

CONWAY PLANNING BOARD

MINUTES

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CONWAY PLANNING BOARD

MINUTES

FEBRUARY 14, 2002

A meeting of the Conway Planning Board was held on Thursday, February 14, 2002, beginning at 7:07 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Sheila Duane; Selectmen's Representative, Dick O'Brien; Vice Chair, Robert Drinkhall; Secretary, Conrad Briggs; Brian Glynn; Martha Tobin; David Robinson; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

PUBLIC HEARING – ARTICLE 123-23

The public hearing was opened at 7:08 p.m. Ms. Duane asked if there were any questions from the Board; there was none. Ms. Duane asked for public comment; Robert deFeyter stated that nothing has really changed except the buffer. Mr. Irving stated that the square footage of the storage trailers would be considered disturbed area in regard to greenspace and parking calculations.

Mr. deFeyter stated once this amendment is passed, if someone sees a storage trailer on a commercial site they should be able to look on an approved site plan and see if it is suppose to be there. Mr. Irving answered in the negative and stated if one is there at this point in time it is there. Mr. Irving stated if it is not on an approved site plan when they come back to the Board for any reason it will have to be addressed at that time.

Mr. deFeyter stated then we are grandfathering trailers. Mr. Irving answered in the negative and stated when a site plan is necessary it will have to be addressed at that time. Mr. deFeyter asked if the trailer could sit there until a site plan is necessary. Mr. Irving answered in the affirmative. Mr. deFeyter asked if the Board of Selectmen has reviewed and is it clear to them. Mr. O'Brien answered in the affirmative.

Ms. Tobin asked if we have an inventory of storage trailers. Mr. Irving answered in the affirmative and stated that it will be updated. The public hearing was closed at 7:15 p.m. **Mr. Briggs made a motion, seconded by Ms. Tobin, to adopt Article 123-23 as amended. Motion unanimously carried.**

PUBLIC HEARING – ARTICLE 147-11.B.

The public hearing was opened at 7:15 p.m. Ms. Duane read letters from Robert Barriault, Sheryl Kovalik, and Martin Frank (attached). Ms. Duane asked if the Board had any questions; Mr. O'Brien stated at the request of the Board of Selectmen he will be voting in favor of this amendment.

Ms. Duane asked for public comment; Robert deFeyter stated that he is concerned the same as Mr. Barriault. Mr. deFeyter stated that there is no regulations for lighting,

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greenspace, etc. for the residential/agricultural district, therefore, the site plan regulations would not apply to this type of development. Mr. deFeyter stated that the other special exceptions for the residential/agricultural district have requirements for lighting, etc., but those requirements have been dropped from the proposed amendment. Mr. deFeyter stated that this is not offering any real protection. Mr. deFeyter stated that he has reviewed this amendment with the State Planning Office and they agreed.

Ms. Duane stated that the Planning Director has indicated that this type of development has to come under site plan review. Mr. deFeyter stated that the zoning ordinance lists the requirements and this one should be consistent with the other eight special exceptions. Mr. deFeyter stated that we are not discussing a technology village, but a business park. Mr. deFeyter stated that this should not be allowed in the residential area. The public hearing was closed at 7:31 p.m.

Mr. Briggs stated that this is something viable for this Town and we should vote for it. Mr. Irving stated that the restrictions added to the special exceptions are to provide protection where the other ordinances do not. **Mr. Briggs made a motion, seconded by Mr. O'Brien, to post Article 147-11.B. to the warrant. Motion carried with Mr. Drinkhall abstaining from voting.**

PUBLIC HEARING – CHAPTERS 88 & 89

The public hearing was opened at 7:35 p.m. Mr. Irving stated that the only change was some additional wording that would not require residential inspections. Ms. Duane asked for board comment; there was none. Ms. Duane asked for public comment; there was none. The public hearing was closed at 7:38 p.m. **Mr. Glynn made a motion, seconded by Mr. O'Brien, to post Chapters 88 & 89 to the warrant as amended. Motion unanimously carried.**

**THOMAS FADDEN AND VICKI GRAVES – 4-LOT SUBDIVISION (PID 255-5.1)
FILE #S01-12**

Edgar Allen of Thaddeus Thorne Surveys appeared before the Board. Mr. Allen reviewed the proposed project. Mr. Allen stated that there are some legal issues that need to be resolved in regard to easements. Mr. Allen stated that he has spoken to the Town Attorney and he is forwarding paperwork regarding the easement to the Board of Selectmen. Mr. Irving stated that we also have to have a resolution with all other parties who have rights to cross the property. Mr. Allen asked for a continuance based on waiting replies from the abutters.

Mr. Allen withdrew the waiver request for lot flagging. Ms. Duane read a waiver for Article 131-24.A. and 131-25 in regard to scale. **Mr. Briggs made a motion, seconded by Mr. Drinkhall, to continue the subdivision application for Thomas Fadden and Vicki Graves until March 14, 2002. Motion unanimously carried.** Ms. Duane asked if there was any public comment; there was none.

**CAROL T., MARION LYNN, JESSE E. IV, AND LEE-ANN LYMAN – MINOR
SITE PLAN REVIEW (PID 218-99) FILE #MR02-01**

Shawn Bergeron of Shawn Bergeron Technical Services, LLC appeared before the Board. Mr. Bergeron stated from the 1930's to mid-1980 the site was a gas station. Mr. Bergeron stated that in mid-1980 the site became generally a restaurant facility. Mr. Bergeron stated that this application is to legitimize what has taken place on this property for a long time. Mr. Bergeron stated that the greatest item is the amendment of seating. Mr. Bergeron stated that there will be no changes to the property except some minor improvements.

Mr. Irving reviewed the staff report. Mr. Irving stated that the patio and a portion of the handicap parking space in the Town right-of-way. Mr. Irving stated that the applicant needs a license from the Board of Selectmen. Mr. Irving stated that they are in the process of having that licensed prepared. Mr. Irving stated that the application is substantially complete. **Mr. Briggs made a motion, seconded by Mr. Drinkhall, to accept the application of Carol T., Marion Lynn, Jesse E. IV, And Lee-Ann Lyman for a minor site plan review as complete. Motion unanimously carried.**

Ms. Duane stated that this project shows us that the ordinances need to be worked on. Ms. Duane stated that there are a substantial amount of waiver requests. Ms. Duane stated that the Board should use this project as a case study to make things more efficient in the villages. Mr. Glynn asked if they had followed through on their previous application, would we have to go through this now. Mr. Irving stated that they were approved for 20 seats under the last application, but they didn't complete the site plan issues. Mr. Irving stated that the current tenant will bring this site into compliance as well as increase the seating. Mr. Irving stated that they are trying to deal with everything all at once.

Ms. Duane asked if there were any questions; there were none. Ms. Duane read a waiver request for Article 123-28. Mr. Irving stated that it is a regulation and they have a valid explanation. **Ms. Tobin made a motion, seconded by Mr. Drinkhall, to grant the waiver for Article 123-28.** Mr. Irving stated that parcel 218-100 has no curb cut and the ordinance requires a cross-easement. Mr. Robinson asked if the same person owned the parcels. Mr. Irving stated that it is owned by the same family, but under different legal entities. Mr. Bergeron stated that the more work he does in the villages the more these handshake agreements occur all over. Mr. Bergeron stated that a recorded easement is not going to change what is going on now. Mr. Irving stated that this section of the ordinance should be revisited.

Mr. Bergeron stated that this process just does not work in the villages. Mr. Bergeron stated that this family owns three parcels along Route 16 and Kearsarge Road. Mr. Bergeron stated that these buildings could be flattened; the property combined and is worth more than what is currently there. Mr. Bergeron agreed that the ordinances should be revisited. Ms. Duane asked if there was any public comment; there was none. **Motion unanimously carried.**

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Ms. Duane read a waiver request for Article 123-21.A. Ms. Duane read a letter from Elvio DeSilva (attached). Mr. Irving stated that our parking standards may work well for development in the highway commercial district with available developmental space, but in a village he doesn't think it is appropriate to require every business to provide all of its parking requirements. Mr. Irving stated that the Board should review parking in the village and discuss this with the Master Plan Consultant.

