

**ZONING BOARD OF ADJUSTMENT**

**MINUTES**

**OCTOBER 18, 2023**

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, October 18, 2023, at the Conway Town Office, 23 Main Street, in Conway, NH, beginning at 7:00 p.m. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Jonathan Hebert; Richard Pierce; Town Planner, Ryan O'Connor; and Assistant Planner, Holly Whitelaw. Alternates Debra Haynes and Steven Steiner were in attendance. Deputy Town Manager, Paul DegliAngeli, and Zoning Officer, Nicholas DeVito, were in attendance.

Mr. Colbath led the Pledge of Allegiance.

**APPOINTMENT OF ALTERNATE MEMBER**

Mr. Colbath appointed Ms. Haynes as a voting member.

**OTHER BUSINESS**

**Conway Poker Room & Casino, LLC [File #23-49] – Motion for Rehearing Request:** John Cronin of Cronin Bisson & Zalinsky and Stefan Huba were in attendance. Jason Dennis, Town Counsel, was in attendance. Steven Steiner joined the meeting at 7:08 p.m. Mr. Colbath reviewed the rules governing granting a rehearing.

The Board discussed whether enough consideration was given to both the applicant's and the Board's finding of facts and they agreed there was. Mr. Colbath noted that the requested use is not listed on the table. Mr. Colbath said that the estoppel issue and the definition of indoor amusement are legal issues that the Board is not suited to discuss.

Mr. Hebert clarified that a rehearing request gives the Board the opportunity to correct something or to strengthen something they felt may have been insufficient. The Board agreed there was no technical error made and no evidence has been presented that was not available at the time of the original hearing.

The Board discussed whether the appropriate groundwork was laid for their decision. Mr. O'Connor said that as a result of discussion with counsel, ~~staff did find that~~ there was sufficient finding of facts.

**Mr. Chalmers made a motion, seconded by Ms. Haynes, to grant a rehearing in this matter. Mr. Colbath asked for Board comment; there was none. The motion was defeated, with Mr. Hebert and Ms. Haynes voting in the affirmative, Mr. Chalmers and Mr. Colbath voting in the negative, and Mr. Pierce abstaining.**

Jason Dennis left at this time.

**PUBLIC HEARINGS**

A public hearing was opened at 7:00 p.m. to consider a **VARIANCE** requested by **VICKI MCDONALD AND RONALD COLLINS** [FILE #23-41] in regards to §190-13.J.(3) of the Conway Zoning Ordinance **to allow multiple travel trailers to be used for storage and residential dwelling** at 234 Transvale Road, North Conway (PID 251-120). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 8, 2023. This hearing was continued from September 20, 2023.

This application was withdrawn by the applicant.

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A public hearing was opened at 7:15 p.m. to consider a **VARIANCE** requested by **WALTHAM II REALTY TRUST/BREK A. KOHLER** [FILE #23-44] in regards to §190-20.F.(10)(a) of the Conway Zoning Ordinance **to allow an internally lit digital menu board** at 1385 White Mountain Highway, North Conway (PID 246-8). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 29, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

Michael Dusik (sp), Maine and New Hampshire Regional Manager of Burger King, appeared before the Board. He explained there has been an internally lit menu board in this location since 1983. The current menu board was installed in 2020, to comply with Burger King regulations. It was an oversight on their part not to request a variance at that time. The sign cannot be seen from the street; it is only visible from the drive-thru lane. There is no other tool available to allow customers to order via the drive-thru lane.

Mr. Colbath asked for Board comment. Mr. Hebert agreed the sign is not visible from anywhere but the drive-thru lane.

Mr. Colbath asked for public comment. Steven Steiner asked if the sign was updated due to advances in technology, which Mr. Dusik agreed was the case.

Mr. Colbath closed public comment.

Mr. Colbath asked for Town comment. Mr. O'Connor noted this situation is similar to the McDonald's sign that was recently considered. The light from the sign cannot extend beyond the property line. He said this sign is well-screened and meets this requirement. There have been no complaints from abutters regarding the sign, which was installed three years ago.

Mr. O'Connor said this ordinance is being reviewed, but there is no timeframe.

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

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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; there was none. **Motion carried unanimously.**

Mr. Colbath read item 3. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. 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. Hebert, 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. Hebert, 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. Hebert, 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. Chalmers made a motion, seconded by Mr. Hebert, that item 5.b. is not applicable for this application.** Motion carried unanimously.

**Mr. Chalmers made a motion, seconded by Mr. Hebert, that based on the forgoing findings of fact, the variance from §190-20.F.(10)(a) of the Town of Conway Zoning Ordinance to allow an internally lit digital menu board be granted.** Motion carried unanimously.

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A public hearing was opened at 7:24 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **2925 WHITE MOUNTAIN HIGHWAY REALTY TRUST** [FILE #23-45] in regards to §190-20.F.(2) & §190-30.C.(3) of the Conway Zoning Ordinance **to appeal the administrative decision denying a sign permit to replace an existing grandfathered sign with a new sign in the same location, with an increase in message area from 12 square feet to 14.66 square feet** at 2925 White Mountain Highway, North Conway (PID 215-71). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 29, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

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Chris Meier of Cooper Cargill Chant appeared before the Board on behalf of the applicant, Furber Funeral Homes. He explained the applicant wants to replace the existing sign with a larger granite sign. The sign permit application was denied due to it being an increase in a non-conforming sign. Mr. Meier said the message area is not a non-conforming aspect of the sign. The only non-conforming aspect is that it is too close to the right-of-way and is in the setback; they are not seeking to increase that non-conformity.

Mr. Colbath asked for Board comment. The Board asked if any change to a non-conforming sign changes the non-conformity aspect of the sign and so, is not allowed. Mr. O'Connor verified this is the case. The sign is entirely in the setback, so the new sign would be a larger sign still within the setback, which makes it non-conforming.

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

Mr. Colbath closed public comment.

Mr. Colbath asked for Town comment. Mr. O'Connor noted that even though the proposed sign is below the square footage requirement, there is no sign square footage permitted in the setback, so it is still a non-conforming use.

**Mr. Chalmers made a motion, seconded by Ms. Haynes, granting the appeal from the administrative decision for 2925 White Mountain Realty Trust. The motion was defeated, with Ms. Haynes voting in the affirmative, and Mr. Chalmers, Mr. Hebert, Mr. Pierce, and Mr. Colbath voting in the negative.**

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A public hearing was opened at 7:35 p.m. to consider a **VARIANCE** requested by **2925 WHITE MOUNTAIN HIGHWAY REALTY TRUST** [FILE #23-46] in regards to §190-30.C.(3) & §190-20.F.(2) of the Conway Zoning Ordinance **to replace an existing grandfathered sign with a new sign in the same location, with an increase in message area from 12 square feet to 14.66 square feet** at 2925 White Mountain Highway, North Conway (PID 215-71). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 29, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

Chris Meier of Cooper Cargill Chant appeared before the Board on behalf of the applicant, Furber Funeral Homes. He explained the applicant wants to replace the existing wooden sign with a larger granite sign. The sign permit application was denied due to it being an increase in a non-conforming sign. He noted it is the smallest sign in the area and most signs in the area are within the setback. Moving the sign would require removing trees from the front of the property, which would not be a positive change.

Mr. Colbath asked for Board comment. The Board expressed their support of the application.

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

Mr. Colbath closed public comment.

Mr. Colbath asked for Town comment. Mr. O'Connor agreed the sign is of limited impact and is a reasonable request.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, 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. Hebert, 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. Hebert, 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. 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. Hebert, 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 Ms. Haynes, 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. Hebert, 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. Chalmers made a motion, seconded by Mr. Hebert, that item 5.b. is not applicable for this application.** **Motion carried unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Hebert, that, based on the forgoing findings of fact, the variance from §190-30.C.(3) & §190-20.F.(2) of the Town of Conway Zoning Ordinance to replace an existing grandfathered sign with a new sign in the same location, with an increase in message area from 12 square feet to 14.66 square feet be granted.** **Motion carried unanimously.**

**APPOINTMENT OF ALTERNATE MEMBER**

Mr. Colbath appointed Steven Steiner as a voting member. Ms. Haynes stepped down at this time.

The Board took a five-minute recess.

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A public hearing was opened at 7:44 p.m. to consider a **VARIANCE** requested by **S&H NORTH CONWAY, LLC/20TEN INVESTMENTS, LLC/DVS FAMILY, LLC/1858 CONWAY, LLC/RUSHIL CONWAY, LLC** [FILE #23-47] in regards to §190-20.F.(2)(d)[1] of the Conway Zoning Ordinance **to allow a freestanding sign with a zero-foot setback** at 1858 White Mountain Highway, North Conway (PID 235-17). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 29, 2023.

Mr. Colbath read the application and the applicable section of the ordinance.

Michael Leary of Sundance Signs appeared before the Board. He noted the hotel formerly in this location removed the sign before it could be grandfathered. They are requesting a zero setback so that the sign can be located at street level and not in/below grade, in the parking lot. The sign will be located appropriately 17 feet from the street curbing, instead of the required 25 feet. Mr. DegliAngeli noted this is 12 feet from the back of the sidewalk.

Mr. Colbath asked for Board comment. The Board asked about other options, if this request is denied. Mr. Leary said they would have to place the sign in the parking lot, below grade, and request a variance for height. The Board said that due to the existing sightlines, the building is very easy to see and they see no need for the sign to be located at the property line.

Mr. O'Connor noted the intent is to reduce the clutter of signs in this area. Other properties in this area have met the requirements. He said the applicant has not presented any other feasible options.

Mr. Colbath asked for public comment. Bill Angeli shared a picture of the former sign with the Board and agreed this is too much of a variance to allow.

Mr. Colbath closed public comment.

Mr. Colbath asked for Town comment. Mr. O'Connor noted the request for an increased message area would require a request for a separate variance.

Mr. Colbath read item 1. **Mr. Chalmers made a motion, seconded by Mr. Hebert, that the variance will not be contrary to the public interest.** Mr. Colbath asked for Board comment; the Board said other options are available, instead of requesting a zero-foot setback. This is too big of a deviation from the ordinance. **Motion was defeated unanimously.**

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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; this is contrary to the ordinance. **Motion was defeated 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; substantial justice lies with the Town, with the ordinance as written. **Motion was defeated 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, with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 was defeated unanimously.**

Mr. DegliAngeli left at this time.

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 was defeated 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 was defeated unanimously.**

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; there was none. **Motion was defeated unanimously.**

**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 freestanding sign with a zero-foot setback be granted.** **Motion was defeated unanimously.**

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A public hearing was opened at 8:18 p.m. to consider a **VARIANCE** requested by **S&H NORTH CONWAY, LLC/20TEN INVESTMENTS, LLC/DVS FAMILY, LLC/1858 CONWAY, LLC/RUSHIL CONWAY, LLC** [FILE #23-48] in regards to §190-20.F.(3)(b) of the Conway Zoning Ordinance **to allow a second wall sign of 40.34 square feet** at 1858 White Mountain Highway, North Conway (PID 235-17). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, September 29, 2023.

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Mr. Colbath read the application and the applicable section of the ordinance.

Michael Leary of Sundance Signs appeared before the Board. He explained the applicant would like to place a halo-lit-style sign with channel letters on the north elevation of the building. Mr. O'Connor noted there is only one public entrance, so only one sign is permitted by the ordinance.

Mr. Colbath asked for Board comment. The Board discussed the absence of a hardship issue. The Board expressed surprise that the applicant did not better plan the signage.

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

Mr. Colbath closed public comment.

Mr. Colbath asked for Town comment. Mr. O'Connor noted the increase in the size of the sign would require a separate request for a variance.

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; the voters have been clear that less visual clutter is wanted. **Motion was defeated 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; the voters have been clear that less visual clutter is wanted. There is no justification for the request. **Motion was defeated 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; substantial justice lays with the Town and the ordinance. **Motion was defeated 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, with Mr. Steiner and Mr. Chalmers voting in the negative.**

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 no hardship presented. **Motion was defeated 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; it does not appear to be a reasonable use. **Motion was defeated 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 was defeated unanimously.**



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; there was none. **Motion was defeated unanimously.**

**Mr. Chalmers made a motion, seconded by Mr. Steiner, that, based on the forgoing findings of fact, the variance from §190-20.F.(3)(b) of the Town of Conway Zoning Ordinance to allow a second wall sign of 40.34 square feet be granted. Motion was defeated unanimously.**

Mr. Colbath reviewed the rehearing process.

### REVIEW AND ACCEPTANCE OF MINUTES

The minutes of September 20, 2023, should be amended as follows: on page 5, first paragraph, add that Mr. Hebert noted the applicant submitted different documents of request for finding of facts at separate dates. He asked if the second, most recent submittal would be acceptable for the Board to use, if it met the applicant's interests. The applicant indicated this would be appropriate. This is the document that was used during the Board's consideration of the finding of facts.

**Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the Minutes of September 20, 2023, as amended. Motion carried, with Mr. Pierce abstaining from voting.**

Mr. Hebert thanked Ms. Whitelaw and Mr. O'Connor for the outstanding work they do, and for keeping the Board on track.

**Mr. Hebert made a motion, seconded by Mr. Steiner, to adjourn. Motion carried unanimously.**

Meeting adjourned at 8:27 p.m.

Respectfully submitted,

Beth Hanggeli  
Recording Secretary