

ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 16, 2020

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, September 16, 2020 at the Conway Village Fire Station, 97 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Alternate, Phyllis Sherman; Code Enforcement Officer, James Yeager; and Planning Assistant, Holly Meserve.

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider an **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT** requested by **WILLIAM J. HOUNSELL** in regards to §190-13.D. of the Conway Zoning Ordinance **to allow the encroachment of one corner of the existing roof soffit of the accessory dwelling unit by approximately 1.9-feet into the 25-foot front setback** at 112 & 120 Thompson Road, North Conway (PID 219-251). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, September 3, 2020.

Seth Burnell of HEB Engineers and William Hounsell appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. Burnell stated this is a single-family home with an accessory dwelling unit. Mr. Burnell stated while doing a boundary survey we found the overhang of the accessory dwelling unit encroaches into the front setback by six square feet.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if this was discovered on their own or is the Town making them do this. Mr. Burnell stated they discovered it. Mr. Colbath asked if this is an approved accessory dwelling unit. Mr. Hounsell answered in the affirmative.

Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 3 is not applicable. Motion carried unanimously.**

Mr. Colbath read item 4. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 5. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the equitable waiver from §190-13.D of the Town of Conway Zoning Ordinance to allow the encroachment of one corner of the existing roof soffit of the accessory dwelling unit by approximately 1.9-feet into the 25-foot front setback be granted. Motion carried unanimously.

A public hearing was opened at 7:09 pm to consider a **SPECIAL EXCEPTION** requested by **PAUL AND SHARON PACENKA** in regards to §190-15.B.(4)(a) of the Conway Zoning Ordinance **to allow an additional residential unit for a total of three-units** at 29 Pollard Street, Conway (PID 276-5). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020.

Paul and Sharon Pacenka appeared before the Board. Mr. Pierce stepped down. Mr. Colbath appointed Ms. Sherman as a voting member. Mr. Colbath read the application and the applicable section of the ordinance. Ms. Pacenka stated they purchased the property in 2018; it was a single-family home with a loft over the barn, which was used as an apartment. Ms. Pacenka stated we rehabbed the entire house, made the main house a two-family and dismantled the loft. Ms. Pacenka stated we are now asking to make that a livable space.

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if they are seeking three unit's in total. Ms. Pacenka answered in the affirmative, and stated it would keep the same exact footprint of the house. Mr. Bartolomeo asked when they made the other apartment in the main house did they come before the Zoning Board of Adjustment. Ms. Pacenka answered in the negative and stated it was already zoned as a two-family. Mr. Bartolomeo asked if there was ever a time when there were three apartments. Ms. Pacenka answered in the negative.

Mr. Colbath asked when the house was built. Ms. Pacenka answered 1890. Mr. Colbath asked if they are proposing three-units total. Ms. Pacenka answered in the affirmative. Mr. Colbath asked how big is the lot. Ms. Pacenka answered 0.77 of an acre. Mr. Colbath asked if there are any changes to the exterior. Ms. Pacenka answered in the negative.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. Colbath asked if there is adequate parking. Ms. Pacenka stated there are two spaces in the garage and there is area enough for four parking spaces. Mr. Colbath stated accessory structures must have at least three hundred (300) square feet. Ms. Pacenka stated it will be 588 square feet.

Mr. Colbath read item #7 that all of the dwelling units shall be used for long-term residency; short-term transient occupancies of less than 30 consecutive days of any dwelling unit is prohibited. Mr. Colbath read item #8 that scaled floor plans and a scaled site drawing must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with the requirements for this special exception.

Mr. Colbath asked for public comment; Jill McMillan of 39 Pollard Street stated she has some serious concerns about the parking, as we already have cars that are almost over the line to our property that park there occasionally. Ms. McMillan stated Pollard Street is unique in this Town, it is a very unique area, it has been residential forever and it has beautiful homes on it.

Ms. McMillan stated it was not a two-family; the previous homeowner lived there and her grown son lived over the barn because he did not want to live in the house with his mother. Ms. McMillan stated it has always been a single-family home; they made it into two apartments. Ms. McMillan stated they have no problem with the people staying there, they are lovely, they have no problem with them.

Ms. McMillan stated she would prefer not to see a third apartment as her fear is they will then ask for a fourth apartment on the bottom of the barn. Ms. McMillan stated she would like to see the beauty of Pollard Street remain and she thinks putting another apartment there would diminish their property values. Ms. McMillan stated it is going to destroy part of the beauty of that street, and she would really like to see that maintained.

Mr. Colbath asked Ms. McMillan if there is enough parking for six cars. Ms. McMillan stated she does not believe there is parking for six cars; they are parking on the lawn between her house and the apartment building.

Carol DiGregorio of 49 Pollard Street stated she thinks it is going to change the integrity of what that street is; it is beautiful, family homes that are well-maintained. Ms. DiGregorio stated she fears that this will turn into the next Washington Street.

Patricia Golding of 38 Pollard Street stated her and her husband fell in love the neighborhood, the beautiful old farmhouses and stated they did not buy their home to live amongst apartment buildings. Ms. Golding stated Pollard Street is very unique, it is a community and a neighborhood.

Ms. Golding stated this is a desirable location and if a three-unit is allowed what is to stop another farmhouse from becoming a four-unit; we are opening the flood gates. Ms. Golding stated the character of Pollard Street will forever be changed. Ms. Golding stated she does not want to see any more apartment buildings on Pollard Street.

Adopted: October 21, 2020 – As Written
CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mike DiGregorio of 49 Pollard Street stated he is concerned with parking. Mr. DiGregorio stated his neighbor across the street, who is an apartment building, park on the street and walk on his lawn rather than parking in the park lot where they belong. Mr. DiGregorio stated he believes the Board needs to focus on the parking lot. Mr. DiGregorio stated he would ask the Board to make sure that there is adequate parking.

Mr. Chalmers stated there is a requirement for a scaled site drawing be submitted to the Board. After a brief discussion, it was determined that a scaled drawing was not submitted.

Mr. Chalmers made a motion, seconded by Mr. Steiner, to continue the hearing for Paul and Sharon Pacenka until October 21, 2020 at 7:00 pm. Motion carried unanimously.

A public hearing was opened at 8:00 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-30.C.(2) and §190-18.F.(10)(e) of the Conway Zoning Ordinance **to remove and replace the existing freestanding sign with a new externally illuminated freestanding sign with a structure in excess of maximum permitted structure area** at 23 & 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Jason Gagnon of Sousa Signs appeared before the Board. Mr. Pierce rejoined the Board. Mr. Colbath stepped down at this time. Mr. Chalmers became Chair and appointed Ms. Sherman as a voting member. Mr. Chalmers read the application and the applicable section of the ordinance.

Mr. Sousa stated there is an existing 35-square foot freestanding sign with a steel structure for a foundation. Mr. Sousa stated they are proposing a sign with a viewing area of under 20 square feet and the architectural section of the sign is 42.2 square feet. Mr. Sousa stated the overall proposed sign is approximately 62 square feet.

Mr. Chalmers asked for Board comment; Ms. Sherman asked if this is proposed in the same location as the existing sign. Mr. Gagnon answered in the affirmative. Ms. Sherman asked how far from the right-of-way. Mr. Gagnon stated it is 10-feet from the entrance and 8 to 9 feet from the sidewalk to side entrance. Ms. Sherman asked what is the setback that is required. Mr. Gagnon stated sign setbacks may be reduced to 10-feet from a platted right-of-way if the size of the message area is reduced to 30-square feet. Mr. Sousa stated this sign is grandfathered.

Mr. Bartolomeo stated if you didn't want all this monumentality, you could use the phylon that is there. Mr. Gagnon stated the new design this part of the branding format that they are trying to go with across all of their branches; it is part of their marketing strategy.

