

ZONING BOARD OF ADJUSTMENT

MINUTES

JUNE 16, 2021

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, June 16, 2021 at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Alternate, Jonathan Hebert; Planning Director, Thomas Irving; and Planning Assistant, Holly Whitelaw. Alternate, Phyllis Sherman was in attendance.

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:00 pm to consider a **VARIANCE** requested by **LOT 23 WMH, LLC** [FILE #21-24] in regards to §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to allow a 40 square foot freestanding sign 10-feet from a platted right-of-way** at 1549 White Mountain Highway, North Conway (PID 246-35). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, May 28, 2021.

Keith Wehmeyer, Project Manager for OVP Management, appeared before the Board. Mr. Colbath read the application and the applicable section of the ordinance.

Mr. Wehmeyer stated this is a multi-tenant commercial property, for whoever the tenants may be to put their sign on; it is proposed to be closer to the road. Mr. Wehmeyer stated to the south of this lot is the Visiting Nurses/hospice building that is located within the front and side setbacks; it is a non-conforming structure. Mr. Wehmeyer stated the building blocks reasonable visibility of not just the sign, but also to the building itself. Mr. Wehmeyer stated our building cannot be seen until clearing the visiting nurses building and reach their side line.

Mr. Wehmeyer stated the hardship is that the non-conforming structure; the strip has a cluster of old buildings developed prior to zoning. Mr. Wehmeyer stated this lot is unique as it is situated along non-conforming signs and structures that makes the visibility a challenge. Mr. Wehmeyer stated he doesn't think we are outside the spirit of the ordinance as the sign does not sit closer to the road than the other signs. Mr. Wehmeyer stated their sign would blend in and be less of a nuisance.

Mr. Wehmeyer stated there is a sign incentive that if there is a conforming freestanding sign the wall sign can be increased by 50%; they will not be permitted to use this incentive if granted a variance. Mr. Chalmers stated he travels that road multiple times a day, and it seems the rental sign is in the appropriate location; he has not had any problem seeing it.

Adopted: July 21, 2021 – As Written

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Mr. Wehmeyer stated when driving south bound the building is visible, but if you're driving north bound and not looking for that building you are not going to see it until you clear the Visiting Nurses building. Mr. Wehmeyer stated their curb cut was in a different location previously which would have allowed the building to be closer to the road, however, NHDOT forced us, for safety reasons, to realign our driveway with the campground. Mr. Wehmeyer stated this resulted in our building having to move back; this was out of our control and contributed to the lack of visibility.

Mr. Bartolomeo stated he travels that route every single day, and the location of the temporary sign works. Mr. Wehmeyer stated most of the other businesses in this area have a sign less than 25-feet from the right-of-way and are more visible than this will be. Mr. Wehmeyer stated we have that same right to visibility; the job of the ZBA is to alleviate the hardship of these unique conditions. Mr. Wehmeyer stated it is subjective if it is visible enough, the other signs along the strip are more visible.

Mr. Hebert stated if heading north, that is the hardest way to see it as there is a short distance in which to see; heading south bound it is clear. Mr. Colbath stated heading north you have to get beyond the Visiting Nurses building before you see the sign.

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

Mr. Wehmeyer stated the sign we requesting is further from the road and smaller than the others around it; we are still adhering to the spirit of the ordinance and not increasing the sign clutter. Mr. Wehmeyer stated he is hoping we demonstrated there is a unique situation; we have a right to have a visible sign.

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 with Mr. Chalmers, Mr. Hebert and Mr. Colbath voting in the affirmative and Mr. Steiner and Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 2. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the spirit of the ordinance is observed.** Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the visibility of the existing conforming sign is adequate, not superior, but adequate. **Motion defeated with Mr. Chalmers, Mr. Steiner and Mr. Bartolomeo voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.**

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. Chalmers stated justice is greater to the public by enforcing the sign to be compliant; it reduces sign clutter. **Motion defeated with Mr. Chalmers, Mr. Steiner and Mr. Bartolomeo voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.**

Mr. Colbath read item 4. **Mr. Colbath made a motion, seconded by Mr. Hebert, 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 with Mr. Bartolomeo voting in the negative.**

Mr. Colbath read item 5.a.ii. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the proposed use is a reasonable use.** Mr. Colbath asked for Board comment; Mr. Chalmers stated the conforming sign provides adequate visibility for that location. **Motion defeated with Mr. Chalmers, Mr. Steiner and Mr. Bartolomeo voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.**

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. Motion defeated with Mr. Chalmers, Mr. Steiner and Mr. Bartolomeo voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.

Mr. Colbath read item 5.b. **Mr. Chalmers 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. Colbath asked for Board comment; Mr. Bartolomeo stated they can still use the property with or without a giant sign. **Motion defeated with Mr. Chalmers, Mr. Steiner and Mr. Bartolomeo voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.**

Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(2)(d)[1] of the Town of Conway Zoning Ordinance to allow a 40 square foot freestanding sign 10-feet from a platted right-of-way be granted. Motion defeated with Mr. Chalmer, Mr. Steiner and Mr. Bartolomeo voting in the negative and Mr. Hebert and Mr. Colbath voting in the affirmative.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Hebert made a motion, seconded by Mr. Bartolomeo, to approve the Minutes of May 19, 2021 as written. Motion carried unanimously.

Meeting adjourned at 7:40 p.m.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant