

ZONING BOARD OF ADJUSTMENT

MINUTES

DECEMBER 20, 2023

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, December 20, 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; Richard Pierce; Jonathan Hebert; Alternate, Debra Haynes; Town Planner, Ryan O’Connor; Assistant Planner, Holly Whitelaw; and Zoning Officer, Nicholas DeVito.

APPOINTMENT OF ALTERNATE MEMBER

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

PUBLIC HEARINGS

A public hearing was opened at 7:00 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **REBECCA MULKERN** [FILE #23-13] in regards to §23-4, §23-13, §23-15 & §23-16 of the Conway Building Construction Code, §190-5, §190-20 & §190 – Permitted Use Table of the Conway Zoning Ordinance and §110-2 & §110-2.A., B., & E. of the Conway Site Plan Review Regulations **to appeal the Building Inspector’s issuance of a building permit to Conway Poker Room & Casino, LLC** at 234 White Mountain Highway, Conway (PID 265-147). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, March 3, 2023. This hearing was continued from March 15, 2023; April 19, 2023; and May 17, 2023.

This application has been withdrawn.

A public hearing was opened at 7:02 p.m. to consider a **SPECIAL EXCEPTION** requested by **DLS PROPERTIES, LLC/PAUL RICHARDSON** [FILE #23-51] in regards to §190-26.B.(1)(h) of the Conway Zoning Ordinance **to allow the construction of two, 30’x96’ agricultural greenhouses** on Tasker Hill Road/Quint Street, Conway (PID 276-262). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 4, 2023. This hearing was continued from November 15, 2023.

No one was in attendance to represent the application. The Board moved the application to the end of the meeting.

At 7:23 p.m., the Board went back to addressing this application. After discussion, the Board agreed to continue the hearing until the next meeting. Mr. O’Connor noted the Town Engineer has reviewed the application and does not have significant concerns, although he would like to add conditions.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to continue this application to the next meeting, January 17, 2024, at 7:00 p.m. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously,**

A public hearing was opened at 7:03 p.m. to consider an **APPEAL FROM ADMINISTRATIVE DECISION** requested by **FRAM REAL ESTATE CO., LLC** [FILE #23-56] in regards to §190-20.F.(10)(a) of the Conway Zoning Ordinance **to appeal the Zoning Officer’s decision to deny a sign permit for internal illumination** at 402 West Main Street, Conway (PID 277-287). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, December 7, 2023.

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

Shawn Bergeron of Bergeron Technical Services and Scott Bailey of Dunkin Donuts appeared before the Board. The local Dunkin Donuts is undergoing a required remodel, which includes replacement of the menu board. Mr. Bergeron reviewed the history of this situation, going back to 2008. The menu board did not require submission of a sign permit application at that time. A variance was granted, due to its proximity to the property line. A certification of compliance was issued for the site in its entirety. He does not believe the ordinance was intended to consider a menu board as a sign. He noted the replacement menu board is smaller than the existing menu board.

Chair Colbath asked about the decibel level and Mr. Bergeron noted it is unchanged. There are no abutters objecting to this.

Chair Colbath asked for input from the Board; there were none.
Chair Colbath asked for public comment; there was no public in attendance.

Mr. O'Connor said the focus is on the sound aspect of the menu board. Mr. DeVito explained that the Town is currently considering menu boards as standalone signs with a backlit aspect and are requiring a variance be sought for them.

Mr. Bergeron noted this is an existing sign that has already been granted a variance that might be different from recent requests. Mr. DeVito clarified the variance was to operate an interactive menu board, speaker, or drive-thru within 300 feet of a residential property. Once a permit is pulled to operate a backlit sign, that falls to a more restrictive ordinance, which does not permit an internally illuminated sign.

The Board agreed to uphold the administrative decision.

Mr. Bergeron withdrew the application.

Adopted: January 17, 2024 – As Written

CONWAY ZONING BOARD OF ADJUSTMENT – DECEMBER 20, 2023

A public hearing was opened at 7:18 p.m. to consider a **VARIANCE** requested by **FRAM REAL ESTATE CO., LLC** [FILE #23-57] in regards to §190-20.F.(10)(a) of the Conway Zoning Ordinance **to allow an internally lit digital menu board** at 402 West Main Street, Conway (PID 277-287). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Thursday, December 7, 2023.

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

Shawn Bergeron of Bergeron Technical Services and Scott Bailey of Dunkin Donuts appeared before the Board. Mr. Bergeron noted this is a request for a new sign of 19.9 square feet.

Chair Colbath asked for public comment; there was no public in attendance.

Chair Colbath asked for Board input; there was none.

Mr. O'Connor said the request is reasonable and granting the variance would be consistent with other applications the Board has seen in the past few months.

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 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. Mr. Colbath asked for Board comment; there was non. 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 19.9 square foot digital menu board be granted. Motion carried unanimously.

OTHER BUSINESS

First Reading of the Zoning Board of Adjustment Bylaws regarding §A200-5. Applications; decisions: The purpose of this amendment is to extend application submittal deadlines from 21 days to 30 days. Mr. Colbath read the amendment.

REVIEW AND ACCEPTANCE OF MINUTES

The minutes of November 15, 2023, should be amended as follows: Page 5, re: Tractor Supply, Mr. Hebert asked to add that he asked the applicant what the difference was between her property and others. Ms. Parker stated she did not know and had not been to the property during the day.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the minutes of November 15, 2023, as amended. Motion carried unanimously.

MISCELLANEOUS

2024 ZBA Dates and Submittal Deadlines

After discussion, the Board agreed to keep the start time at 7:00 p.m.

Mr. Chalmers made a motion, seconded by Mr. Hebert, to approve the meeting dates and deadlines for 2024. Motion carried unanimously,

NHMA Work Session

Mr. O'Connor has reached out to the NHMA to schedule a date for a work session and asked the Board to submit any questions they would like addressed. The work session will potentially be held in February. Chair Colbath said the definition of hardship is changing and he would like an update on the hardship provision. Mr. Hebert would like input on the issue of legal representation for the Board.

Meeting adjourned at 7:36 p.m.

Respectfully Submitted,
Beth Hanggeli