

ZONING BOARD OF ADJUSTMENT

MINUTES

OCTOBER 21, 2009

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 21, 2009 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Alternate, Cynthia Briggs; Alternate, Dana Hysten; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

Ms. Sherman appointed Ms. Briggs and Mr. Hysten as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **REDSTONE PROPERTIES, INC/SBA TOWERS, INC/NH #1 RURAL CELLULAR, INC** in regard to §147.13.1.11.12 of the Conway Zoning Ordinance to construct a wireless communication facility off Mountain Street, Conway (PID 245-65). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Jonathan Springer of Bosen & Springer appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Springer stated that they had received a special exception in March 2009 and have been trying to put the site plan together since then. Mr. Springer stated that they were asked by Mr. Irving to flag the wetlands, which they did. Mr. Springer stated that they discovered that they had to move the road and the compound over 40-feet to move them further away from the wetland.

Mr. Springer stated that they would like to amend the Special Exception granted in March 2009 as nothing has changed except to move the compound over by 40-feet. Mr. Springer stated that this will not impact the visibility and it was established at the last meeting that there is not a visibility issue here.

Mr. Irving stated it has always been the practice of this Board that this would constitute as a new application. Mr. Irving stated that he referred to the Town's attorney and he agreed that that was a reasonable interpretation. Mr. Irving stated from the Town's perspective everything is on the table. Mr. Springer stated he sees familiar faces from the first hearing in March 2009. Mr. Irving stated that Ms. Briggs and Mr. Hysten are new to the Board and did not hear this application the first time.

Mr. Springer reviewed sheet C-1. Mr. Springer stated that the applicant is leasing a 100' x 100' area with a 50' x 75' compound with a 140-foot tower. Mr. Springer reviewed sheet C-5. Mr. Springer stated that the profile of the tower is a monopole, slim profile, and they are subleasing

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to other carriers. Mr. Springer stated that each carrier needs an equipment cabinet. Mr. Springer stated that this tower will provide coverage where there is a significant gap in coverage. Mr. Springer stated that this is a large wooded site. Mr. Springer stated at the last meeting they had submitted a visual report entitled *View Shed Report*.

Mr. Springer stated that the report details that a balloon was flown at 100-feet and the view shed showed the balloon was not visible from Bolton Hill Road. Mr. Springer stated that the site itself has very limited traffic and after construction there may be one or two trips per month per carrier. Mr. Springer stated that there is no noise, no smoke and no fumes and it is not going to be lit. Mr. Springer stated that this is a very low impact use of the property.

Mr. Springer stated that the Special Exception criterion requires other municipalities to be notified and that has been done. Mr. Springer stated that it requires reasonable effort to have the least possible visual impact. Mr. Springer stated that this is a very large property and it is not going to be seen from the roadside. Mr. Springer stated there are no existing sites in this area in which to locate on. Mr. Springer stated that this facility is designed to accommodate multiple carriers. Mr. Springer stated that in regard to detailed plans and other professional consultants, the Board did not require this at the hearing in March 2009. Mr. Springer stated that the last requirement requires a site plan approval from the Planning Board and they have been working on that.

Mr. Hylen asked if the tower is as low as possible is it going to be useful for other carriers. Mr. Springer stated there needs to be a 10-foot separation between carriers and as you go down the tower the coverage is going to shrink. Mr. Springer stated that he makes no representations on the bottom slot. Mr. Springer stated that every carrier is going to have to come in and justify the need for the site and if they are at 90-feet and they cannot use it, they may ask for another facility. Mr. Springer stated that the Board can ask that they show that they cannot use 90-feet by engaging the services of professional consultants under item #3 in the requirements. Mr. Springer stated that the first two or three slots will be fine.

Mr. Colbath asked if it is normal to have only two or three carriers. Mr. Springer stated that they will only install what the tower can hold structurally and it depends on the height of the pole.

Ms. Sherman asked for public comment; Earl Sires, Conway Town Manager, stated that Mr. Springer is indicating that they have already gained a special exception and they would only like to amend that previous approval, however, Mr. Irving is indicating that this is a whole new application. Mr. Irving stated technically there is no approval, as the former approval cannot be reviewed by the Planning Board because they cannot meet the wetland setback. Mr. Springer stated that they do have a special exception in place, but quite frankly, if you like the proposal, whatever we get tonight will supersede the previous approval.