Mr. Irving stated that there are 416 on-street parking spaces in North Conway Village. Mr. Irving stated that we have no credit system for on-street parking. Mr. Irving stated that this is a perfect example why we should revisit the parking requirements. **Mr. Drinkhall made a motion, seconded by Mr. Briggs, to grant the waiver for Article 123-21.A.** Mr. Briggs stated that this is a real problem for the villages and it is important to address this issue under the Master Plan. Ms. Duane asked for public comment; there was none. **Motion carried with Mr. Briggs not voting.**

Ms. Duane read a waiver request for Article 131-67.C.8 and 123-27. Mr. Irving stated that staff has no concerns with the remaining waivers. Ms. Duane read waiver requests for Articles 131-67.C.8.f.; 123-29A.2 & A.3; 123-29.B; 123-29.D.1. & D.6.; 123-29.D.8; and 123-30. **Mr. Drinkhall made a motion, seconded by Mr. O'Brien, to grant the waivers for Articles 131-67.C.8 and 123-27; 131-67.C.8.f.; 123-29A.2 & A.3; 123-29.B; 123-29.D.1. & D.6.; 123-29.D.8; and 123-30.** Ms. Duane asked for public comment; there was none. **Motion unanimously carried.**

Mr. Bergeron stated the applicant needs to obtain a license from the Town and provide bonding. Mr. Bergeron stated that the only improvement is striping the parking spaces. Mr. Bergeron asked if the applicant could forego the bonding and be given a reasonable amount of time to complete the work to be tied to the certificate of occupancy. Mr. Irving stated that that is contrary to our policy, plus we also have a letter on file that the previous tenant could not complete the proposed site plan issues because the owner would not allow them to. Mr. Irving stated that he would not recommend the Board waiving the bonding. Mr. Bergeron stated that the previous applicant came before the Board in 1995 without the owner's permission. Mr. Bergeron stated if this is a stumbling block, he will withdraw the request.

Mr. Irving stated that an existing sign is in the setback, which is illegal because the applicant cannot obtain a sign permit for it. Mr. Irving stated that the sign has never been permitted. Mr. Bergeron stated that he does not know if the sign is legal or illegal. Mr. Bergeron stated that it is there that is why is it on the site plan. Mr. Bergeron stated just because it is on the site plan doesn't mean it can remain. Mr. Irving stated that this approval is not approving the signage. Ms. Duane agreed. Mr. Bergeron stated that he does not have a problem with that. Ms. Tobin asked if the sign will have to be removed. Mr. Irving answered in the affirmative or they will not be given a certificate of occupancy.

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Mr. Briggs made a motion, seconded by Mr. O'Brien, to continue the minor site plan review for Carol T., Marion Lynn, Jesse E. IV, And Lee-Ann Lyman until March 14, 2002. Motion unanimously carried.

**CONWAY HISTORICAL SOCIETY – FULL SITE PLAN REVIEW (PID 265-33)
FILE #FR02-01**

Mr. Robinson stepped down at this time. Shawn Bergeron of Shawn Bergeron Technical Services, LLC appeared before the Board. Mr. Bergeron reviewed the project. **Mr. Briggs made a motion, seconded by Mr. O'Brien, to accept the application for the Conway Historical Society for a Full Site Plan Review as complete. Motion unanimously carried.**

Mr. Irving stated that there are no issues with the waiver requests, Fire Chief approval has been received and the Town Engineer has approved the drainage plans. Mr. O'Brien asked how far the parking lot is from the school's playground. Mr. Bergeron answered the parking lot is approximately 100 feet from the ball field. Ms. Duane asked if it is necessary to have all this parking. Mr. Bergeron stated that the ordinance does not address museums. Mr. O'Brien asked if parking could be between the two historical buildings. Mr. Bergeron answered in the negative. Mr. Bergeron stated that he does not think the Historical Society has considered less parking.

Ms. Duane read the waiver requests for Articles 123-20.F. and 131-67.C.8.f.; 123-20.G.; 123-29.A.3; and 123-30. **Ms. Tobin made a motion, seconded by Mr. O'Brien, to grant the waiver requests for Articles 123-20.F. and 131-67.C.8.f.; 123-20.G.; 123-29.A.3; and 123-30. Motion unanimously carried.**

Ms. Duane read a waiver request for Article 123-29.D.6. Mr. Irving suggested moving three trees on the lower side on the east side to the west side of the parking lot. **Mr. O'Brien made a motion, seconded by Mr. Drinkhall, to grant the waiver for Article 123-29.D.6. Ms. Duane asked for public comment; there was none. Motion unanimously carried.**

