

ZONING BOARD OF ADJUSTMENT

MINUTES

DECEMBER 10, 2014

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 10, 2014 at the Conway Town Office in Center Conway, NH, beginning at 7:05 pm. Those present were: Acting Chair, John Colbath; Andrew Chalmers; Dana Hylan; Luigi Bartolomeo; Alternate, Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Mr. Steiner as a voting member.

PUBLIC HEARINGS

A public hearing was opened at 7:05 pm to consider a **VARIANCE** requested by **WAL-MART REAL ESTATE BUSINESS TRUST** in regards to §147.8.6.2.3 of the Conway Zoning Ordinance **to allow a 298 square foot wall sign** at 46 North-South Road, North Conway (PID 246-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, November 18, 2014.

Andrew Maass of BRR Architecture appeared before the Board. Mr. Maass stated the ordinance does not address businesses the size of Wal-Mart; the ordinance addresses 50,000 square feet of retail space or more. Mr. Maass stated Wal-Mart is now 168,000 square feet; three times the size addressed in the ordinance. Mr. Maass stated there is a precedence set as Lowe's has three signs; a Garden Center sign, and Indoor Lumber Yard sign and a main sign. Mr. Maass stated that Wal-Mart also has different amenities; a Market and Pharmacy, an Outdoor Living and a main sign.

Mr. Bartolomeo stated he thought Wal-Mart came before this Board previously regarding signage. Mr. Irving stated in 1992 for an internally lit sign which was denied; for a freestanding sign which was denied; and to exceed the number and area of wall signs, which was denied. Mr. Bartolomeo stated that he agrees with the applicant that the sign ordinance addresses a building of 50,000 square feet, but does not address a 168,000 square foot building. Mr. Bartolomeo stated it is a question of relative scale and proportion; when the size of the building is so grossly over what the ordinance suggests, it's acceptable to look for relief from the sign ordinance.

Mr. Steiner stated he agrees Mr. Bartolomeo. Mr. Colbath stated when you're on the North-South Road and looking for signage, you hardly can see the signage. Mr. Chalmers stated we were addressing similar applications with the other two big boxes and thinks the Board disagreed that they needed individual signs. Mr. Chalmers stated one of the arguments was it is pretty easy to recognize the garden center; and Wal-Mart is pretty recognizable and has similar layouts in all their stores.

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Mr. Colbath stated there is only one major entrance and a garden center entrance; there is not a third entrance. Mr. Maass agreed. Mr. Hylan asked if the garden center would be used as an entrance. Mr. Maass stated it is usually open only in the summer. Mr. Maass stated with the expansion of the store there is a sliding gate with security sensors so people can get in and out at that location; there also will be a greeter at that gate.

Mr. Bartolomeo stated that the applicants claim is that the building is well set back; and it is. Mr. Hylan stated that as for the outdoor living signs it is pretty obvious what it is; wording does not seem to be very directional. Mr. Hylan stated that he can see the Market and Pharmacy sign and the Wal-Mart sign in the middle, but he doesn't think the outdoor living sign is necessary.

Mr. Colbath stated it is probably a marketing strategy. Mr. Maass stated that Wal-Mart calls that outdoor living. Mr. Maass stated what it is called should not be a reason of whether or not it should be allowed. Mr. Hylan stated he's looking at whether it is necessary; don't see it necessary to change the middle Wal-Mart sign, but do find the one over the entrance necessary.

Mr. Colbath stated there are only two entrances and on opposite sides of the building; think something is necessary. Mr. Hylan stated if it is identified as an entrance. Mr. Irving stated the decision should be based on size and quantity, not content. Mr. Irving stated because they have a conforming freestanding sign they can bump up the wall sign by 50%; he read §147.13.8.6.14.3.

Mr. Bartolomeo stated that he thinks the proposed sign as presented is proportionate to scale. Mr. Colbath stated that the existing sign is now difficult to see. Mr. Chalmers stated with the sign bump up it is twice the size that is allowed. Mr. Bartolomeo stated the ordinance is based on 50,000 square feet not buildings that are three times that size. Mr. Chalmers asked how many square feet total for all three signs. Mr. Maass answered 414.06 square feet. There was no public in attendance.

Mr. Colbath read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 2. **Mr. Hylan made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 3. **Mr. Hylan made a motion, seconded by Mr. Bartolomeo, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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Mr. Colbath read item 5.a.i. **Mr. Bartolomeo made a motion, seconded by Mr. Hylen, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

Mr. Colbath read item 5.b. **Mr. Bartolomeo made a motion, seconded by Mr. Chalmers, that item 5.b was not necessary.** Motion unanimously carried.

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2.3 of the Town of Conway Zoning Ordinance to allow a 298 square foot wall sign be granted. Motion unanimously carried.

A public hearing was opened at 7:40 pm to consider a **VARIANCE** requested by **WAL-MART REAL ESTATE BUSINESS TRUST** in regards to §147.8.6.2.3 of the Conway Zoning Ordinance **to allow a 65.59 square foot wall sign** at 46 North-South Road, North Conway (PID 246-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, November 18, 2014.

Andrew Maass of BRR Architecture appeared before the Board.

Mr. Colbath read item 1. **Mr. Hylen made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 2. **Mr. Hylen made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 3. **Mr. Hylen made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Colbath read item 5.a.i. **Mr. Hylen made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

Mr. Hylen made a motion, seconded by Mr. Steiner, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. **Motion unanimously carried.**

Mr. Colbath read item 5.b. **Mr. Chalmers made a motion, seconded by Mr. Hylen, that item 5.b was not necessary.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2.3 of the Town of Conway Zoning Ordinance to allow a 65.59 square foot wall sign be granted. **Motion unanimously carried.**

A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **WAL-MART REAL ESTATE BUSINESS TRUST** in regards to §147.8.6.2.3 of the Conway Zoning Ordinance **to allow an additional (third) wall sign measuring 49.47 square feet** at 46 North-South Road, North Conway (PID 246-62). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Tuesday, November 18, 2014.

Andrew Maass of BRR Architecture appeared before the Board.

Mr. Colbath read item 1. **Mr. Hylen made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 2. **Mr. Hylen made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 3. **Mr. Hylen made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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Mr. Colbath read item 5.a.i. **Mr. Hylan made a motion, seconded by Mr. Bartolomeo, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

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

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

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

Mr. Chalmers made a motion, seconded by Mr. Hylan, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2.3 of the Town of Conway Zoning Ordinance to allow an additional (third) wall sign measuring 49.47 square feet be granted. Motion unanimously carried.

REVIEW AND APPROVAL OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the Minutes of October 15, 2014 as written. Motion carried with Mr. Colbath abstaining from voting.

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the Minutes of November 19, 2014 as written. Motion carried with Mr. Hylan and Mr. Chalmers abstaining from voting.

Meeting adjourned at 7:50 pm.

Respectfully Submitted,



Holly L. Meserve
Recording Secretary