

CONWAY PLANNING BOARD

MINUTES

APRIL 12, 2007

A meeting of the Conway Planning Board was held on Thursday, April 12, 2007 beginning at 7:05 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Secretary, Steven Porter; Hud Kellogg; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Martin, to approve the Minutes of March 22, 2007 as written. Motion unanimously carried.

DAVID SMITH/NORTHEAST AUTO BODY – FULL SITE PLAN AND LOT MERGER REVIEW (PID 252-50 & 51) FILE #FR07-05

David Smith and Dimitri Savchick appeared before the Board. This is an application to construct a 6,000 square foot auto body shop and small engine repair shop and a 512 square foot shed and to merge PID 252-50 and PID 252-51 into one lot. **Mr. Porter made a motion, seconded by Mr. Drinkhall, to accept the application of David Smith for a Full Site Plan and lot merger review as complete. Motion unanimously carried.**

Mr. Drinkhall read the requirements to grant a waiver. Mr. Kellogg asked if a stockade fence could be erected behind the arborvitaes. Mr. Drinkhall stated that this was discussed at the conceptual review and the Board preferred the arborvitaes. Mr. Porter and Mr. Martin agreed with Mr. Drinkhall. Mr. Kellogg stated that the plantings should be placed closer together, such as one-foot apart. Mr. Irving stated that they could not be planted that close and survive. Mr. Irving stated that the usual and customary practice is to plant them 4-feet apart. Mr. Smith stated that he could put up a stockade fence. Mr. Martin stated that the applicant came before the Board with a conceptual and the applicant as the Board asked and not right to start asking the applicant to jump through hoops now. Mr. Drinkhall and Mr. Porter agreed.

Mr. Drinkhall read the waiver requests for §123-21.A.1; 123-22.B; and 123-29.A.2 & A.3. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver requests for §123-21.A.1; 123-22.B; and 123-29.A.2 & A.3.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Mr. Martin made a motion, seconded by Mr. Porter, to conditionally approve the Full Site Plan for David Smith conditionally upon Town Engineer Approval; a

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Mylar; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on July 12, 2007. Motion unanimously carried.

Mr. Porter made a motion, seconded by Mr. Martin, to sign the lot merger to merge PID 252-50 and PID 252-51 into one lot. Motion unanimously carried.

NORTH CONWAY HOLDINGS, INC. – FULL SITE PLAN REVIEW (PID 219-204) FILE #FR07-06

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. This is an application to construct 12,000 square foot retail building in place of the previously approved 6,000 square foot office building. **Mr. Martin made a motion, seconded by Mr. Porter, to accept the application of North Conway Holdings, Inc. for a Full Site Plan Review as complete. Motion unanimously carried.**

Mr. Porter stated that the use is going to be retail. Mr. Bergeron answered correct.

Mr. Drinkhall read the waiver request for §123-20.F/131-67.C.8.a, b & f. **Mr. Porter made a motion, seconded by Mr. Martin, to grant the waiver request for §123-20.F/131-67.C.8.a, b & f.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Mr. Martin asked if there was a garage door on the south elevation and if so, what is its purpose. Mr. Bergeron stated that there is a garage door proposed on the southern elevation, but the applicant is not sure if it will be constructed. Mr. Bergeron stated that he recommended to his client to add it now, as it would be easier to remove it then add it later.

Mr. Drinkhall read the waiver request for §123-21.A. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver request for §123-21.A.** Mr. Drinkhall asked for Board comment; Mr. Kellogg stated that he is having a hard time with the parking shortage. Mr. Kellogg stated that the site is almost 1/3 short of the required parking. Mr. Martin asked if waivers have been granted previously for this site. Mr. Bergeron stated that a waiver for 17 parking spaces had been granted in the past.

Mr. Porter stated that this is a change of use and he was inclined to grant it initially since the use was office space and it was not a high number, but with it changing to retail he is not so sure about granting the waiver now. Mr. Porter stated if the Board continually grants waivers for parking it opens a Pandora's box. Mr. Porter stated that most people want to park where they want to shop rather than park and walk.

Mr. Drinkhall stated that the Board has granted waivers for sites in the past in the village that do not have any parking. Mr. Drinkhall asked how does the Board justify denying this request. Mr. Porter stated that this site has already been before the Board and now the applicant wants to change the use. Mr. Porter stated that the applicant has an

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approval for an office building and now they want to change it to a more intensive use. Mr. Porter stated that the request is not for a minor amount of parking, it is for a major amount.

