

## ZONING BOARD OF ADJUSTMENT

### MINUTES

JUNE 15, 2016

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 15, 2016 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Luigi Bartolomeo; Andrew Chalmers; Alternate, Martha Tobin; Alternate, Steven Steiner; Planning Director, Thomas Irving; Recording Secretary, Holly Meserve; and Code Compliance Officer, James Yeager.

#### APPOINTMENT OF ALTERNATE MEMBERS

Mr. Bartolomeo stepped down at this time. Ms. Sherman appointed Ms. Tobin and Mr. Steiner as voting members.

#### PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **ANDREW AND TESSA NARDUCCI** in regards to §147.13.4.4 of the Conway Zoning Ordinance **to allow the construction of a building overhang within the side and front setback** at 112 Mechanic Street, North Conway (PID 219-4). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 6, 2016.

Steve Burdette and Luigi Bartolomeo appeared before the board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Burdette stated they would like to rescue this building from its current run-down state; we think that what we are proposing will create a pleasant atmosphere in the neighborhood.

Mr. Burdette stated the proposed 30” overhang will add an architectural element as well as protect the façade and entry way; they will be dressing up the face of the building as well. Mr. Burdette stated the building is a prominent presence at the end of the North-South Road. Mr. Burdette submitted pictures of the existing building to the Board.

Ms. Sherman asked for Board comment; Mr. Chalmers asked if the only item encroaching further into the setback is the awning. Mr. Burdette answered in the affirmative and stated that it does not touch the ground. Mr. Burdette stated aesthetically it improves the building. Mr. Colbath stated it looks like the entire building, except for the back, doesn’t comply with the setbacks. Mr. Bartolomeo stated that is correct.

Mr. Chalmers stated there was a fire in the building and when reconstructed it grew substantially. Ms. Sherman asked if that was prior to zoning. Mr. Colbath stated there was a fire in the 1990’s.

Mr. Bartolomeo stated he is the owner’s agent and he would like to address the five criteria’s to grant a variance. Mr. Bartolomeo stated granting the variance will not be contrary to the public interest as there is no detriment to the public interest by improving this building.

**Adopted: July 20, 2016 – As Written**

**CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 15, 2016**

Mr. Bartolomeo stated the spirit of the ordinance will be observed. Mr. Bartolomeo stated as he thought about this criteria, he realized that every application violates the letter of the law, but the criteria is the “spirit” of the ordinance and the spirit of the ordinance is to create uniformity and a light open airy feel. Mr. Bartolomeo stated a 30” overhang on brackets that does not cover new ground does not violate that spirit.

Mr. Bartolomeo stated substantial justice would be done as the public would benefit from an improved structure in this neighborhood; the public is well served by these improvements. Mr. Bartolomeo stated the values of surrounding properties will not be diminished, the improvements will elevate this area.

Mr. Bartolomeo stated in regards to hardship, with this particular building on this lot, the finish grade comes up to the threshold of the building which is causing rot; the overhang will give added protection to the building.

Mr. Bartolomeo stated this encroachment does not cover new ground like other variances denied by this Board. Mr. Bartolomeo stated they are encroaching, but it is in the air and it does not cover new ground; he believes the neighborhood will be well served by this addition.

Mr. Chalmers stated one of the conditions of this building, having low access, is something very desirable in public access buildings; he would presume an ADA accessible ramp would have had to been installed if the building was not low to the ground. Mr. Chalmers stated if this condition is around the whole structure, and using the argument that it is to protect the structure, it is not going to protect the rest of the building that has the same grade.

Mr. Bartolomeo stated they will be installing drippage; not the sole reason, but a supporting reason. Mr. Burdette stated he wants to protect the custom made wooden front door as it will be comprised if it is not protected. Mr. Chalmers stated if extending the eave or the drippage around the rest of the building then he would expect that they would have to come back for another variance. Mr. Bartolomeo stated that it might not exceed what is there, so they may not have to come back.

Mr. Chalmers stated this will make the building much more attractive than what has been there for years; the Board should entertain granting the variance as part of our approach for addressing variances is to look at public rights. Mr. Chalmers stated this is already tight to the street, not sure which side the utilities run on, but further encroachment could impede equipment. Mr. Chalmers stated he would propose if we approve this application the Board add a condition that if this encroachment needed to be removed it should be done at the applicant’s expense. Mr. Irving stated they are not encroaching into the public way, but into the setback. Mr. Chalmers stated the setback is to maintain the right-of-way. Mr. Irving stated staff does not share your concern in this case.

Mr. Burdette stated it is being bolted to the surface and could be removed probably within an hour if a serious issue arises, however, the utilities are off to one side. Mr. Colbath asked the zone of this property. Mr. Irving answered North Conway Village Residential. Mr. Colbath asked if this use is grandfathered. Mr. Irving stated it is a legally existing non-conforming use.

Ms. Sherman asked for public comment; there was none.

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

**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 §147.13.4.4 of the Town of Conway Zoning Ordinance to allow the construction of a building overhang within the side and front setback be granted.** **Motion unanimously carried.**

\*\*\*\*\*

A public hearing was opened at 7:23 pm to consider a **VARIANCE** requested by **FRAM REAL ESTATE INVESTMENT CO, LLC** in regards to §147.13.8.6.1.2 and §147.13.8.6.10.1 of the Conway Zoning Ordinance to allow an internally lit freestanding sign exceeding the height restriction at 1921 White Mountain Highway, North Conway (PID 235-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 3, 2016.

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 15, 2016

Ms. Tobin left at this time. Mr. Bartolomeo joined the Board at this time. Brian Siddell, Sign Manager for Auto Zone, appeared before the Board. Ms. Sherman read the application and the applicable sections of the ordinance.

Mr. Siddell stated he is withdrawing the variance request for height [§147.13.8.6.1.2]; being on the site today 25-feet is not needed. Mr. Siddell stated in regard to internally lit, there are a few internally lit signs in the same area and he would like to offer, something we commonly do to reduce light, to opaque the light of the face so the red letters and orange stripes only are illuminated. Mr. Siddell stated this provides for a better look than an external light.

Ms. Sherman asked for Board comment; Mr. Bartolomeo asked how much is opaque. Mr. Siddell answered 100%; that is the request seeing the intent of the spirit of the ordinance is external lighting. Mr. Bartolomeo stated the spirit of the ordinance is to reduce the amount of the light into the sky and having the white area 100% opaque means light would only come thru the applied vinyl graphics. Mr. Siddell agreed.

Mr. Siddell stated external lights are expensive, and would require a few of them to make the sign look good. Mr. Siddell stated having an opaque face is a good thing. Mr. Bartolomeo asked if the sign would still have a white background. Mr. Siddell stated it would be white during the day, but at night only the black and red would be illuminated. Mr. Siddell stated it is also company policy that the signs are shut off 30 minutes after closing.

Mr. Steiner asked if there are any other stores where externally lit signs are used. Mr. Siddell answered very few. Mr. Colbath asked if the existing freestanding sign is grandfathered. Mr. Irving answered in the affirmative. Mr. Colbath asked if they could use the grandfathering and change the sign. Mr. Irving answered in the affirmative.

Mr. Siddell stated the sign is in no shape to be removed. Mr. Colbath stated since it is an existing sign it can be replaced. Mr. Siddell stated he did not know that. Mr. Yeager stated he requested a letter from the owner of the property indicating that he understood if the variance was granted he would be relinquishing any grandfathering.

Ms. Sherman asked for public comment; there was none.

Mr. Bartolomeo asked if Mr. Siddell was removing the height request. Mr. Siddell answered in the affirmative. Mr. Bartolomeo asked if he was not proposing white lighting, but opaque. Mr. Siddell answered in the affirmative. Mr. Irving stated the Board can assign conditions to the variance if granted. Mr. Colbath stated that the request is for a 28 square foot internally illuminated sign. Mr. Siddell answered in the affirmative with the background to be opaque.

Mr. Yeager stated the Sign Committee did agree with internal illumination. Mr. Irving agreed, but the Planning Board did not put the proposed amendment on the warrant. Mr. Colbath asked if the 99 Restaurant sign was internally lit. Mr. Yeager answered in the affirmative and stated it was a grandfathered sign. Ms. Sherman stated the Pizza Hut sign is the same way. Mr. Yeager stated the Homestead sign is approximately 60 square feet and not internally lit, but externally lit.

Mr. Chalmers stated this might be a good compromise, trade a 60 square foot sign for a sign half the size with internal illumination. Mr. Chalmers stated they are entitled to have a 60 square foot sign. Mr. Colbath stated they are not entitled to have internal illumination.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Chalmers stated it has been years since we have addressed internal illumination and when we do it gets put on the back burner; it does not seem the will of the voters to change this. Mr. Irving stated the Sign Committee and the Planning Board worked very hard on this, but the amendment was not suitable at this time.

Ms. Sherman stated if the Board decides to grant the variance we can add conditions. Mr. Irving agreed and stated the conditions could be that the sign conform to the 15-foot height restriction, that the white background is opaque and only the letters and stripes are translucent. Mr. Chalmers stated the request is still contrary to the public interest. Ms. Sherman stated it is also evident that the Town does not want internally lit signs. **Motion defeated with Mr. Steiner, Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Mr. Chalmers stated the intent of the ordinance is to not spill light and that is what a well-designed internally lit sign does. **Motion carried with Mr. Bartolomeo, Mr. Chalmers and Ms. Sherman voting in the affirmative and Mr. Steiner and Mr. Colbath voting in the negative.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated they are trading a big, ugly sign for a smaller sign. **Motion carried with Mr. Bartolomeo, Mr. Steiner and Mr. Chalmers voting in the affirmative and Mr. Colbath and Ms. Sherman voting in the negative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Steiner voting in the negative.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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. Chalmers stated there are no special conditions on this property. Mr. Colbath stated there are no conditions of this property that distinguishes it from other properties in the area. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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 Mr. Chalmers, 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 defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that if the criteria of subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Chalmers stated the property can still be reasonably used. **Motion defeated with Mr. Steiner, Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.13.8.6.10.1 of the Conway Zoning Ordinance as amended by the applicant to allow an internally lit freestanding sign with the light background opaque and only light illuminating through the lettering and stripes be granted. Motion unanimously defeated.**

\*\*\*\*\*

A public hearing was opened at 7:55 pm to consider a **VARIANCE** requested by **FRAM REAL ESTATE INVESTMENT CO, LLC** in regards to §147.13.8.6.2.2 and §147.13.8.6.10.1 of the Conway Zoning Ordinance **to allow a 54.31 square foot internally lit wall sign** at 1921 White Mountain Highway, North Conway (PID 235-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 3, 2016.

Brian Siddell, Sign Manager for Auto Zone, appeared before the Board. Ms. Sherman read the application and the applicable sections of the ordinance. Mr. Siddell stated the sign on the front wall facing White Mountain Highway is allowed to be 31.18 square feet and they are asking for a 54.31 square foot wall sign.

Mr. Siddell stated there is a large open gable with much negative space and felt the 54.31 square foot sign was significantly large enough for that space. Mr. Siddell stated we are also requesting internal illumination because that is the way we do our signs. Mr. Siddell stated the red would be LED and the signs are shut off 30 minutes after closing.

Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if the Board granted one of the variance requests, which one would the applicant prefer. Mr. Siddell answered the one parallel to the street on the short wall. Mr. Colbath asked if the drawings are drawn to scale. Mr. Siddell answered in the affirmative.

Mr. Steiner stated he is okay with the size, but not with the internal illumination. Mr. Colbath stated if the drawing is drawn to scale then it is not an unreasonable size sign, but the ordinance is opposed to internal illumination. Mr. Bartolomeo stated the Hannaford sign has a nice soft glow to it, and with a certain amount of external light you can get the same effect. Mr. Chalmers stated there are some signs that have been tastefully done with back lighting.

Mr. Siddell stated back lit halo illumination is another option for them; and that method is preferred as the white wash from lights is so incredible. Mr. Siddell stated white LED is super white, but with halo lighting the only outline you see is the red outline.

Mr. Bartolomeo asked if he would consider halo lighting over internal illumination. Mr. Siddell stated that they don't have time to resubmit, but would be willing to entertain it as a condition of approval. Mr. Colbath asked if back lit halo is allowed. Mr. Irving stated it is a form external illumination and not against the sign ordinance.

Mr. Chalmers asked why is the size restriction section not as important as any other section of the ordinance. Mr. Bartolomeo stated when the sign ordinance was developed technology was crude, the plexiglas on the front would crack and bare the bulbs behind it, but over the decade's technology has improved. Mr. Chalmers stated we shouldn't be giving more weight to one section of the ordinance over another section.

Mr. Colbath stated this Board does not set a precedent; we look at all applications on an individual basis and he believes we have done a fair job of looking at a fair size sign to the size of the building. Mr. Colbath stated we have never gotten feedback asking why did you do that; it doesn't have any greater weight and illumination is black and white. Mr. Chalmers stated we need to address the internally lit section of the sign ordinance. Mr. Colbath stated the Sign Committee tried to do that, but the Planning Board opted not to do that this year.

Mr. Siddell stated that he is withdrawing the request for internal illumination [§147.13.8.6.10.1]. Mr. Bartolomeo stated he could support the larger size sign on the front side; relative scale to proportion. Ms. Sherman asked for public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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 Mr. Steiner, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there is none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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 Mr. Steiner, 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 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.** Ms. Sherman asked for Board comment; Mr. Bartolomeo asked how do specific conditions apply to a wall sign. Mr. Colbath stated it is the size of the building that is going to be on the property.

Mr. Bartolomeo asked it is not about the land; and stated that it could mean improvements as well, not just the land. Mr. Chalmers asked what is the zoning burden being placed on this property that is not in a similar situation as other properties. Mr. Colbath stated put it to the size of the building, which would distinguish it from others in the area. **Motion carried with Mr. Bartolomeo, Mr. Steiner, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5.a.ii. **Mr. Colbath made a motion, seconded by Mr. Steiner, 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 Mr. Steiner, 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 carried with Mr. Bartolomeo, Mr. Steiner, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Chalmers voting in the negative.**

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

**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2.2 of the Conway Zoning Ordinance to allow a 54.31 square foot externally lit wall sign be granted. Motion unanimously carried.**

\*\*\*\*\*

A public hearing was opened at 8:19 pm to consider a **VARIANCE** requested by **FRAM REAL ESTATE INVESTMENT CO, LLC** in regards to §147.13.8.6.2; §147.13.8.6.2.2 and §147.13.8.6.10.1 of the Conway Zoning Ordinance **to allow a second 54.31 square foot internally lit wall sign** at 1921 White Mountain Highway, North Conway (PID 235-37). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, June 3, 2016.

Brian Siddell, Sign Manager for Auto Zone, appeared before the Board. Ms. Sherman read the application and the applicable sections of the ordinance. Mr. Siddell stated he is withdrawing the variance request for internal illumination [§147.13.8.6.10.1]. Mr. Irving stated the ordinance allows for only one wall sign, this is to permit a second wall sign.

Mr. Siddell stated this is for the customer entry door which is on the side of the building facing north; the sign is requested to be the same size as the front to keep symmetry. Mr. Siddell stated the gables are the same size and if the signs were a different size you would be able to see the difference.

Ms. Sherman asked for Board comment; Mr. Bartolomeo stated he does not think it needs to be the same size as the first one; a smaller sign centered over the door would be fine. Mr. Colbath stated they would still have use of the 60 square foot freestanding sign. Mr. Irving agreed.



Adopted: July 20, 2016 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 15, 2016

Mr. Chalmers stated he could not support a second wall sign. Mr. Colbath agreed and stated that they still have a grandfathered, 60 square foot freestanding sign. Mr. Chalmers stated if they eliminated the freestanding sign in trade for the two proposed wall signs, he could support that.

Mr. Irving stated even if the existing non-conforming freestanding sign goes away, they are still entitled to a conforming freestanding sign; is that suitable for two wall signs, that could be something the Board decides on, but you still have to go through the statutory requirements.

Ms. Sherman asked for public comment; Jonathan Goodwin stated he doesn't understand, why an exception is allowed when he doesn't see a hardship, why would they be allowed a second wall sign when no else can have a second wall sign.

Mr. Colbath stated allowing a second sign is what the Board has to decide. Mr. Colbath stated we have allowed larger signs relative to the size of the building, symmetric size to the building, if proportionally done, as it appears to be proportionately appropriate. Mr. Goodwin stated that is aesthetics, if a customer wants a larger sign how do you do that. Mr. Colbath stated any business that feels they need anything different they can apply for a variance.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated the applicant already has a variance for a larger sign, he doesn't believe a second sign is necessary and the ordinance precludes it. **Motion unanimously defeated.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; Ms. Sherman stated the ordinance is designed to limit, to an extent, the amount of signage on a lot. **Motion unanimously defeated.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Steiner, that substantial justice is done.** Ms. Sherman asked for Board comment; Mr. Colbath stated substantial justice weighs greater with the public. **Motion defeated with Mr. Bartolomeo, Mr. Steiner, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Chalmers voting in the affirmative.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion carried with Mr. Bartolomeo, Mr. Colbath and Ms. Sherman voting in the affirmative and Mr. Steiner and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, 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. Colbath stated the public would not be better served by having a second wall sign on this building. **Motion unanimously defeated.**

Ms. Sherman read item 5.a.ii. **Mr. Colbath made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion defeated with Mr. Steiner, Mr. Chalmers, Mr. Colbath and Ms. Sherman voting in the negative and Mr. Bartolomeo voting in the affirmative.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, 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 defeated.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Steiner, that if the criteria of subparagraph a are not established, an unnecessary hardship will be deemed to exist, if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.** Ms. Sherman asked for Board comment; Mr. Bartolomeo stated the property can be reasonably used. **Motion unanimously defeated.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.13.8.6.2 and §147.13.8.6.2.2 of the Conway Zoning Ordinance to allow a second 54.31 square foot externally lit wall sign be granted. Motion unanimously defeated.**

\*\*\*\*\*

A public hearing was opened at 8:50 pm to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **RED BARN SC, LLC** in regards to §147.14.3 and §147.14.3.3 of the Conway Zoning Ordinance **to request that the ZBA find that the sign permit application to consolidate two freestanding signs into one freestanding sign should be granted** 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 Friday, June 3, 2016.

Christopher Meier of Cooper Cargill Chant appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Meier stated they have two existing signs they wish to consolidate into one more visually appealing sign. Mr. Meier stated the existing granite pillars would stay in the same location. Mr. Meier stated it would go from two non-conforming signs to one non-conforming sign in the location of one of the signs.

Mr. Meier stated the sign permit application was denied; although reducing the amount of non-conformity, the message area of the new sign is larger and higher than the old sign. Mr. Meier stated he thinks it was appropriate that it was denied because the ordinance states the non-conformity cannot be increased, but philosophically it is moving toward conformity although some of the sign size is increasing, the overall signage is decreasing. Mr. Meier stated he feels Mr. Yeager should have more authority than he does.

Mr. Yeager stated the ordinance does not allow him to approve the non-conformity of any sign; and the structure moves into the right-of-way further. Mr. Meier stated the overhang goes out over the posts.

Ms. Sherman asked for Board comment; Mr. Colbath asked if the roof is necessary over the signage. Mr. Meier stated it matches the façade of the building and provides continuity with the building. Mr. Meier stated the owner took great steps to preserve the barn, so it is a visual thing.

Jonathan Goodwin stated the roof and structure is a reflection of what is going on architecturally. Mr. Colbath asked if it is a necessary element. Mr. Bartolomeo stated the complex is known as the Red Barn, so he thinks what they did makes sense. Mr. Colbath asked if the sign could have been approved with a different structure. Mr. Meier answered in the negative. Mr. Irving stated on the street side where the roof goes beyond the existing pillars, that goes further into the State’s right-of-way.

Ms. Sherman asked for public comment; Mr. Goodwin stated the idea is to clean it up, the signs have been there forever; they would like to make the main sign more attractive, relate it to the building, and make a more readable, cleaner looking sign and not move the granite.

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that the Appeal of Administrative Decision be granted. Motion unanimously defeated.**

\*\*\*\*\*

A public hearing was opened at 9:05 pm to consider a **VARIANCE** requested by **RED BARN SC, LLC** in regards to §147.14.3 and §147.14.3.3 of the Conway Zoning Ordinance **to allow two freestanding signs to be consolidated into one freestanding sign** 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 Friday, June 3, 2016.

Christopher Meier of Cooper Cargill Chant appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Meier stated this would clean up the front and declutter and make it less confusing; the tenants would all be on one sign. Mr. Meier stated this consolidates everything in a visually appealing way that incorporates the old barn.

Mr. Meier read from the *Addendum to Application for Appeal/Variance* submitted with the application [copy in the file] addressing the five criteria to grant a variance.

Ms. Sherman asked for Board comment; Mr. Colbath asked if the new sign encroaches further into the setback. Mr. Irving stated it encroaches further into the State’s right-of-way and the NHDOT will need to approve the additional encroachment. Mr. Meier stated he did not realize that was an issue. Mr. Irving stated the sign is also under the overhead utilities and the electrical company often have restrictions within their utility rights- of-way; we will need conformation from the electrical company having jurisdiction prior to the erection of the sign.

Mr. Irving asked how is the sign going to be illuminated. Mr. Goodwin answered overhead. Mr. Irving stated if the Board grants the variance there should be a condition that lighting is to be in accordance with the approved site plan. Mr. Irving stated the site plan review regulations requires all lighting to be dark sky compliant fixtures and required to be down lighting, any up lights would have to be replaced with down lights.

Adopted: July 20, 2016 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – JUNE 15, 2016

Ms. Sherman asked for public comment; Mike Jaffrey, Manager of the Red Barn Property, stated the property has improved and the owner is committed to having an attractive property. Mr. Jaffrey stated this would declutter the entry way, tenants would be more visible, and the new sign would be more attractive having the look and feel of the red barn; it is also a significant cost and investment by the owner to have the property look its best and do right by his tenants.

Mary Ann Eastman of the Book Warehouse stated Laura Buckman, one of the tenants, had to leave, but she believes the new design is visually pleasing and will help increase business sales. Ms. Eastman stated people know the red barn and now all the tenants will be represented in one spot.

Nanci Neenan stated the new sign adds unity and mimics the red barn; the property looks appealing and the tenants are pleased. Ms. Neenan stated that she appreciates the Board working so the Town is not cluttered, but the variance should be granted in this case.

Mr. Meier stated the cap on the proposed sign will allow the lights to be hidden and facing down.

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

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

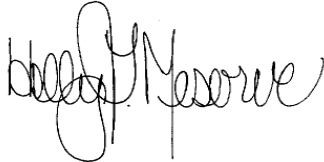
**Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §147.14.3 and §147.14.3.3 of the Town of Conway Zoning Ordinance to allow two freestanding signs to be consolidated into one freestanding sign be granted with the conditions that before the sign can be erected the applicant must obtain approval from the New Hampshire Department of Transportation to allow the sign to remain within the State's right-of-way; obtain approval from the utility company servicing the site; and the sign must be down lit. Motion unanimously carried.**

#### REVIEW AND ACCEPTANCE OF MINUTES

**Mr. Chalmers made a motion, seconded by Mr. Steiner to approve the Minutes of May 18, 2016 as written. Motion carried with Mr. Colbath abstaining from voting.**

Meeting adjourned at 9:30 pm.

Respectfully Submitted,



Holly L. Meserve  
Recording Secretary