Mr. Sousa stated within the existing sign cabinet the sign message area measures 35 square feet, and the cabinet itself measures about 88-inches; the only thing that is going to extend beyond the bottom of the existing sign is the 3-4 inches of the roof of the proposed sign. Mr. Bartolomeo stated the eave overhang will basically be where the cabinet hits now. Mr. Sousa answered in the affirmative.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. Chalmers stated because of its location, the sign right at that corner is going to impact traffic turning in and out by creating a blind spot. Mr. Chalmers stated with the single pylon you can see through that. Mr. Chalmers stated part of the setback requirement is to be out of the view lines of the road. Mr. Yeager stated the existing sign is probably within 5-feet of the right-of-way; the grandfathered part of the sign is what is there, the cabinet which is up above and the structure which is just a pole, a piece of metal.

Mr. Yeager stated by adding that structure down below they are increasing the non-conformity of the sign by practically doubling the size of the two-dimensional footprint. Mr. Yeager stated he believes that goes against the ordinance as you are not supposed to make non-conforming signs any more non-conforming.

Mr. Bartolomeo stated the new branding can go in the old cabinet. Mr. Gagnon stated their new branding is the image of the sign itself. Mr. Bartolomeo stated the visual impact in terms of a blind spot is real, the slender visual impact of one pylon versus what is proposed. Mr. Yeager stated if they move it back 10-feet from the right-of-way they could have a 30-square foot sign message area and a 30-square foot structure for a total of 60-square feet.

Mr. Gagnon stated the existing location is a good spot for visibility from the road. Mr. Bartolomeo stated if it is pulled back ten more feet, they can get everything they want. Mr. Gagnon stated if it was moved back 10-feet it will incur a new foundation and the electrical being replumbed. Mr. Chalmers stated the electrical is minor and he cannot believe that the foundation of the existing sign is going to be used. Mr. Gagnon stated he would think the foundation is adequate enough because of the wind load and the height of the sign; it will have less wind load on it overall.

Mr. Chalmers asked for public comment; Tom Holmes stated he is the Town Manager of Conway, but he is not representing the Town; he has spent three years negotiating a lease with the bank and he feels some responsibility with the situation they find themselves. Mr. Holmes stated the sign they are asking to change is ineffective six months out of the year as it is blocked by a deciduous tree from all northeast bound traffic. Mr. Holmes stated it was not an issue until the bank relocated to the back of the lot because they had a massive sign on the top roof line of their own building.

Mr. Holmes stated now that the Town is going to be occupying that building and they have relocated to the rear of the lot it has created a hardship for them because they have no visibility from the street except for this one sign. Mr. Holmes stated he is concerned with moving the sign 10-feet back, you would not be able to see that sign until you were almost ready to turn due to more landscaping on the abutter's property.

Mr. Holmes stated he feels the bank has placed itself on the lot where there is no visibility. Mr. Holmes stated he feels that is a hardship; he wants to be good neighbors as they will be sharing this parcel for 60 years. Mr. Holmes stated he is also not representing the Board of Selectmen tonight either. Mr. Holmes stated the sign that was meaningless to them due to their other signage has now become very important and has exposed itself as being inadequate.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

John Colbath stated you have to get beyond the sign to see north, you almost have to nose out into traffic especially if you want to turn south. Mr. Colbath stated the sign does not block the vision there, but he agrees that a lower sign might. Mr. Chalmers stated when he looks at the location of this sign, he is concerned they will create a hazard; it is a miserable location for pulling in and out of traffic there. Mr. Chalmers stated it is a really bad design, adding a solid structure will create more of a hazard.

Mr. Yeager stated another option is to put in a directional sign on either one of those driveways, there is no permit required as long as it is on their property. Mr. Yeager stated they do have other options.

Mr. Chalmers read item 1. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; Ms. Sherman stated because of visibility. **Motion defeated with Ms. Sherman, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner voting in the affirmative.**

Mr. Chalmers read item 2. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; Mr. Steiner stated you cannot drive out into that road without creeping anyway, that sign is not going to make that more or less. Ms. Sherman stated the spirit of non-conformity is to make it more conforming, not less. **Motion defeated with Ms. Sherman, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner voting in the affirmative.**

Mr. Chalmers read item 3. **Ms. Sherman made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Chalmers asked for Board comment; Mr. Steiner stated we should do something to help this company; the Town is involved and Conway Village needs businesses like Bank of New Hampshire investing in the Village. Mr. Bartolomeo stated the justice balance advantage is far more to the applicant than to the public. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Mr. Chalmers read item 4. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the values of surrounding properties are not diminished.** Mr. Chalmers asked for Board comment; Mr. Steiner stated they are enhancing the area. **Motion carried unanimously.**

Mr. Chalmers read item 5.a.i. **Mr. Bartolomeo 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. Chalmers asked for Board comment; Ms. Sherman stated there are no more special provisions on this particular lot then lots surrounding it. Mr. Bartolomeo stated they have other options; they could move the sign back and make it slightly smaller and they could use directional signs. **Motion defeated with Ms. Sherman, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner voting in the affirmative.**

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

Ms. Sherman 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. Mr. Chalmers asked for Board comment; there was none. **Motion defeated with Ms. Sherman, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner voting in the affirmative.**

Mr. Chalmers read item 5.b. **Ms. Sherman made a motion, seconded by Mr. Steiner, that if the criteria in 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.**

Mr. Chalmers asked for Board comment; Ms. Sherman stated other properties in the area have the same conditions. Mr. Bartolomeo stated there is nothing that distinguishes this property from other properties in the area. **Motion defeated with Ms. Sherman, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner voting in the affirmative.**

Ms. Sherman made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-30.C.(2) and §190-18.F.(10)(e) of the Town of Conway Zoning Ordinance to remove and replace the existing freestanding sign with a new externally illuminated freestanding sign with a structure in excess of maximum permitted structure area be granted. Motion defeated with Ms. Sherman, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner voting in the affirmative.

Mr. Holmes left at this time.

A public hearing was opened at 8:22 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-18.F.(3)(a) of the Conway Zoning Ordinance **to replace the existing wall sign with a larger wall sign that exceeds the maximum permitted sign message area** at 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Jason Gagnon of Sousa Signs appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Gagnon stated there is currently a 22.6 square foot wall sign. Mr. Gagnon stated the new sign that they are proposing to replace the current sign is 42.9 square feet. Mr. Gagnon stated this building is 240-feet off either of the rights-of-ways and it is almost fully enclosed by buildings and/or trees, there is no site line to this building. Mr. Gagnon stated they need bigger signage especially on the north elevation.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated it is almost doubling what is permitted. Ms. Sherman stated they are way off the street. Mr. Bartolomeo stated the sign there now is a conforming sign, and he had no problem seeing it.

Mr. Chalmers asked for public comment; John Colbath stated this Board granted both Walmart and Home Depot larger signs because the building was set back so far from the road. Mr. Bartolomeo stated this is a village setting, it is a different situation. Mr. Yeager stated he believes that discussion was mostly based on proportion to the size of the building.

Mr. Chalmers read item 1. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; there was none. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Chalmers read item 2. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; there was none. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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

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

Mr. Chalmers read item 5.a.i. **Ms. Sherman 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. Chalmers asked for Board comment; Mr. Steiner stated it is setback from the road. Ms. Sherman stated the sign ordinance is designed to reduce signage near the roadways, but this is off the roadway. Mr. Bartolomeo stated there is no unnecessary hardship in the property. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

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

Mr. Bartolomeo 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. Mr. Chalmers asked for Board comment; there was none. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Mr. Chalmers read item 5.b. **Mr. Bartolomeo made a motion, seconded by Mr. Steiner, that if the criteria in 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.**

Mr. Chalmers asked for Board comment; Mr. Steiner stated this building is so far back off the road the additional signage on the front of the building is needed. Ms. Sherman stated being setback from the roadways distinguishes it from other properties in the area. Mr. Bartolomeo stated this property can still be used in strict conformance with the ordinance. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Ms. Sherman made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-18.F.(3)(a) of the Town of Conway Zoning Ordinance to replace the existing wall sign with a larger wall sign that exceeds the maximum permitted sign message area be granted. Motion carried with Mr. Bartolomeo and Mr. Chalmers voting in the negative.

A public hearing was opened at 8:53 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-18.F.(3) of the Conway Zoning Ordinance **to allow an additional wall sign over the main entrance** at 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Jason Gagnon of Sousa Signs appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Gagnon stated this sign is over the main entrance. Mr. Gagnon stated the ordinance only allows one wall sign; this would be an additional sign.

Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated it is under an overhang and will be shadowed. Mr. Gagnon stated the sign is to show where the entrance to the branch is. Mr. Chalmers asked for public comment; there was none.

Mr. Chalmers read item 1. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; there was none. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

Mr. Chalmers read item 2. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; there was none. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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

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

Mr. Chalmers read item 5.a.i. **Ms. Sherman 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. Chalmers asked for Board comment; there was none. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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

Ms. Sherman 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. Mr. Chalmers asked for Board comment; there was none. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

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

Ms. Sherman made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-18.F.(3) of the Town of Conway Zoning Ordinance to allow an additional wall sign over the main entrance be granted. **Motion carried with Mr. Steiner, Ms. Sherman and Mr. Pierce voting in the affirmative and Mr. Bartolomeo and Mr. Chalmers voting in the negative.**

A public hearing was opened at 9:02 pm to consider a **VARIANCE** requested by **BANK OF NEW HAMPSHIRE** in regards to §190-18.F.(3) of the Conway Zoning Ordinance **to allow an additional wall sign over the drive-thru canopy** at 29 Main Street, Conway (PID 276-277). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Jason Gagnon of Sousa Signs appeared before the Board. Mr. Chalmers read the application and the applicable section of the ordinance. Mr. Gagnon stated this is an additional wall sign for over the drive-thru; it is the logo, which is classified as a sign.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. Chalmers asked for Board comment; Mr. Steiner stated even though it cannot be seen from the road it is still a sign; however, it is next to the woods and you cannot see it until you drive up upon it. Mr. Chalmers asked for public comment; there was none.

Mr. Chalmers read item 1. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated three signs versus the one wall sign that is allowed is very contrary. Mr. Pierce stated it is contrary to our ordinances, therefore, it is contrary to public interest whether you can see it or not. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Mr. Chalmers read item 2. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the spirit of the ordinance is observed.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated it numerically slaps the ordinance in the face. **Motion defeated with Mr. Steiner, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Ms. Sherman voting in the affirmative.**

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

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

Mr. Chalmers read item 5.a.i. **Ms. Sherman 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. Chalmers asked for Board comment; Mr. Bartolomeo stated there is no hardship here, they are not even identifying them as drive-up tellers, just putting a nice piece of graphics up there. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Mr. Chalmers read item 5.a.ii. **Ms. Sherman made a motion, seconded by Mr. Steiner, that the proposed use is a reasonable use.** Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated the third unnecessary sign is unreasonable. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Mr. Steiner made a motion, seconded by Ms. Sherman, that based on i. and ii. above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated there is no hardship. **Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.**

Mr. Chalmers read item 5.b. **Ms. Sherman made a motion, seconded by Mr. Steiner, that if the criteria in 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.**

Mr. Chalmers asked for Board comment; Mr. Bartolomeo stated they can still open their doors and conduct banking operations; the property can be reasonably used. **Motion defeated with Mr. Steiner, Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Ms. Sherman voting in the affirmative.**

Ms. Sherman made a motion, seconded by Mr. Bartolomeo, that, based on the forgoing findings of fact, the variance from §190-18.F.(3) of the Town of Conway Zoning Ordinance to allow an additional wall sign over the drive-thru canopy be granted. Motion defeated with Mr. Bartolomeo, Mr. Pierce and Mr. Chalmers voting in the negative and Mr. Steiner and Ms. Sherman voting in the affirmative.

A public hearing was opened at 9:14 pm to consider a **SPECIAL EXCEPTION** [FILE #20-26] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(f) of the Conway Zoning Ordinance **to allow the installation of fill within the Floodplain Conservation Overlay District to raise an area above the floodplain** 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath rejoined the Board at this time. Ms. Sherman left at this time. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. McAllister stated this is similar to an application brought to the Board in 2018 to raise a portion of the center of the campground above the floodplain to give us the opportunity to build structures at the campground outside of the Floodplain Conservation Overlay District. Mr. McAllister stated we have completed the design of the fill and we have coordinated a conditional letter of map revision for fill with FEMA.

Mr. McAllister stated the intent is to construct this bump in the middle of the campground, as-built survey it and then get a final letter of map amendment from FEMA. Mr. McAllister stated this would bring the bump top out of the floodplain and thus out of the Floodplain Conservation Overlay District. Mr. McAllister stated this was previously granted, we went through a cut and fill analysis that was presented to FEMA showing at we were at least balancing, if not creating more, flood plain storage.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. McAllister stated all of the site work will comply with the NFIP, and we did receive that conditional letter of map revision. Mr. McAllister stated the utility systems that will be discussed later will be constructed to be flood safe. Mr. McAllister stated there are no improvements within the floodway. Mr. McAllister stated it is an opportunity for them to create a space to move their store facility and be more centrally located on the site.

Mr. Colbath asked for Board comment; Mr. Colbath asked if it goes by federal guidelines, is there any off-set required. Mr. McAllister stated we had to lower some areas; we raised a portion of the site and will do subsequent lowering of some of the areas in and around it. Mr. McAllister stated they are actually showing a net increase of flood storage of 307 cubic yards. Mr. Colbath stated the federal requirement is met by doing that. Mr. McAllister answered in the affirmative.

Mr. Colbath asked if a federal permit is required for this. Mr. McAllister stated we have the conditional letter of map revision now from FEMA, it will not become final until we construct the bump and we cannot construct the bump without the special exception. Mr. Colbath asked if they will inspect it. Mr. McAllister stated HEB will as-built survey it and submit a LOMRF which takes the conditional off. Mr. Colbath stated you cannot do anything with it until the conditional is removed. Mr. McAllister stated that is correct.

Mr. Colbath asked for public comment; David Weathers stated he is concerned with the balancing of the cut and fills so the floodplain storage would not have a negative impact. Mr. Weathers stated his other concern was life safety codes. Mr. McAllister stated the proposed building will not be occupied by people, it is a store front, a bathroom facility and a check-in location. Mr. McAllister stated there will be people working in it, but not living in it.

Mr. Weathers asked is the established elevation for the new bump designed to be right at the mark of the 100-year frequency or is over and above that. Mr. McAllister stated it is above that; the grade is going to be 463, they are staying above the 100-year flood elevation. Mr. Weathers stated the higher elevation buffer as a safety factor will be an improvement to everyone's advantage in the future.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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 carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(f) of the Town of Conway Zoning Ordinance to allow the installation of fill within the Floodplain Conservation Overlay District to raise an area above the floodplain be granted. Motion carried unanimously.

A public hearing was opened at 9:33 pm to consider a **SPECIAL EXCEPTION** [FILE #20-27] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(d) of the Conway Zoning Ordinance **to allow the installation of a paved drive and utilities within the Floodplain Conservation Overlay District to access the raised portion of the property** 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated this is an application that was presented two years ago, the intent here is to allow for the rerouting and reconstruction of the drives and necessary utilities to access the area that is going to be on the bump.

Mr. McAllister stated the areas that come up the bump are still within the floodplain, so these would be driveways and utilities to provide access of those services to structures that will ultimately be on top of the bump. Mr. McAllister stated all of the improvements will comply with the NFIP regulations, all of the utilities will be designed so that there is no infiltration of flood waters, and we received a CLOMR.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Mr. Weathers asked if the side slopes on the driveways would be seeded. Mr. McAllister answered in the affirmative.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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 carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(d) of the Town of Conway Zoning Ordinance to allow the installation of a paved drive and utilities within the Floodplain Conservation Overlay District to access the raised portion of the property be granted. Motion carried unanimously.

A public hearing was opened at 9:37 pm to consider a **SPECIAL EXCEPTION** [FILE #20-38] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(m) of the Conway Zoning Ordinance **to allow the installation of paved parking areas 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 Thursday, August 6, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated all of the justification are the same. Mr. McAllister stated this is for a paved parking lot, which will be for visitors to come into the store, to park to check-in, or if they want to use the pool patio and drive from their campsite.

Mr. McAllister stated it is in the floodplain, it is raised up from the natural elevation and that elevation change was included in the CLOMRF that was approved by FEMA and within the cut and fill calculation. Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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 carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(m) of the Town of Conway Zoning Ordinance to allow the installation of paved parking areas within the Floodplain Conservation Overlay District be granted. Motion carried unanimously.

A public hearing was opened at 9:41 pm to consider a **SPECIAL EXCEPTION** [FILE #20-28] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(l) of the Conway Zoning Ordinance **to allow the installation of signage along the paved drive and ADA parking spaces 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated this is for the installation of traffic signs for directional movement within the campground. Mr. McAllister stated all of the justifications are the same; the sign posts are insignificant with respect to flood storage. Mr. McAllister stated this is to allow people to understand the traffic flow.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; Mr. Weathers asked if they are seasonal or permanent. Mr. McAllister stated it is anticipated that they will be permanent.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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 carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(l) of the Town of Conway Zoning Ordinance to allow the installation of signage along the paved drive and ADA parking spaces within the Floodplain Conservation Overlay District be granted. Motion carried unanimously.

A public hearing was opened at 9:47 pm to consider a **VARIANCE** [FILE #20-29] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance **to allow light poles (structures) to illuminate the driveway, parking, pool and patio areas 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated the intent here is to provide lighting associated with the drives, parking area and patios, and the bathhouse area to provide safe pedestrian use of these facilities as well as safe vehicular access.

Mr. McAllister stated we are looking at user safety; the campground itself is in a hole so it is not going to be spilling anywhere else and it will be reviewed at site plan. Mr. McAllister stated the pole will be mounted on concrete sonatubes that will be flush to the ground structure, so the only thing we have is the pole structure.

Mr. Colbath asked for Board comment; Mr. Colbath asked how many poles. Mr. McAllister answered approximately 18, but he doesn't know the exact number. Mr. McAllister stated they are directional lighting to the drives; they do not want them to cast onto the campsites.

Mr. Colbath asked for public comment; there was none

Mr. Colbath read item 1. **Mr. Chalmers 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 carried unanimously.**

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

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

Mr. Colbath read item 4. **Mr. Chalmers 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 carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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 carried unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers 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 carried unanimously.**

Mr. Chalmers 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. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 7 was not applicable to this application.** Motion carried unanimously.

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance is necessary, considering the flood hazard, to afford relief.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190, Use Table of the Town of Conway Zoning Ordinance to allow light poles (structures) to illuminate the driveway, parking, pool and patio areas within the Floodplain Conservation Overlay District be granted. Motion carried unanimously.

A public hearing was opened at 9:55 pm to consider a **SPECIAL EXCEPTION** [FILE #20-30] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190-26.B.(1)(a) of the Conway Zoning Ordinance **to allow the installation of a playground, one tennis court, one basketball court and the associated features for each 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated they are proposing a paved tennis court, a paved basketball court and playground area, which are all uses compatible with open space. Mr. McAllister stated all of them are at varying elevations, and those elevations were included as part of the CLOMR.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. Colbath asked for Board comment; Mr. Bartolomeo asked if this is what today’s campers are looking for. Mr. McAllister answered in the affirmative. Mr. Pierce asked when you make impervious surfaces do you still design so that no more water leaves the property. Mr. McAllister stated they will be subject to the Alteration of Terrain rules on this, and he will have to figure out stormwater run-off during non-flood events, rain events. Mr. McAllister stated it will all stay on site. Mr. Colbath asked for public comment; there was none

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, 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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 2 is not applicable to this application. Motion carried unanimously.**

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 carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the Special Exception pursuant to §190-26.B.(1)(a) of the Town of Conway Zoning Ordinance to allow the installation of a playground, one tennis court, one basketball court and the associated features for each within the Floodplain Conservation Overlay District be granted. Motion carried unanimously.

A public hearing was opened at 10:02 pm to consider a **VARIANCE** [FILE #20-31] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance **to allow structures within the Floodplain Conservation Overlay District including tennis court net posts, basketball hoop posts and playground equipment** 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated this is for the associated structures to be erected in the floodplain for the tennis court, basketball court and playground; posts for the nets, posts for the hoops and standard playground equipment.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none.

Adopted: October 21, 2020 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – SEPTEMBER 16, 2020

Mr. Colbath read item 1. **Mr. Chalmers 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 carried unanimously.**

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

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

Mr. Colbath read item 4. **Mr. Chalmers 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 carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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 carried unanimously.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers 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 carried unanimously.**

Mr. Chalmers 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. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

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

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 7 is not applicable to this application.** **Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance is necessary, considering the flood hazard, to afford relief.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190, Use Table of the Town of Conway Zoning Ordinance to allow structures within the Floodplain Conservation Overlay District including tennis court net posts, basketball hoop posts and playground equipment be granted. Motion carried unanimously.

A public hearing was opened at 10:07 pm to consider a **VARIANCE** [FILE #20-32] requested by **ADVENTURE & ENTERTAINMENT PROPERITES, LLC** in regards to §190, Use Table of the Conway Zoning Ordinance **to allow light poles (structures) to illuminate the tennis and basketball courts 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 Thursday, August 6, 2020. This hearing was deferred from August 19, 2020.

Josh McAllister of HEB Engineers appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance. Mr. McAllister stated we are requesting this as a means of lighting the tennis court, the basketball court and the playground area for nighttime use. Mr. McAllister stated the justifications are the same as the previous applications.

Mr. Colbath asked for Board comment; Mr. Bartolomeo stated some of those play areas are near the campsites, wouldn't this be a light intrusion to someone who is trying to camp. Mr. McAllister stated they will be directionally cast away from the campsites. Mr. Colbath asked for public comment; there was none.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated it is one thing to provide these items, but it is getting a little too suburban to light them. **Motion carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in affirmative and Mr. Bartolomeo voting in the negative.**

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

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that substantial justice is done.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the proximity of these lights are too close to the campsites. **Motion carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in affirmative and Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 4. **Mr. Chalmers 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 carried unanimously.**

Mr. Colbath read item 5.a.i. **Mr. Chalmers 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; Mr. Bartolomeo stated there is no hardship, they can play during the day light. **Motion carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers 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 carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Bartolomeo voting in the negative.**

Mr. Chalmers 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. Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Bartolomeo voting in the negative.**

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

Mr. Colbath read item 6. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read item 7. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that item 7 is not applicable to this application. Motion carried unanimously.**

Mr. Colbath read item 8. **Mr. Chalmers made a motion, seconded by Mr. Steiner, that the variance is necessary, considering the flood hazard, to afford relief.** Mr. Colbath asked for Board comment; there was none. **Motion carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Bartolomeo voting in the negative.**

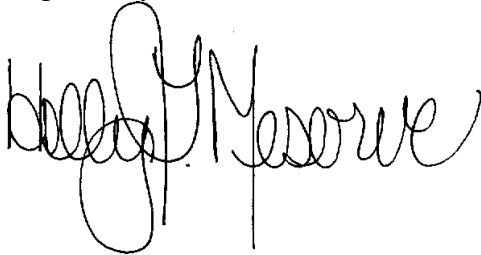
Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190, Use Table of the Town of Conway Zoning Ordinance to allow light poles (structures) to illuminate the tennis and basketball courts within the Floodplain Conservation Overlay District be granted. Motion carried with Mr. Steiner, Mr. Chalmers, Mr. Pierce and Mr. Colbath voting in the affirmative and Mr. Bartolomeo voting in the negative.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to approve the minutes of August 19, 2020 as written. Motion carried with Mr. Chalmers and Mr. Pierce abstaining from voting.

Meeting adjourned at 10:16 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
Planning Assistant