Mr. Sires stated that the Board of Selectmen [BOS] asked him to ask this Board to request another balloon test before this Board acts on the applications before you this evening. Mr. Sires stated that the BOS is of the opinion that this is a new application and that the visual study should be reviewed by an expert. Mr. Sires stated that the tower is located on the southern end of the Green Hill Preserve. Mr. Sires stated that the BOS would like staff checking where the

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balloon is visible, plus they question if this is the best location. Mr. Sires stated that the visual impact will be great to an area that people flock to take photographs of the scenery and this would not add to the scenery.

Ms. Briggs stated that the Quarry could become a historical site and this backs up to it. Mr. Sires stated that the BOS and the Conway Conservation Commission [CCC] worked hard a few years ago to secure land close to this area to protect the view shed and do not want to see development on that end of the Green Hills. Mr. Sires stated that this is contiguous to other recreation properties. Mr. Sires stated that the Historic Committee did not have any concerns.

David Weathers, member of the BOS, stated if another balloon test is granted it should be published so the public could review it and not just Town staff. Mr. Springer stated that this is a 140-foot facility on a 700 acre parcel with tree cover; you are not going to see it, but will do it if required.

Mr. Springer stated that a balloon test was done on March 10, 2009. Mr. Colbath asked how long the balloon was up. Mr. Springer stated that they are usually up for 3 hours. Mr. Colbath asked if there were Town observers for that test. Mr. Irving answered in the negative and stated that they did not do a test that the Town was privy to unless they came upon it. Ms. Briggs stated that she would like to see an advertised balloon test as the Redstone Quarry could become a site people come to visit.

Mr. Irving stated the Board and the applicant could establish a date suitable for both as well as an alternative date in case the first date did not work out. Mr. Irving stated that he would take photographs and he would encourage the public and Board members to check it out on their own.

Ms. Briggs made a motion, seconded by Mr. Hylen, to request a balloon test, set two different dates, advertise in the paper, on channel 3 and on the radio as a public service announcement and be at a time that the public can view it. Ms. Sherman asked for Board comment; Mr. Chalmers stated that he feels bad as the applicant has already gone through this. Ms. Briggs stated that the abutters were notified, but the public was not. Mr. Chalmers stated that the previous board did not require a balloon test.

Mr. Colbath stated that there were pictures taken from all residential areas. Mr. Irving stated not all, but believes within a half a mile of the site. Mr. Springer stated that it did not have a radius. Ms. Sherman stated that this tower will be below ridge line. Mr. Springer agreed. Mr. Irving stated that it depends on where you are looking. Mr. Sires stated he is concerned that it does have an impact beyond ½ mile and he wants to make sure everyone has the opportunity to view it. Mr. Sires stated that the Green Hills Preserve is not an abutter and was not notified.

Mr. Chalmers stated that this applicant has already done this and we did not require it last time. Mr. Weathers stated the BOS and the general public were not aware of the balloon test the first time. Mr. Chalmers stated that BOS knew this was going to the ZBA.

Motion defeated with Mr. Colbath, Mr. Chalmers and Ms. Sherman voting in the negative and Ms. Briggs and Mr. Hylen voting in the affirmative.

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Mr. Irving stated it is a total of 148-feet to the top. Mr. Springer stated with the lightening rod. Mr. Irving stated that the tower is taller than the distance from the property line. Mr. Springer stated that it is about 40-feet from the property line. Mr. Springer stated that these towers can be built so they buckle.

Mr. Irving asked if there was a review of alternative sites as there may be an alternative site at the high school that would not have an impact on wetlands. Mr. Springer stated that he received a call from the SAU Superintendent and he did not know the school existed until he received the call last week. Ms. Sherman stated this is to reduce the dead spot on Route 302 and South Conway. Mr. Springer answered in the affirmative. Mr. Springer stated to shift the site of the tower by a mile can have an impact. Mr. Springer stated that he does not know if a tower at the high school is feasible. Mr. Irving stated to determine it would require need an alternative study.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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; Mr. Hylen stated another balloon test and the school site would have been a reasonable effort. **Motion carried with Mr. Colbath, Mr. Chalmers and Ms. Sherman voting in the affirmative and Ms. Briggs and Mr. Hylen voting in the negative.**

Ms. Sherman read item 3. **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. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the Board of Adjustment may request detailed plans from the applicant and may, at the expense of the applicant, engage the services of professional consultants to review and comment on the proposal, and testimony of the applicants or their agents relating thereto. This requirement has been satisfied.** 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. Hylen, that a Major Site Plan Approval must be obtained from the Planning Board.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Colbath made a motion, seconded by Ms. Briggs, 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 50' x 75' compound with associated equipment shelter and generator be granted. Motion carried with Ms. Briggs, Mr. Colbath, Mr. Chalmers and Ms. Sherman voting in the affirmative and Mr. Hylen voting in the negative.

Mr. Colbath made a motion, seconded by Ms. Briggs, that a subsequent condition of approval be that a \$15,000 decommissioning bond be submitted prior to final site plan approval. Motion unanimously carried.

A public hearing was opened at 8:35 pm to consider a **VARIANCE** requested by **REDSTONE PROPERTIES, INC/SBA TOWERS, INC/NH #1 RURAL CELLULAR, INC** in regard to §147.13.16.4 of the Conway Zoning Ordinance to construct an access road and cell tower compound within the 50-foot wetland buffer off Mountain Street, Conway (PID 245-65). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Jonathan Springer of Bosen & Springer appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Springer reviewed sheet C-3B. Mr. Springer stated that seven wetland areas were identified. Mr. Springer stated that they are not in any of the wetlands and they are not creating an access road as the gravel trail exists already. Mr. Springer stated there is a fence around the compound, the compound will have a crushed gravel surface and they are not going into the wetlands at all.

Mr. Springer stated it is a limited wetland and not a high capacity wetland. Mr. Springer reviewed the location of the wetlands and stated that it has been determined that the project will not have any impact on the wetlands. Mr. Colbath asked why the compound cannot be turned to be further out of the wetland buffer. Mr. Springer stated that it has to do with the grade of the land. Mr. Springer stated that the proposed layout has less of an impact on the land.

Ms. Sherman asked for public comment; David Correa asked if this will have any impact on the recreational trails. Mr. Springer answered in the negative. Mr. Chalmers asked if the road is going to be gated. Mr. Springer stated that he believes that it is gated now. Mr. Correa stated in the winter the gates are open. Mr. Springer stated that the compound will be gated; this is private property and the landowner has the right to put up a gate if he chooses.

Ms. Briggs stated this applicant is only leasing a 100' x 100' area and the remaining land would be under someone else's control. Mr. Springer stated that they have the right to access the compound. Ms. Briggs asked if they have the right to block the access road. Mr. Springer answered in the negative. Mr. Weathers asked if the roadway would be plowed. Mr. Springer answered in the negative and stated they would access the compound via snowmobile or by foot.

Mr. Irving stated the only structure the Board is approving is the US Cellular structure and the tower and not the future lease areas within the compound. Mr. Irving stated they will have to

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come back to this Board to allow those future lease areas within the compound. Mr. Chalmers asked if it would make more sense to approve it all at this time. Mr. Springer stated if this Board approves every carrier as shown, then they would only have to go to the Planning Board for each carrier.

Jeff Sullivan asked doesn't this Board have to approve those other carriers since one of the requirements is to provide for other carriers. Mr. Springer stated that it would make more sense to approve the five footprints at this time and make them go to Planning Board when they want to construct them.

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.**

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; Ms. Briggs stated that the high school property should be reviewed. **Motion carried with Mr. Colbath, Mr. Hylen, Mr. Chalmers and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

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 carried with Mr. Colbath, Mr. Hylen, Mr. Chalmers and Ms. Sherman voting in the affirmative and Ms. Briggs voting in the negative.**

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 Ms. Briggs, 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.**

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Mr. Colbath made a motion, seconded by Mr. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.16.4 of the Town of Conway Zoning Ordinance to construct an access road and cell tower compound as presented on the plans dated September 9, 2009 for the compound and the proposed buildings within the 50-foot wetland buffer be granted. Motion unanimously carried.

A public hearing was opened at 8:48 pm to consider a **VARIANCE** requested by **REDSTONE PROPERTIES, INC/SBA TOWERS, INC/NH #1 RURAL CELLULAR, INC** in regard to §147.13.16.3.1 of the Conway Zoning Ordinance to construct an access road and cell tower compound within the 75-foot wetland buffer off Mountain Street, Conway (PID 245-65). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Jonathan Springer of Bosen & Springer 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 Mr. Hylen, 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 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; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, 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 Ms. Briggs, 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. Briggs, 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. Hylen, 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. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.16.3.1 of the Town of Conway Zoning Ordinance to construct an access road and cell tower compound as presented on the plans dated September 9, 2009 for the compound and the proposed buildings within the 75-foot wetland buffer be granted. Motion unanimously carried.

A public hearing was opened at 8:52 pm to consider a **VARIANCE** requested by **LAWRENCE AND CHARLOTTE SULLIVAN** in regard to §147.13.16.3.1 of the Conway Zoning Ordinance to expand an existing deck within the 75-foot wetland setback at 538 Old Bartlett Road, North Conway (PID 203-92). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Jeff Sullivan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Sullivan stated that his father would like to add 10-feet of decking on the side of the house with one corner of the deck being 65-feet from the brook. Mr. Sullivan stated that it is just a deck on posts with decking. Ms. Sherman asked of the 41-feet how much is not in compliance. Mr. Sullivan stated that the closest the deck is to the brook is 64-feet.

Mr. Colbath asked what is on the house. Mr. Sullivan stated that it is a deck. Mr. Colbath asked if the purpose is to extend the outdoor living space. Mr. Sullivan agreed. Mr. Colbath asked if the creek rises. Mr. Sullivan stated that it does rise, but the house is elevated. Mr. Colbath asked if the creek has ever risen to the house. Mr. Sullivan answered in the negative. Ms. Sherman asked for public comment; there was none.

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.**

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; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Hylen, 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.**

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Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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. Hylen, 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. Hylen, 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 §147.13.16.3.1 of the Town of Conway Zoning Ordinance to expand an existing deck by allowing an open deck with no covering [railings are okay] within the 75-foot wetland setback be granted. Motion unanimously carried.

A public hearing was opened at 9:05 pm to consider a **VARIANCE** requested by **CHARLES O'BRIEN** in regard to §147.13.2.4 of the Conway Zoning Ordinance to construct a garage within the 15-foot setback at 84 Mill Street, Center Conway (PID 260-33). Notice was published in the Conway Daily Sun and certified mailings were sent to abutters Friday, October 9, 2009.

Charles O'Brien appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. O'Brien stated there is not any room to put a garage on the lot that would be easily accessible. Mr. Colbath asked if he shares the driveway. Mr. O'Brien answered in the negative.

Mr. Chalmers asked if there is any other feasible place. Mr. O'Brien stated that cannot meet setback on the left side of the house, in the front would make it difficult to remove snow and behind the house is his septic system. Mr. Hylen asked how close to the edge of the driveway will the garage be. Mr. O'Brien answered 9-feet. Ms. Sherman asked for public comment; there was none.

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; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Briggs, 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. Briggs, 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. Briggs, 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. Hylen, 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. Hylen, 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. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.2.4 of the Town of Conway Zoning Ordinance to construct a garage 6-feet within the 15-foot side setback be granted. Motion unanimously carried.

A public hearing was opened at 9:15 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **MICHAEL C. KENT** in regard to §147.14.1 of the Conway Zoning Ordinance regarding confirmation of a legally existing non-conforming use and use area at 2460 West Side Road, North Conway (PID 231-97). Notice was published in the Conway Daily Sun and certified mailings were sent to abutters Friday, October 9, 2009.

Bonnie Hayes of Select Real Estate appeared before the Board. Michael Kent and Robert Quint were in attendance. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Hayes stated that the Quint's have owned the property since 1968 and Mr. Kent purchased the property in 2006. Ms. Hayes stated that the property was used as a commercial site and Mr.

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Quint provided years of ledgers. Mr. Irving stated that he was not questioning the commercial use of the site; the commercial building and the area immediately around and to the south was determined to be grandfathered. Mr. Irving stated that they wanted the commercial parking area to be grandfathered and it is contrary to the aerial photos taken by the Town in 1983. Mr. Irving stated that he could not approve everything they had claimed.

Ms. Hayes stated that the trees were there, but they limbed them up and they were parking underneath them. Ms. Hayes stated little by little they cut them back. Ms. Hayes stated the potential buyers need to use all of the land. Robert Quint stated that they stored pallets of pipes in the tree line for as long as he can remember. Mr. Chalmers stated that he grew up across the street and he cannot remember that area being wooded.

Ms. Sherman asked for public comment; Mike Simeone stated that it is a very small area, maybe 40' x 75'. Mr. Quint agreed. Mr. Irving stated the Board needs to determine if the area was legally being used when the Town adopted Zoning. Ms. Hayes stated that she maintains that it was, but you could not see it through the trees on the aerial photographs.