Mr. Irving stated that the applicant needs to provide bonding, relocate the utility pole to the curb line, and change the location of the trees. **Mr. O'Brien made a motion, seconded by Mr. Glynn, to conditionally approve the Conway Historical Society site plan conditionally upon relocating utility pole to the curb line; remove trees on east side of parking lot and adding two trees along the west side of the parking lot; a performance guarantee for 50% of all site improvements; when the conditions have been met, the plans can be signed out-of-session; and the conditional approval will expire in 120 days [June 20, 2002]. Motion unanimously carried.**

Mr. Robinson rejoined the Board at this time.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Briggs made a motion, seconded by Mr. Glynn, to approve the Minutes of January 3, 2002 as written. Motion unanimously carried.

The Minutes of January 24, 2002 should be amended as follows: page 6, paragraph 5 under Article 147-22.D.(1) should read, "...seconded by Mr. Drinkhall...". **Mr. Glynn made a motion, seconded by Mr. O'Brien, to approve the Minutes of January 24, 2002 as amended. Motion unanimously carried.**

OTHER BUSINESS

Master Plan Workshop: There will be a master plan workshop on Thursday, February 21, 2002. The Board agreed to change the time from 7:00 p.m. to 4:00 p.m.

Meeting adjourned at 9:25 p.m.

Respectfully Submitted

Holly L. Meserve
Recording Secretary

Conway Planning Board

February 14, 2002

Subject: Public Hearing, February 14, 2002

I am sorry I am unable to attend this public hearing on the proposed amendment to Article 147-11, Residential/Agricultural District Zoning Ordinance. It is unfortunate that two official town-board public hearings (Planning Board and Budget Committee), covering equally important topics, were scheduled for the same evening.

My absence at this meeting in no way reflects a lack of interest or diminished concern regarding this issue. I expressed my concerns at the January 24 public hearing and will not take up your time reiterating them. For any Board member wishing to refresh their memory, I have attached a copy of a letter I sent to Mr. Tom Eastman at The Mountain Ear summarizing my views expressed at the public hearing.

I hope that the Board will seriously consider the potential impact this special exception could have on future commercial encroachment of residential property and will move to table this amendment at this time. I sincerely believe that the appropriate time to revisit this proposal would be after the Town Master Plan has been updated to reflect the desires of the community regarding future land use development.

Sincerely,



Bob Barriault
Conway

Tom Eastman
The Mountain Ear

January 31, 2002

Subject: Business park special exception addressed...

Tom,

This letter is a follow-up to my telephone conversation with you regarding your article in this week's paper regarding the subject matter.

Your article neglected to report the principal concern expressed at the public hearing, January 24, regarding the proposed amendment to the residential / agricultural zoning district. Since I was a participant, I wish to enlighten you. First of all, I was particularly careful not to accuse the Planning Board of spot zoning. What I said was that the language and content of this article was so site specific that it gave the appearance of spot zoning to satisfy a specific application. However, the main thrust of my concern was the timing of this proposal.

As you know, Conway is embarking on an update of its master plan for which the voters appropriated \$70,000 to hire a professional to assist in the process. Over the years the public has expressed concerns over commercial development sprawl in the community. Most recently this was expressed in the 1998 consensus building process summary prepared by Glenn Harbeck Associates in connection with the Conway Bypass Overlay District Study. A recommendation was made in that summary that expansion of commercial zoning to new areas be tightly controlled. The reason given in part was that compared to other communities of similar size in New England, Conway had an enormous amount of commercially zoned property.

I feel that the timing of this zoning amendment is inappropriate until the master plan is updated and the desires of the community are known regarding future land use development.

I witnessed a certain element of hypocrisy demonstrated by the actions of the Planning Board that evening. They voted unanimously not to recommend Mr. Morrill's petition to rezone a portion of his property to highway commercial because they did not want to consider such a change until the Master Plan update was completed. Yet their own actions in developing and promoting the special exception amendment has the same potential impact of producing further commercial encroachment of residential / agricultural property. I feel the argument appropriately used in defense of their position on the Morrill petition equally applies to this article.

If timing is a crucial factor to the MWV Economic Council building plans, I recommend that they petition the voters (which is their legal right) to rezone the specific property in question. If approved by the voters, which I feel is highly probable; the decision will only impact the property in question. In my opinion, the amendment proposed by the Planning Board could open the floodgate for potential business park developments in other residential areas contiguous to the business/commercial districts.

In closing I wish to emphasize that my position is without prejudice on this special exception proposal. I reserve judgement on this issue until the master plan is updated. My principal concern is that the timing is inappropriate for the reason stated.

Bob Barriault
Conway.

February 14, 2002

Sheila Duane, Chair
Conway Planning Board

Dear Sheila:

I won't be able to attend the public hearing on the proposed Business Park warrant article tonight so am submitting my thoughts in writing instead. My interest is helping find the best way to move the project forward without unduly burdening the zoning ordinance, or preempting the Master Plan process.

After reviewing the most recent draft proposal, I urge the Planning Board and the Economic Council to substitute a simple request that the voters approve the rezoning of this particular parcel to Commercial from its current status of part Commercial, part Residential/Agricultural. Though an attempt has been made to write the proposed article to give the appearance of applying to any project that meets the criteria outlined, it is clearly designed for this particular project, not any other. As a result, it unduly burdens Chapter 147 with language that is unlikely to be used again in a way that will benefit the community, and which in fact may prove troublesome.

This proposed article does not contribute toward the goal being pursued in other amendments to simplify and clarify Chapter 147, in fact it has the opposite effect. Some of its requirements (to qualify, a project must be consistent with a residential neighborhood and have *no* negative impact on abutting properties) are perhaps impossible to meet, or at the least are very subjective and subject to challenge by abutters or other parties.

It seems highly likely that there will be widespread support among the voters to support this project. The Technology Village is a unique development that has clear benefits to the community. Why not keep it simple and avoid complicating the zoning ordinance, and also the possibility of future unintended side effects, by instead presenting an amendment to rezone this one parcel, and letting the Master Plan process determine the future of commercial development in Conway?

Respectfully submitted,



Martin Frank

cc: Tom Irving, Jac Cuddy

Town of Conway

From: "Sheryl Kovalik" <skovalik@nh.adelphia.net>
To: "Sheila Duane" <sheila.duane@verizon.net>
Cc: "jac cuddy" <jac@mwvec.com>
Sent: Thursday, February 14, 2002 1:30 PM
Subject: Tonight's Planning Board Hearing

Sheila,

I am unable to attend this evening's meeting. However, as a Conway taxpayer and supporter of the Technology Village Project I want to go on record as supporting the special exception. Obviously I do not know if any opposition will be present so I will simply state a few of the reasons that this direction is warranted.

Our valley needs economic diversification. Technology/Software type businesses are environmentally friendly, can deliver the economic diversification, offer higher wage opportunities and will not conflict with the environmental assets that drive our primary industries.

This will be an asset for the valley, our children and our local economy. It needs to happen now and this special exception is key to our ability to begin.

Thanks.

Sheryl Kovalik

Mr. Elvio DeCilla
P.O. Box 273
Bartlett, NH 03812
603-374-2429

COPY

10 January 2002

Ms. Sheila Duane, Chair
Conway Planning Board
P.O. Box 70
Center Conway, NH 03813-0070

Dear Ms. Duane:

I am writing to you on behalf of Kate & Pete Willis, the owners of Coyote Rose Restaurant which hopefully will be opening soon at the location that used to be "Elvio's Pizzeria" in North Conway Village. Their representative has explained to me that the Planning Board may be concerned that the 70 dining seats being requested cannot be serviced adequately by the available parking and that this concern may prevent an approval by the Board. I have to explain that this concern is without merit.

Elvio's Pizzeria and numerous other restaurant businesses have operated out of this Lyman property for more than a decade. While Elvio's was in business at this location we offered indoor seating on a year round basis and outdoor seating on the patio, usually for four months of the year. During the busiest times we would seat up to 90 customers. How our customers arrived at the restaurant and where they parked was never a concern and our customers did not produce any greater parking nuisance than the customers of other businesses in North Conway Village. The reality of parking in the Village is simple: No one can explain where the thousands of people that visit North Conway on a summer weekend park their vehicles but... they do. If business owners place themselves in a location where access and parking is not available, their business will fail. Elvio's Pizzeria did not close due to lack of parking. As you probably know, the number of available seats is critical to any restaurant. Please do not allow the number of available parking spaces to prevent this new restaurant from opening with enough seats to make it a financially viable operation.

Sincerely,


Elvio DeCilla