

ZONING BOARD OF ADJUSTMENT

MINUTES

AUGUST 16, 2017

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, August 16, 2017 at the Conway Town Office in Center Conway, NH, beginning at 7:00 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **SPECIAL EXCEPTION** requested by **KATHLEEN SHERMAN** in regards to §190-26.B.(1)(h) of the Conway Zoning Ordinance to **erect a sunshade for the cows in the pasture within the floodplain conservation district on East Conway Road, Center Conway (PID 240-46)**. Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2017.

Ms. Sherman stepped down at this time. Phyllis Sherman appeared before the Board. Mr. Colbath stated that only four members were present and the applicant is entitled to a five-member Board. Ms. Sherman agreed to proceed with the hearing with four-members.

Ms. Sherman stated this is a pole structure between 1,200 and 1,500 square feet. Mr. Colbath asked if this is in the floodplain. Ms. Sherman answered in the affirmative and stated that it was not within the floodway. Mr. Colbath asked if the poles would be permanent. Ms. Sherman answered in the affirmative. Mr. Colbath asked how many cows could be under the structure. Ms. Sherman stated there are 60 in the pasture and this should take care of most of them.

Mr. Colbath asked if this is just for shade, not a feeding station. Ms. Sherman answered in the affirmative. Mr. Colbath asked if this area floods. Ms. Sherman stated it has, but at most a foot. Ms. Sherman stated other than the poles themselves they are not going to impede or displace water. Mr. Chalmers asked if there would be any fill placed. Ms. Sherman answered in the negative. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Steiner made a motion, seconded by Mr. Chalmers, 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.** Mr. Colbath asked for Board comment; Mr. Irving stated this is consistent with the codes. **Motion unanimously carried.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 2 is not applicable.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Chalmers made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(h) of the Town of Conway Zoning Ordinance to erect a sunshade for the cows in the pasture within the floodplain conservation district be granted. Motion unanimously carried.

A public hearing was opened at 7:08 pm to consider a **VARIANCE** requested by **NORTH CONWAY FAIRWAYS, LLC/MICHAEL’S** in regards to §190-20.F.(2) of the Conway Zoning Ordinance **to allow an additional (second) 94.95 square foot wall sign** at 120B North-South Road, North Conway (PID 246-51); and a public hearing was opened at 7:19 pm to consider a **VARIANCE** requested by **NORTH CONWAY FAIRWAYS, LLC/MICHAEL’S** in regards to §190-20.F.(2) of the Conway Zoning Ordinance **to allow an additional (third) 94.95 square foot wall sign** at 120B North-South Road, North Conway (PID 246-51). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2017.

Ms. Sherman rejoined the Board at this time. Chris Stone of C & S Signs appeared before the Board. Mr. Bartolomeo asked why the sign permit was denied. Mr. Irving stated they already have the maximum signage permitted through the ordinance. Mr. Bartolomeo asked why do you need to other. Mr. Stone stated to enhance safety, increase avenue for revenue to give it more advertisement and better visibility. Mr. Bartolomeo asked if the store is a destination or an impulse. Joe Sanpietro of Michael’s stated that it is probably both.

Ms. Sherman stated that the applicant is also requesting a third wall sign on the south side of the building. Ms. Sherman stated the sign proposed on the north side of the building would not be seen until you are in the traffic circle and the sign proposed on the south side of the building would be blocked by trees. Mr. Stone stated the third elevation would be visible from the Walmart parking lot and the sign on the north elevation would be visible from the Petco parking lot.

Mr. Chalmers stated that he thinks the third wall sign to be seen from Walmart would cause more confusion as people may think they can get there by using the driveway for NH Aluminum and Service Master; they might think they can pull through these other businesses rather than make it clearer to get into that location. Mr. Chalmers stated he does not believe it would be beneficial to the public.

Ms. Sherman stated one of the reasons for the sign ordinance is to clearly identify businesses, but not to have so much excess signage. Mr. Colbath stated going around the circle he doesn’t think these signs will be effective; he thinks the existing signs are excellent, you can see it from Route 16. Mr. Colbath stated thinks the two additional wall signs are in excess. Mr. Bartolomeo stated the main sign is a nice sign, good job.

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At this time, the Board agreed to consider both applications at the same time. Ms. Sherman asked if the applicant had any further information to provide the Board regarding the third requested wall sign. Mr. Stone answered in the negative. Ms. Sherman asked for public comment for both applications; 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; Mr. Bartolomeo stated that it violates the Town ordinance. Mr. Colbath stated that it does not serve the public interest as the existing signage works; and it is against the ordinance. **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; Mr. Chalmers stated the ordinance is best served by being upheld in this case. Mr. Colbath stated the ordinance is to limit unnecessary signage. **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 in this case the public justice outweighs the justice for the applicant. **Motion unanimously defeated.**

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. Steiner voting in the negative.**

Ms. Sherman read item. 5.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 there is no specific application to this property. **Motion unanimously defeated.**

Ms. Sherman read item 5. 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 defeated.**

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. Steiner, that if the criteria is 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. Colbath stated there is a reasonable use of the property. **Motion unanimously defeated.**

Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variances from §190-20.F.(2) of the Town of Conway Zoning Ordinance to allow two additional (a second and third) 94.95 square foot wall sign be granted. Motion unanimously defeated.

A public hearing was opened at 7:28 pm to consider a **VARIANCE** requested by **JOURNEY CHURCH** in regards to §190-13.F.(5) of the Conway Zoning Ordinance **to allow a twenty-square foot freestanding sign** at 15 Hutchins Drive, Center Conway (PID 261-46). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2017.

Trevor Skalberg of Journey Church appeared before the Board. Ms. Sherman asked how much frontage does the property have on Route 113. Mr. Skalberg stated approximately 800-900 feet. Mr. Irving stated that section of the highway the NHDOT right-of-way is wider. Mr. Colbath asked how much over the allowed square footage is the applicant requesting. Mr. Irving answered 8 square feet. Mr. Colbath stated he totally thinks you need a sizable sign so it can be seen. Ms. Sherman stated she doesn't see a big difference between 12 square feet and 20 square feet.

Ms. Sherman asked for public comment; Tracy McCarthy, who lives directly across the street, stated the overall scope of this project is large. Ms. McCarthy stated that we have concerns about the lighting, the parking lot; it is different from what we have looked at for the past 30 years. Ms. McCarthy stated the project is not in keeping with what we have known for the past 30 years.

Ms. McCarthy stated that she understands that the purpose of the meeting tonight is not to address the lighting or the traffic flow, but the church is a destination and doesn't think people are not going to know where the church is. Ms. McCarthy stated that the Our Lady of the Mountains Catholic Church in North Conway has a tidy sign and it seems to work just fine. Ms. McCarthy stated this is a really big change to the neighborhood.

Ms. McCarthy asked what is the lighting for this sign. Mr. Skalberg stated the sign will be placed in between the two pine trees, and it can only a one-sided sign it cannot be two sided. Mr. Skalberg stated no light will shine across the road. Ms. Sherman stated it has to be down lit. Mr. Irving agreed. Ms. McCarthy asked the hours of lighting. Mr. Irving stated we do not regulate the hours of lighting.

Ms. McCarthy stated that she would like it acknowledged that it is a big change. Ms. McCarthy stated she did not consider that this would happen to the view across the street from her home. Mr. Colbath stated that he empathizes with her and thanked Ms. McCarthy for coming to the meeting to express her concerns as it is very rare that abutters do come. Mr. Colbath stated it will take adjusting, but a lot more worse could have gone there.

Holly Skalberg stated that the sign is over towards the driveway and not directly in front of her home. Mr. Bartolomeo asked if they intend to light it through the night. Mr. Skalberg stated we have typically run it through the night. Mr. Colbath asked that they consider not running it at night. Mr. Skalberg stated they would take it under consideration.

Mr. Chalmers stated Our Lady of the Mountains Church has a small sign and a large parish and it doesn't seem the size of the sign has impacted the ability to find that church. Mr. Irving stated their sign is bigger than this one, it is 30-square feet 10-feet from the right-of-way. Mr. Irving stated this property is 50-feet from the pavement. Mr. Chalmers stated that he would presume that this is a destination, that people are planning to go to your church and that this is not an impulse. Mr. Chalmers stated he doesn't think the bump up in the sign size is necessary to have a successful facility.

Mr. Colbath stated Our Lady of the Mountains Church is not as noticeable as you may think it is, people have a difficult time locating it. Mr. Skalberg stated we currently have a 32 square foot sign and truck drivers are unable to find it. Mr. Skalberg stated it is going to be set back further from the road and within the trees. Ms. Sherman stated the road frontage makes a huge difference. Mr. Colbath stated the church is also set back from the road.

Mr. Bartolomeo stated given the long frontage and that the right-of-way is wider in this area it will appear to be further back from the road so he has no problem supporting this variance. Mr. Steiner stated he is siding with the abutter, he has to in this case.

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; Mr. Chalmers stated he believes granting the variance would be contrary to the public interest. **Motion carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 carried with Mr. Steiner and Mr. Chalmers 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; there was none. **Motion carried with Mr. Steiner and Mr. Chalmers 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. Steiner and Mr. Chalmers voting in the negative.**

Ms. Sherman read item. 5.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 that he does not believe there is any unnecessary hardship. **Motion carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5. 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 carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that item 5.b. is not necessary.** Motion carried with Mr. Steiner voting in the negative.

Mr. Colbath made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-13.F.(5) of the Town of Conway Zoning Ordinance to allow a twenty-square foot freestanding sign be granted. Motion carried with Mr. Steiner and Mr. Chalmers voting in the negative.

A public hearing was opened at 7:59 pm to consider a **VARIANCE** requested by **JOURNEY CHURCH** in regards to §190-13.F.(5) of the Conway Zoning Ordinance **to allow a 73-square foot wall sign** at 15 Hutchins Drive, Center Conway (PID 261-46). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, August 4, 2017.

Trevor Skalberg of Journey Church appeared before the Board. Mr. Irving stated the ordinance restricts signage to 12 square feet within the residential agricultural district. Ms. Sherman stated that this is a sign that is not permitted at all. Ms. Sherman asked if other churches have wall signs. Mr. Chalmers asked if it would be visible from the road. Mr. Skalberg stated they are hoping to be able to see it from the road as we are set back quite a bit from the road. Mr. Colbath asked the size of the building. Mr. Skalberg stated it is just under 12,000 square feet.

Mr. Bartolomeo stated most of the other churches are in village settings and this is in the boonies and set back from the road. Ms. Sherman stated there is the Baptist Church in Center Conway and they only have a freestanding sign. Ms. Skalberg stated the entire frontage is lined with trees, which you will be able to see it through them, but being so far back it is not going to look like 73 square feet. Ms. Sherman asked if they are planning on removing any more greenery. Mr. Skalberg stated not any more than what has already been done. Ms. Sherman asked if any of the greenery is in the road right-of-way. Mr. Skalberg answered in the negative.

Mr. Irving stated the site plan has required landscaping and trees; any trees on the church property that are not required by the site plan, there is nothing to preclude them from being cut. Mr. Irving stated not only has the lighting not been installed, but neither has the landscaping. Mr. Skalberg stated because of Hutchins Drive he is concerned with people missing the church and going through to the condos, there is a chance they would drive to the private property.

Mr. Chalmers asked if they are permitted directional signs. Mr. Irving answered in the affirmative. Mr. Bartolomeo stated that is a good point. Mr. Colbath stated it is a very large building that sits back from the road.

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 it is a big building that sits back from the road and this sign relative to scale will have a low impact. Mr. Chalmers stated they already have been granted a variance for additional signage over what they are allowed and the ordinance is clear on this matter. **Motion carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 ordinance is clear. **Motion carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

Ms. Sherman read item. 5.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 carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

Ms. Sherman read item 5. 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 carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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. Steiner and Mr. Chalmers voting in the negative.**

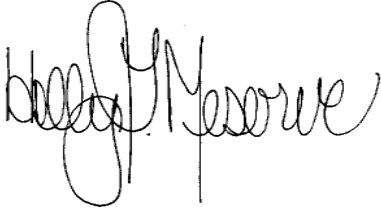
Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Steiner, that item 5.b. is not necessary.** **Motion carried with Mr. Steiner voting in the negative.**

Mr. Colbath made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-13.F.(5) of the Town of Conway Zoning Ordinance to allow a 73-square foot wall sign be granted. **Motion carried with Mr. Steiner and Mr. Chalmers voting in the negative.**

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Meeting adjourned at 8:30 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Recording Secretary