Mr. Colbath made a motion, seconded by Mr. Hylen, to grant the appeal from administrative decision in regard to §147.14.1. Motion unanimously carried.

A public hearing was opened at 9:35 pm to consider a **SPECIAL EXCEPTION** requested by **MONICA VALLEE** in regard to §147.13.4.2.4.1 of the Conway Zoning Ordinance to allow a second unit in a single family home at 169 Seavey Street, North Conway (PID 219-147).

Faye Melendy of Melendy & Lee PA, Attorney for Monica Vallee, appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Irving stated that this request is in compliance with the Master Plan and staff has no issue with this request.

Ms. Melendy stated that the structure was constructed in 1945. Ms. Melendy stated that this unit has been in existence for years. Ms. Melendy stated that Ms. Vallee purchased this property from a bank in 1994 and the second unit was already in place. Ms. Melendy stated there will be no changes to the exterior. Mr. Colbath asked if this site was serviced by municipal sewerage. Ms. Melendy answered in the affirmative. Mr. Colbath asked about parking. Ms. Melendy stated there was adequate parking for the two units. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Briggs, that modification of the interior does not exceed four (4) units.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Hylen, 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; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that adequate area is available for parking and sewage disposal.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.1 of the Town of Conway Zoning Ordinance to allow a second unit in a single-family home be granted. Motion unanimously carried.

A public hearing was opened at 9:40 pm to consider a **VARIANCE** requested by the **ESTATE OF SANDRA ASHNAULT** in regard to §147.13.1.3.1 of the Conway Zoning Ordinance to create a new lot with 70-feet of road frontage at 185 Artist Falls Road, North Conway (PID 219-315). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Smith stated if the applicant complied with the 150-foot of road frontage it would impact how the side yard for the apartment building is used.

Ms. Smith stated that the North Conway Water Precinct is requiring the new lot to tie in to the existing sewer line with the apartment building, but keep the water under the proposed new driveway. Mr. Irving stated if they were to comply with the 150-foot frontage requirement it would give the lot a boot like shape which would require a waiver from the Planning Board because of the odd shape lot.

Mr. Colbath asked because the sewer line has to piggy back onto the existing sewer line, will the location be okay with an easement. Ms. Smith stated this was determined by the water precinct. Mr. Irving stated that this would have less of an impact on the floodplain. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1.a. **Mr. Colbath made a motion, seconded by Ms. Briggs, 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. Briggs, 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.**

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Mr. Colbath made a motion, seconded by Ms. Briggs, 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. Briggs, 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. Briggs, 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. Briggs, 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. Briggs, 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. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.1.3.1 of the Town of Conway Zoning Ordinance to create a new lot with 70-feet of road frontage be granted. Motion unanimously carried.

A public hearing was opened at 9:47 pm to consider a **SPECIAL EXCEPTION** requested by the **ESTATE OF SANDRA ASHNAULT** in regard to §147.13.14.3.4 of the Conway Zoning Ordinance to allow the construction of a driveway and utilities within the Floodplain Conservation District at 185 Artist Falls Road, North Conway (PID 219-315). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Diane Smith of Thaddeus Thorne Surveys appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman asked if this would include phone, electric, cable and water. Ms. Smith answered in the affirmative. Mr. Colbath stated this would not include sewer. Ms. Smith agreed.

Mr. Colbath asked if there will be any fill. Ms. Smith stated there would be grading and adding of gravel. Ms. Sherman stated this is not in the floodway. Ms. Smith agreed. Mr. Colbath asked if this work is creating a public hazard. Ms. Smith answered in the negative. Ms. Sherman asked for public comment; there was none.

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Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Briggs, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** 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. Briggs, that item #2 is not applicable to this application. Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Sherman, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously created**

Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.4 of the Town of Conway Zoning Ordinance to allow the construction of a driveway and utilities within the Floodplain Conservation District be granted. Motion unanimously carried.

A public hearing was opened at 9:50 pm to consider a **VARIANCE** requested by **OLIVIA CONWAY REALTY, LLC/RESIDENCE INN BY MARRIOTT** in regard to §147.13.8.6.1 of the Conway Zoning Ordinance to allow a second freestanding sign at 1801 White Mountain Highway, North Conway (PID 235-76). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Kim Jackson, General Manger, of Residence Inn by Marriott appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Jackson stated that the intent of the sign is to identify the entrance.

Ms. Briggs stated that this is poor planning, why should we approve something that is blatantly not right. Ms. Briggs stated that this is a national organization. Mr. Colbath stated that they could have a smaller identification sign. Ms. Jackson stated that the proposed sign will not be able to be seen from the road. Ms. Briggs disagreed and stated that she saw it from the road.

Mr. Irving stated that this sign was originally approved on another wall of the building. Ms. Hylen asked if the wall the sign was installed on was on a plan. Ms. Sherman asked the purpose of the wall. Ms. Jackson stated that there is a fire pit behind it. Mr. Irving stated that they are requesting a second freestanding sign since the wall does not have an interior wall associated with it.

Ms. Briggs stated one reason for restricting the size of signs years ago was so the small businesses could compete with the big businesses. Ms. Briggs stated that this is just poor planning on their part.

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Ms. Sherman asked for public comment; Ted Sares agreed with Ms. Briggs and stated they are looking for four signs; however, the sign by the road is super. David Correa stated that you are funneled into one area and the entrance is immediately in front of you; there are no other entrances and there is no confusion. Mr. Correa stated there are no other hotels that have more than two signs and to grant them this would give them an unfair advantage. Mr. Sares stated that Mr. Correa lives on Village Way.

Ms. Jackson stated that they are permitted for three signs and they are not asking for a fourth sign. Ms. Jackson stated that she made the decision to move this sign from the permitted area, which is not visible, to the proposed location.

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; Ms. Briggs stated that they created this situation themselves. Mr. Colbath stated that the use exists with or without the sign. Mr. Chalmers stated that this does not affect the use of the property. **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 reasonably feasible for the applicant to pursue, other than an area variance.** Ms. Sherman asked for Board comment; Ms. Briggs stated that a directional sign could be used to indicate the front entrance. Mr. Colbath stated there are other methods available. Mr. Chalmers stated that they could use other signage. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Briggs, 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; Ms. Briggs stated there are other opportunities to indicate the entrance. **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; Ms. Briggs stated that it would in fact put surrounding properties at a competitive disadvantage. **Motion defeated with Ms. Briggs, Mr. Chalmers and Mr. Hylen voted in the negative and Ms. Colbath and Ms. Sherman 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; Mr. Colbath stated that there is a limit to signs and this is obsessive. Mr. Colbath stated that they could have a sign against the wall someplace else. **Motion unanimously defeated.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Hylen, that the granting of this variance will not be contrary the public interest.** Ms. Sherman asked for

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Board comment; Mr. Colbath stated that it would be contrary the public interest as there is a limit to the amount of signage to level competitive positions. **Motion unanimously defeated.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Briggs, that by granting this variance, substantial justice would be done.** Ms. Sherman asked for Board comment; Ms. Briggs stated that they have no more than what other properties in Town are allowed. Mr. Colbath stated that granting the variance would give an unfair advantage to the applicant and that is not the intent of the ordinance. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Ms. Briggs, that, based on the forgoing findings of fact, the variance from §147.13.8.6.1 of the Town of Conway Zoning Ordinance to allow a second freestanding sign be granted. Motion unanimously defeated.

A public hearing was opened at 10:20 pm to consider a **VARIANCE** requested by **JGF PROPERTY MANAGEMENT** 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 600-feet of a residential property** at 1561 White Mountain Highway, North Conway (PID 246-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, October 9, 2009.

Mr. Irving stated that there was an error in noticing an abutter and the applicant has requested a continuance in order to remedy the noticing error. **Mr. Colbath made a motion, seconded by Ms. Briggs, to continue the public hearing for JGF Property Management until November 18, 2009 at 7:30 pm. Motion unanimously carried.**

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Colbath made a motion, seconded by Mr. Hylen, to approve the Minutes of September 16, 2009 as written. Motion unanimously carried.

OTHER BUSINESS

Mr. Irving stated that the Town would like to start digitizing plans submitted with applications for storage. Mr. Irving suggested the Board amend their fees to require a \$20 digitization fee for the first page and \$2 for each additional page. **Mr. Colbath made a motion, seconded by Ms. Briggs, to require a \$20 digitization fee for the first page and \$2 for each additional page to be effective January 1, 2010. Motion unanimously carried.**

Meeting adjourned at 10:24 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant