consensus of the Board to not perform another balloon test.

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Mr. Irving asked if the Board wanted to hire a third party to review the application. Mr. Colbath answered in the negative and stated that it was an exceptional presentation. Mr. Chalmers stated that it was a nice presentation, but he is not qualified to make that judgment and a third party should be hired to review the application. Mr. Bartolomeo answered in the negative and stated that this has been a thorough and enlightening presentation. Ms. Sherman answered in the negative. Ms. Duane answered in the negative. It was a consensus of the Board to not hire a third party to review the application.

Mr. Fay asked if the tower could look like the tree on top of Mount Cranmore. Mr. Colbath stated he would entertain that suggestion, but he thinks they are worse than what is being proposed. Mr. Irving asked what about a decommissioning bond. The Board agreed that a decommissioning bond should be posted with the Town.

Mr. Irving asked if the Board wanted to grant as a condition of approval a submission of FAA approval with no lighting or does it matter to the Board if there is a light on the top of tower. The Board agreed that it did not matter if there was a light at the top of the tower or not.

Mr. Colbath made a motion, seconded by Ms. Duane, that since the visual impact of wireless communication facilities can transcend town lines, communities that may be visually affected shall be formally notified of applications for such proposed facilities as projects having regional impact. This requirement has been satisfied. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Duane, that the applicant must demonstrate that every reasonable effort has been made to cause the facility to have the least possible visual impact on the town at large, including demonstration of realistic analysis of multiple sites, the need for the proposed height, and any impact on significant roadside view points. This requirement has been satisfied. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that any wireless communication facility shall be designed to accommodate multiple providers of communication services and will only be approved under the condition that the primary developer of the facility will make the facility available upon reasonable terms by lease or other legal instruments to other wireless communication services. This requirement has been satisfied. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that the applicant does not need to engage the services of professional consultants to review and comment on the proposal, and testimony of the applicants or their agents relating thereto.

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

Mr. Colbath made a motion, seconded by Mr. Chalmers, that Major Site Plan Approval must be obtained from the Planning Board. Ms. Sherman asked for Board comment; there was none. Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that a removal bond must be submitted prior to the construction of the facility. 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 §147.13.1.11.12 of the Town of Conway Zoning Ordinance to allow the construction of a 180-foot wireless facility within a 75' x 75' compound with associated equipment shelter and generator with a base elevation of 911-feet be granted. Ms. Sherman asked for public comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 10:40 pm to consider a **VARIANCE** requested by **THE ROCK DEVELOPMENT, LLC** in regard to §147.13.8.6.1.8 of the Conway Zoning Ordinance to allow one additional appendage at 19 Barnes Road, North Conway (PID 235-78 & 78.01). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Wednesday, September 20, 2006.

Dot Seybold appeared before the Board. There was no public in attendance. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Seybold stated that this is an extremely valuable sign and they recognize that the Town would prefer to get rid of this sign. Ms. Seybold stated that the applicant would to, and has redesigned the sign with a 50 square foot reduction. Ms. Seybold stated that the changeable copy would be removed, the lighting would remain the same and it would be moved further to the South. Ms. Seybold stated that it is hard for a property owner to give up grandfathered rights, especially when this is the only sign Home Depot will have.

Ms. Seybold stated that the reduction of 50 square feet is a significant compromise and with the change in the visibility of this sign you will be able to see over it, around it and through it; especially the way it is positioned on the road. Ms. Seybold stated that this proposal sets the sign back further. Ms. Seybold stated that there is no way to add a structure to this sign, so the variance request is for an additional appendage. Mr. Irving stated what is proposed tonight you are approving the third element of the sign.

Ms. Sherman read item 1.a. **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; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 1.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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; Mr. Bartolomeo stated originality and creativity allows the removal of one of the ugliest signs in Town. **Motion unanimously carried.**

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 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.** Ms. Sherman asked for Board comment; there was none. **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.** Ms. Sherman asked for Board comment; there was none. **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 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 Mr. Chalmers, 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 Mr. Chalmers, that, based on the forgoing findings of fact, the variance from §147.13.8.6.1.8 of the Town of Conway Zoning Ordinance to allow one additional appendage be granted as presented. Motion unanimously carried.

Meeting adjourned at 11:15 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant