

## ZONING BOARD OF ADJUSTMENT

### MINUTES

DECEMBER 11, 2013

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, November 20, 2013 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; Luigi Bartolomeo; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

#### APPOINTMENT OF ALTERNATE MEMBER

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

#### PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **VARIANCE** requested by **RED BARN SC, LLC/NORTH CONWAY MUSIC CENTER** in regards to §147.14.3.2 of the Conway Zoning Ordinance **to change a single-sided, twenty-four square foot non-conforming roof sign to a double-sided sign on a roof** at 1976 White Mountain Highway, North Conway (PID 235-34). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, November 25, 2013.

Brian Charles of the North Conway Music Store appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Sherman stated the applicant would like to turn the sign 90-degrees and make it a two-sided sign. Mr. Charles stated most signs in that area that are that close to the road are turned 90-degrees. Ms. Sherman asked if parking for your facility is next to Corning. Mr. Charles answered in the affirmative. Ms. Sherman asked if there could be a sign on the building facing the parking lot. Mr. Charles stated that there was one there at one time as there is still a light fixture there for it.

Mr. Bartolomeo stated that he went to the site and there were no other signs that are the way you claim to be in that area. Mr. Bartolomeo stated that applicant has a sign on the freestanding sign, a wall sign, a feather sign and two signs hanging under the porch. Mr. Charles stated the signs that are in that vicinity are not roof signs; the signs in the vicinity are facing traffic. Mr. Charles stated that they have little signs that are allowed by ordinance to hang from underneath the eaves. Mr. Charles stated there are two main freestanding signs for the complex; one large sign and one small sign, and we are on the small sign. Mr. Charles stated that the sign in question is a grandfathered sign and he is asking to turn it like the other freestanding signs.

Mr. Bartolomeo stated that the tree is right in the middle of the sign; could the sign be moved to one side or the other of the tree. Mr. Charles stated that it would be blocked either way. Ms. Sherman stated that the other businesses are on the freestanding sign and the other businesses have wall signs; how is this unique. Mr. Charles stated trying to compete; they would just like to turn it 90-degrees. Mr. Charles stated that this is not going to hurt the neighborhood. Mr. Bartolomeo stated that he is concerned with visual clutter; and the applicant had the same type of sign as every other sign he saw today.

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Mr. Charles stated that the building is directly on the road; it is unique and needs a unique look. Mr. Charles stated it would make a difference to a small business that is doing well in the village, but would be able to compete on a somewhat more even playing field that is surrounded by large freestanding signs.

Mr. Chalmers stated that the site already has two freestanding signs; there is a lot of visual clutter including a feather sign. Mr. Charles stated it is allowed and only there so people could find them. Mr. Bartolomeo stated that the business is growing so the sign is not hindering the business. Mr. Charles agreed.

Mr. Charles stated that they asked the owner of the property if they could be on the larger freestanding sign, but because of contracts with other businesses it was not possible. Ms. Tobin asked if the sign could be reduced by half and turn it 90-degrees. Mr. Irving stated there would be no increase in the message area, but it would be a different type of sign. Ms. Sherman asked for public comment; there was none. Mr. Bartolomeo stated a sign is allowed on a wall that is perpendicular to the street in lieu of a freestanding sign. Mr. Charles stated by turning it sideways, it is neither a wall sign nor a freestanding sign.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it is quite contrary to the ordinance and, therefore, would be contrary to the public interest. Ms. Sherman stated that non-conforming signs cannot change. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the spirit of the ordinance is literally being unobserved. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that it is an injustice to the public at large. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there were none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Tobin, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the applicant has six signs already and based on his testimony the business is growing. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

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Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; Ms. Sherman stated that they already have signage. **Motion carried with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Mr. Colbath voting in the affirmative and Ms. Sherman voting in the negative.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Bartolomeo, Mr. Chalmers, Ms. Tobin and Ms. Sherman voting in the negative and Mr. Colbath voting in the affirmative.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated that the property is being used in a reasonable way. **Motion unanimously defeated.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.14.3.2 of the Town of Conway Zoning Ordinance to change a single-sided, twenty-four square foot non-conforming roof sign to a double-sided sign on a roof be granted. Motion unanimously defeated.**

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A public hearing was opened at 7:55 pm to consider a **VARIANCE** requested by **PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE** in regards to §147.13.16 of the Conway Zoning Ordinance **to allow a utility system in the Wetland and Watershed Protection Overlay District** at 80 East Conway Road, Conway (PID 252-42). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, November 25, 2013.

Nick Golan of TF Moran and Laura Games, Siting and Permitting Specialist, and Gary O’Kula, Transmission Project Manager, of PSNH appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Games and Mr. O’Kula explained that this application is for the placement of voltage regulating devices to serve New England.

Mr. Golan reviewed the application of the proposed 160’x190’ area which they have to have safe vehicular access around. Mr. Golan stated they worked with a wetland scientist and determined that the intermittent stream could be relocated and recreated. Mr. Golan stated that what is proposed is the least impact to the site. Mr. Golan stated that they will be recreating a wetland that is one and a half times larger than what exists now.

Mr. Bartolomeo asked if the site really this wooded in front of the road. Mr. Golan answered in the affirmative. Mr. Bartolomeo asked if the proposed road could be removed. Mr. O’Kula stated that the road would remain as if there is an emergency they need quick access to it. Ms. Tobin asked if there would be a visual impact of any kind. Mr. Irving stated that the site has a large buffer.

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Ms. Sherman asked for public comment; there was none. Mr. Colbath asked how much of the 45 acres is disturbed. Mr. Golan stated there is approximately 125,000 square feet of disturbed area or approximately 5 acres of open area.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the variance will not be contrary to the public interest.** 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. Tobin, that the spirit of the ordinance is observed.** 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. Tobin, that substantial justice is done.** 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. Tobin, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Ms. Tobin, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Ms. Tobin, that item 5.b is not necessary.** **Motion unanimously carried.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.14.3.2 of the Town of Conway Zoning Ordinance to allow a utility system in the Wetland and Watershed Protection Overlay District be granted.** **Motion unanimously carried.**

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A public hearing was opened at 8:25 pm to consider a **SPECIAL EXCEPTION** requested by **ADVENTURE PROPERTIES, LLC AND 1550 WMH, LLC (FORMERLY HURST FAMILY REALTY, LLC)** in regards to §147.13.14.3.1 of the Conway Zoning Ordinance to **allow additional campsites to the open field at the existing commercial campground as a use compatible to open space within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, November 25, 2013.

Josh McAllister of HEB Engineers and Keith Wolters and Kevin Zins appeared before the Board. Mr. McAllister stated that Hurst Family Realty has sold the property to Mr. Walters and Mr. Zins. Ms. Sherman read the application and the applicable section of the ordinance.

Mr. McAllister stated they would like to expand the number of sites in the open field area. Mr. McAllister stated that they would be RV and camper sites. Mr. McAllister stated that they are requesting that the Board find that this use is compatible with open space. Mr. McAllister stated that the property is within the Highway Commercial District and the Floodplain Conservation Overlay District, and used as a campground.

Mr. McAllister stated they are proposing 89 new sites; and each site would have a pedestal with electric, water and cable service. Mr. McAllister stated there would not be hooking up to sewer at this time. Ms. Tobin asked how many sites currently exist. Mr. Wolters answered 146 sites. Mr. Bartolomeo asked other than the pedestals would there be any other structures. Mr. McAllister answered in the negative. Mr. McAllister stated that the locations of the sites are outside of the Shoreland Protection District, the floodway and of the Wetland and Watershed Protection Overlay District.

Ms. Sherman asked other than the pedestal would everything else be underground. Mr. McAllister answered in the affirmative. Mr. Colbath asked what the surface of the campsite is. Mr. McAllister answered grass. Ms. Tobin asked if staff had any concerns. Mr. Irving stated it is a subjective question of whether campgrounds are compatible with open space. Mr. Irving stated that they are not proposing any structures and the new site will not interfere with the evacuation process. Mr. Irving stated that it will have to go through a site plan review.

Mr. Colbath asked if there would be an impact on traffic. Mr. Irving stated that there has not been a traffic study submitted at this time. Mr. McAllister stated peak traffic is under 37 trips. Mr. Colbath asked if there would be a recreational area left. Mr. Wolters answered in the affirmative, about 3 acres. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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. Tobin, that new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.** 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. Tobin, that item 3 is not applicable to this application. Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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 carried.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.14.3.1 of the Town of Conway Zoning Ordinance to allow additional campsites to the open field at the existing commercial campground as a use compatible to open space within the Floodplain Conservation Overlay District be granted. Motion unanimously carried.**

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A public hearing was opened at 8:42 pm to consider a **SPECIAL EXCEPTION** requested by **ADVENTURE PROPERTIES, LLC AND 1550 WMH, LLC (FORMERLY HURST FAMILY REALTY, LLC)** in regards to §147.13.14.3.4 of the Conway Zoning Ordinance **to allow the installation of a gravel drive and utility services to provide services to the expanded camping area within the Floodplain Conservation Overlay District** at 1550 White Mountain Highway, North Conway (PID 246-22). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Monday, November 25, 2013.

Josh McAllister of HEB Engineers and Keith Wolters and Kevin Zins appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, 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. Tobin, that new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.** Ms. Sherman asked for Board comment; there was none. **Motion unanimous carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that all fill, new construction, substantial improvements and other development within the floodway shall be prohibited unless the applicant's New Hampshire registered engineer can show the activity would not result in any increase in flood hazard within the Town of Conway.** 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. Tobin, 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 carried.**

**Mr. Colbath made a motion, seconded by Ms. Tobin, 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 installation of a gravel drive and utility services to provide services to the expanded camping area within the Floodplain Conservation Overlay District be granted. Motion unanimously carried.**

#### **MOTION FOR REHEARING**

A public meeting was opened 8:47 pm to consider a **MOTION FOR REHEARING** requested by **ML HOLDINGS** in regard to § 147.14.1.2 of the Conway Zoning Ordinance **to change the use from a Fairpoint Communications garage and storage to a transportation trucking company garage and storage** at 38 Melody Lane, Conway (PID 258-35).

The Board determined that there was neither a technical error nor new information available that was not available at the time of the first hearing. **Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to grant the rehearing for ML Holdings as requested. Motion unanimously defeated.**

#### **REVIEW AND ACCEPTANCE OF MINUTES**

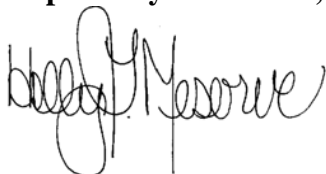
**Mr. Colbath made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of November 20, 2013 as written. Motion carried with Ms. Tobin abstaining from voting.**

#### **AMENDMENT TO BYLAWS**

**Mr. Colbath made a motion, seconded by Ms. Tobin, to hold a public hearing on January 15, 2014 to reconsider the meeting start time from 7:30 pm to 7:00 pm. Motion unanimously carried.**

Meeting adjourned at 8:55 pm.

Respectfully Submitted,



**Holly L. Meserve**  
**Recording Secretary**