Mr. Irving stated that the previous use would have required 24 spaces. Mr. Martin stated that office space of 6,000 square feet requires 24 parking spaces and he knows that the TD Banknorth business only requires 14 every day. Mr. Martin stated that he might lean toward granting the waiver if he knew what the exact use would be. Mr. Bergeron stated that he did not know and he doesn't think the owner knows. Mr. Martin stated that the Board has allowed waivers in the past because of the town parking spaces.

Mr. Bergeron stated that he understands the requirements that this Board functions and every time the Board grants a waiver you risk someone hanging it over your head, but in this district the Board has granted waivers significantly greater than this one and the businesses have been successful. Mr. Bergeron stated that the village has existed with non-compliant parking forever, not sure how, but it does. Mr. Bergeron stated this is one of the largest lots in North Conway Village and the ordinance almost punishes them. Mr. Bergeron stated that this site provides 63% of the required parking and that is more than probably any business in the North Conway Village. Mr. Bergeron stated that the applicant is being penalized for having the largest site in the village.

Mr. Bergeron stated if a business owner asks for a waiver and it is granted, then it is at his risk, not the Board's, because if people cannot find a parking spot they are going to leave. Mr. Porter stated that it is the Board's responsibility to the Town. Mr. Porter stated even though the waiver was granted last year for office space, doesn't mean the Board should grant the waiver now for retail just because we have for other businesses in the village. Mr. Porter stated that the lot is almost conforming now without the seventeen spaces.

Mr. Martin stated the Board should be careful about drawing a line in the sand and not allowing this waiver. Mr. Martin stated if another business in the village comes before the Board and we have drawn this line then we need to stick by it. Mr. Martin stated on Main Street the Board has been lenient and would hate to see us do a 180. Mr. Martin cautioned the Board from taking that stand.

Mr. Irving stated that it is always a good idea to look at every case on it's own merit as you may find circumstances in one area that just does not fit in another. Mr. Irving stated that the Board should review the circumstances today, as you will find it difficult to apply a rigid standard to other applications based on this application. Mr. Irving stated that the Board might want to look at a waiver worksheet he has created and then make some finding of facts. Mr. Irving stated that this might help the Board look at the specific merits. Mr. Drinkhall asked for public comment; there was none. Mr. Drinkhall stated that this property is used for public events and it is not a public parking lot. The Board decided not to use the worksheet. **Motion defeated with Mr. Porter and Mr. Kellogg voting in the negative.**

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Mr. Irving asked that the members who voted in the negative go through the worksheet and determine what portions failed. The Board agreed.

Mr. Irving asked if item 1 was an issue. Mr. Porter and Mr. Kellogg both answered in the negative. Mr. Porter stated that strict compliance with the regulations would not cause a hardship to the applicant solely because of the unique physical characteristics of the site. Mr. Porter stated that the owner had previous approval for office space. Mr. Kellogg agreed and stated that granting the waiver would have the effect of nullifying the intent and purpose of the ordinance. Mr. Irving asked how. Mr. Kellogg stated that it is self-explanatory and that the applicant is asking the Board to overlook 47 parking spaces that are needed.

Mr. Bergeron asked if there was a regulation in regard to the number of members present similar to the Zoning Board of Adjustment procedure. Mr. Irving stated that it does not apply to Planning Board only the Zoning Board of Adjustment. **Mr. Martin made a motion, seconded by Mr. Porter, to reconsider the last motion [§123-21.A]. Motion carried with Mr. Kellogg voting in the negative.**

Mr. Drinkhall read item 1. **Mr. Porter made a motion, seconded by Mr. Martin, for the finding of fact that granting the waiver will not be detrimental to the public health, safety or general welfare. Motion carried with Mr. Kellogg voted in the negative.**

Mr. Drinkhall read item 2. **Mr. Martin made a motion, seconded by Mr. Porter, for a finding of fact that granting the waiver will not be injurious to other parties. Motion carried with Mr. Kellogg abstaining from voting.**

Mr. Drinkhall read item 3. **Mr. Porter made a motion, seconded by Mr. Martin, for a finding of fact that granting the waiver will not have the effect of nullifying the intent and purpose of these regulations.** Mr. Kellogg stated that his concern is that this is a new procedure and the first time using this worksheet. Mr. Irving stated that the requirements are not new as this is what the Chair reads at every meeting. Mr. Irving stated all he has done is added a space to add a vote. **Motion carried with Mr. Kellogg voting in the negative.**

Mr. Drinkhall read item 4. **Mr. Porter made a motion, seconded by Mr. Martin, for a finding of fact that strict compliance with the regulations would cause a hardship to the applicant solely because of unique physical characteristics of the site. Motion carried with Mr. Kellogg voting in the negative.**

Mr. Drinkhall read item 5. **Mr. Porter made a motion, seconded by Mr. Martin, for a finding of fact that granting the waiver would result in substantial public benefit. Motion defeated with Mr. Kellogg and Mr. Martin voting in the negative.**

Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver for §123-21.A. Motion carried with Mr. Kellogg voting in the affirmative.

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Mr. Drinkhall read the waiver requests for §123-27; §123-29.A.2 & A.3; and §123-29.D.1, D.2 & D.8. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver request for §123-27; §123-29.A.2 & A.3; and §123-29.D.1, D.2 & D.8.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion carried with Mr. Kellogg voting in the negative.**

Mr. Porter made a motion, seconded by Mr. Drinkhall, to conditionally approve the Full Site Plan for North Conway Holdings, Inc. conditionally upon North Conway Water Precinct water and sewer approval; Revise handicap accessible parking spaces to meet minimum requirements and widen driveway in front of Banknorth building to meet minimum driveway width; Add use to PID 219-211 on plan; Show parking space dimension typical on plan; revise note #21 to indicate parking spaces to be 9' x 18' (not 9.5'); provide cut sheets for all proposed lighting; confirm location of utility easements; a Mylar; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on July 12, 2007. Motion carried with Mr. Kellogg voting in negative.

**BERGERON & BURNELL, INC – FULL SITE PLAN REVIEW (PID 218-135)
FILE #FR07-07**

Ed Bergeron of H.E. Bergeron Engineers appeared before the Board. This is an application to construct a 1,792 square foot garage and access driveway. **Mr. Martin made a motion, seconded by Mr. Porter, to accept the application of Bergeron & Burnell, Inc. for a Full Site Plan Review as complete. Motion unanimously carried.**

Mr. Kellogg stated that there are no windows on the north end for security reasons. Mr. Bergeron stated that there are no windows on the north end of the building, as they cannot see that side of the building. Mr. Kellogg asked if the applicant would be willing to install fake windows. Mr. Bergeron stated that he would be willing, but the reason there are no windows is because that side of the building will not be seen. Mr. Bergeron withdrew the waiver request for §123-30.A.3.

Mr. Drinkhall read a waiver request for §123-6.A. & 27 and 123-20.F/131-67.C.8.a; §123-20.F/131-67.C.8.f.; §123-20.I.; §123-21.A. & 21.B.; §123-22.A.; §123-26; §123-29.A.2 & A.3; and §123-29.D.8. **Mr. Porter made a motion, seconded by Mr. Kellogg, to grant the waiver request for §123-6.A. & 27 and 123-20.F/131-67.C.8.a; §123-20.F/131-67.C.8.f.; §123-20.I.; §123-21.A. & 21.B.; §123-22.A.; §123-26; §123-29.A.2 & A.3; and §123-29.D.8.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

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

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Mr. Porter made a motion, seconded by Mr. Martin, to conditionally approve the Full Site Plan for Bergeron & Burnell, Inc. conditionally upon NHDOT Driveway Permit; North Conway Water Precinct water and sewer approval; add faux windows on north elevation; revise “Waivers Granted as part of this approval” table; a Mylar; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on July 12, 2007. Motion unanimously carried.

OTHER BUSINESS

MRM Real Estate Development/Shaw’s Realty Co. (PID 246-19 & 20) – Extension of Conditional Approval (File #FR06-06): Mr. Porter made a motion, seconded by Mr. Martin, to extend the conditional approvals for MRM Real Estate Development/Shaw’s Realty Co. until June 28, 2007. Motion unanimously carried.

Shaw’s Realty Co. (PID 246-20) – Extension of Conditional Approval (File #S06-26): Mr. Porter made a motion, seconded by Mr. Martin, to extend the conditional approvals for Shaw’s Realty Co. until June 28, 2007. Motion unanimously carried.

Meeting adjourned at 8:35 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant