

CONWAY PLANNING BOARD

MINUTES

AUGUST 12, 2010

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CONWAY PLANNING BOARD

MINUTES

AUGUST 12, 2010

A meeting of the Conway Planning Board was held on Thursday, August 12, 2010 beginning at 7:01 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Selectmen's Representative, Robert Drinkhall; Vice Chair, Martha Tobin; Patricia Sell; Ted Sares; Steven Hartmann; Scott Lees; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Sell made a motion, seconded by Mr. Drinkhall, to approve the Minutes of July 22, 2010 as written. Motion carried with Ms. Tobin abstaining from voting.

MARY GAUDETTE – 2-LOT SUBDIVISION REVIEW (PID 216-73) FILE #S10-08

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. This is an application to subdivide 37.39 acres into two lots. Mr. Hartmann joined the Board at this time. **Mr. Drinkhall made a motion, seconded by Ms. Tobin, to accept the application of Mary Gaudette for a subdivision review as complete. Motion unanimously carried.**

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

Mr. Drinkhall made a motion, seconded by Ms. Sell, to conditionally approve the 2-lot subdivision for Mary Gaudette conditionally upon indicating underground utilities serving proposed lot 216-73.1; indicate NHDES Subdivision approval number on plan; NHDOT Driveway permit and indicating permit number on plan; North Conway Fire Chief approval; four copies of revised plans; a performance guarantee for underground utilities; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on November 18, 2010. Motion unanimously carried.

DENNIS HILLER – FULL SITE PLAN REVIEW (PID 276-287) FILE #FR10-05

Josh McAllister of H.E. Bergeron Engineers and Dennis Hiller appeared before the Board. This is an application to convert the residential, 3-unit apartment building to one commercial unit and one residential unit in the main building and to convert the two-car garage to a commercial unit. This application was deferred from July 22, 2010.

Mr. McAllister stated that they are looking for approval for what the building has been historically used for, but is not approved by the Town. **Mr. Drinkhall made a motion, seconded by Mr. Sares, to accept the application of Dennis Hiller for a Full Site Plan Review as sufficiently complete. Motion carried with Ms. Tobin voting in the negative.**

Mr. Irving stated the Town Engineer is concerned with not paving the parking and the number of parking spaces. Mr. Irving stated staff has no issues with the waiver for the drainage analysis. Mr. Irving stated we need to know the use of the garage; not just that it is a commercial use. Mr. McAllister stated that it is not specifically retail; cleaning businesses have been in there with

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materials and there has been a bike shop, not specifically sale of goods, but service. Mr. Irving stated that we need to know the use; the Board needs to know what they are approving. Mr. Irving stated that the removal of the garage removes two parking spaces and they are increasing the demand on the parking.

Mr. Porter stated that a Board member would like to change their vote on the acceptance of the application. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to reconsider the vote on accepting the application as sufficiently complete. Motion unanimous carried.**

Ms. Sell made a motion, seconded by Mr. Drinkhall, to accept the application of Dennis Hiller for a Full Site Plan Review as sufficiently complete. Motion carried with Ms. Tobin and Ms. Sell voting in the negative.

Mr. Sares asked what the issues are. Mr. Irving stated that we do not yet know what the use is being proposed in the garage. Mr. Irving stated that the parking waiver is asking for seven spaces; however, by changing the two car garage to a use they are reducing the number of parking spaces on their own and increasing the demand on their own. Mr. Sares asked what the use has been historically. Mr. Irving answered none, it was not approved.

Mr. Drinkhall stated that the driveway is too narrow and could cause a jam in the street. Mr. Lees asked how many parking spaces are required. Mr. Irving stated that he cannot answer that until we know the use of the garage. Mr. Irving referred to the parking calculations on sheet 2. Mr. McAllister stated that retail was used as the use when putting together the application as it has been many different items. Mr. McAllister stated that that the garage has primarily been for storage for other businesses; we thought retail provided the strictest count.

Mr. Sares stated the garage is a rental property and now changing to something else, what is the use now. Mr. McAllister stated that there is not a tenant lined up at this point. Mr. Hiller stated since he's owned the property he has rented the garage, but it can only be rented for certain things. Mr. Irving stated light manufacturing/warehouse is allowed, but the repair of motorcycles is not allowed. Mr. McAllister stated light manufacturing would be the closest. Mr. Irving stated by changing it to light manufacturing would reduce the parking demand, how many employees. Mr. Hiller answered one.

Mr. Hiller stated that he purchased the property this way and not to cast stones, but the Town just didn't record what was there. Ms. Sell stated what has been presented is vague. Mr. Lees stated he is not doing anything that he hasn't done in the past and maybe the town mislabeled it, as that happens. Mr. Lees stated that he has to agree with him; parking is an issue with him.

Mr. Irving stated that the garage needs to be specified as light industry and then they can reduce the parking demand, but would probably still need a waiver. Mr. McAllister agreed. Mr. Porter asked for public comment; there was none.

Mr. Porter read the waiver request for §123-20.E. **Mr. Drinkhall made a motion, seconded by Mr. Sares, to grant the waiver request for §123-20.E.** Mr. Porter asked for Board comment; there was none. **Motion carried with Mr. Hartmann voting in the negative.**

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Mr. Porter read the waiver request for §123-20.F. **Ms. Tobin made a motion, seconded by Mr. Sares, to grant the waiver request for §123-20.F.** Mr. Porter asked for Board comment; there was none. **Motion carried with Mr. Porter voting in the negative.**

Mr. Porter read the waiver request for §123-20.G. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to grant the waiver request for §123-20.G.** Mr. Porter asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Porter read the waiver request for §123-22.A. & 22.B. **Mr. Drinkhall made a motion, seconded by Ms. Tobin, to grant the waiver request for §123-22.A. & 22.B.** Mr. Porter asked for Board comment; there was none. **Motion carried with Ms. Sell, Mr. Hartmann and Mr. Porter voting in the negative.**

Mr. Porter read the waiver request for §123-27. **Mr. Drinkhall made a motion, seconded by Mr. Sares, to grant the waiver request for §123-27.** Mr. Porter asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Porter read the waiver request for §123-29.A.2 & A. 3. **Mr. Drinkhall made a motion, seconded by Mr. Sares, to grant the waiver request for §123-29.A.2 & A.3.** Mr. Porter asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Porter read the waiver request for §123-29.D.8. **Mr. Sares made a motion, seconded by Ms. Sell, to grant the waiver request for §123-29.D.8.** Mr. Porter asked for Board comment; Ms. Tobin asked how many trees are required. Mr. McAllister answered four. Ms. Tobin asked if there is room to plant four trees. Mr. McAllister stated there are some trees off their property, but they cannot be considered as street trees. **Motion unanimously carried.**

Mr. Porter read the waiver request for §123-36. **Mr. Sares made a motion, seconded by Mr. Porter, to grant the waiver request for §123-36.** Mr. Porter asked for Board comment; Ms. Tobin asked why we would not take this opportunity to have a building be ADA accessible. Mr. Porter stated especially with it being retail. Mr. McAllister stated that they are guidelines, all new construction or remodeled structures are to adhere to these guidelines. Mr. McAllister stated there is also a responsibility of land owners to review their property and if they are capable of bringing into compliance or a reasonable effort can bring into compliance then they should. Mr. McAllister stated there is no requirement to bring buildings not being renovated into compliance. Mr. McAllister stated there is no building or renovation occurring here, but Mr. Hiller will continue to review the accessibility of his building. **Motion carried with Ms. Tobin, Mr. Hartmann and Mr. Drinkhall voting in the negative.**

Mr. Porter read the waiver request for §123-36.B. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to grant the waiver request for §123-36.B.** Mr. Porter asked for Board comment; Mr. Drinkhall asked if gravel is considered acceptable. Mr. Irving stated typically we require paved. Mr. Porter stated that the Town requires pavement, but ADA regulations allows gravel. Mr. McAllister stated that he contacted the ADA hotline to clarify; they do not specifically say gravel is not an approved material, nor do they say pavement is an approved material, just a non slippery surface.

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Mr. McAllister stated as an engineer a maintained gravel parking lot can be acceptable. Ms. Tobin stated as someone who moves wheelchairs on a regular basis, gravel is not a stable surface; it is not easy to move a wheelchair on gravel. Ms. Sell agreed with Ms. Tobin. Mr. Sares stated there won't be any wheelchairs here as there is no access. Mr. Hartmann stated that you cannot say there is never going to be a wheelchair here as we are not sure what the use is in the garage.

Mr. Sares stated these are difficult times and people are trying to run businesses. Mr. Sares stated that he chooses to go with a little leeway given the times. Mr. Sares stated that he wants to change something in his building; he is not going to stand in his way. Mr. Hartmann stated that he is not going to stand in his way, but cannot say that no one is going to use a wheelchair at this site. Mr. McAllister stated that the property owner has the responsibility to review the ADA guidelines and make a reasonable effort to comply.

Ms. Tobin stated that she will not be told that she is keeping him from doing his business; she didn't push trees, she didn't push drainage, she is talking about a 5 feet of pavement. Ms. Tobin stated that she does not agree with the waiver. Ms. Sell stated that she agrees with Ms. Tobin and would like to see the handicap parking brought up to Town standards. Mr. Drinkhall stated if you pave that one little section it will be plowed up. Mr. Hartmann suggested concrete.

Motion carried with Ms. Tobin, Ms. Sell and Mr. Hartmann voting in the negative.

Mr. Irving asked if the applicant is going to designate the garage as light industry/warehousing. Mr. McAllister answered in the affirmative. Mr. Irving stated that the applicant is then asking for relief of six parking spaces out of the total requirement of 12. Mr. Porter read the waiver request for §123-21.A. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to grant the waiver request for §123-21.A.**

Mr. Porter asked for Board comment; Ms. Tobin asked how much parking is available on the street. Mr. Irving stated there is none available on Lake Street, but there is on street parking on Route 16. Mr. McAllister stated there are four parallel parking spaces in front of the building on Route 16. Mr. Lees stated if this waiver is not granted it would require extensive work to add six spaces. Mr. Irving answered significant work would be required. Mr. McAllister stated there would be 1,800 square feet of greenspace lost. **Motion carried with Mr. Hartmann and Mr. Lees voting in the negative.**

The Board took a recess so staff could determine the conditions of approval. **Mr. Porter read a waiver request for §123-30.A.3. Mr. Sares made a motion, seconded by Ms. Tobin, to grant the waiver request for §123-30.A.3. Motion unanimously carried.**

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

Mr. Drinkhall made a motion, seconded by Ms. Sell, to conditionally approve the Full Site Plan for Dennis Hiller conditionally upon addressing any pending items in the staff report dated July 14, 2010; submitting four copies of revised plans; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on November 18, 2010. Motion unanimously carried.

**THE PRESIDENTIAL GOLF CORPORATION – 2-LOT/13-UNIT SUBDIVISION
REVIEW (PID 291-30) FILE #S10-07**

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. This is an application to subdivide 696 acres into two lots of 462 and 234 acres and create 13-units on the 462 acre lot. This application was deferred from July 22, 2010. **Ms. Sell made a motion, seconded by Mr. Drinkhall, to defer consideration of this application for acceptance and the Public Hearing for same to the meeting agenda of September 9, 2010.**

Mr. Lees stated the last time this application was before the Board he recused himself as he used to be involved with a group called Arlington. Mr. Lees stated that he is no longer involved and feels he can sit on this and be unbiased.

Mr. Hartmann asked why this is being deferred again. Mr. Irving stated offsite improvements are still being worked out. Mr. Hartmann asked if the Town or the applicant is requesting this deferment. Mr. Irving answered both and stated their only other alternative is to withdraw the application. **Motion carried with Mr. Hartmann voting in the negative.**

Mr. Sares stated that we have to be careful voting in the negative to extend, there has to be a real good reason not to extend. Mr. Sares stated that the alternative for the person coming in is not a good one; he gets antsy when it becomes over a year.

OTHER BUSINESS

Michael Kent (PID 231-97) – Request for a Concurrent Site Plan and Subdivision Review: Mr. Drinkhall made a motion, seconded by Ms. Sell, to allow a Concurrent Site Plan and Subdivision Review for Michael Kent. Motion unanimously carried.

Committee Reports: There was none.

Letter to Representatives in regard to RSA 674:54: Mr. Sares made a motion, seconded by Ms. Tobin, for Mr. Drinkhall and Mr. Sares to sign the letter dated August 12, 2010 addressed to the State Representatives supporting the change to RSA 674:54. Motion unanimously carried.

Proposed Noise Ordinance: Mr. Drinkhall stated that he would like to strike property maintenance; that would help with lawn mowing. Ms. Sell stated that she would like to table this as we need to define what a “reasonable person” is. Mr. Drinkhall stated that the Town starts construction at 6 am and this would be in conflict with the proposed ordinance. Ms. Sell stated that she is not ready to proceed with this this evening, she did not receive this and we need a definition for a “reasonable person”.

Mr. Sares stated there could be an exemption for the Town. Mr. Drinkhall stated that he would like to change the hours to go back to the early hour on mowing the lawn and the Town begins work on major projects as early as 6 am.

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Mr. Drinkhall asked what burdens will this put on the Police Department. Mr. Sares stated that he finds that dysfunctional; ask for an ordinance and then ask a question in the ninth inning, not right; it will not put a burden on the Police Department. **Mr. Sares made a motion, seconded by Ms. Sell, to withdraw the proposed ordinance.**

Mr. Hartmann stated that he thinks it is great and if it creates more work for the Police Department, it is not a bad thing. Ms. Sell stated that each Board member has the right to express their opinion. Ms. Sell stated that she wants to move forward with this, but would like to email her comments. Mr. Drinkhall stated that he thinks it's a good piece of work and these are only his suggestions. Mr. Drinkhall stated that he believes the Police Department should be conferred with. **Mr. Sares withdrew his motion to withdraw the ordinance.**

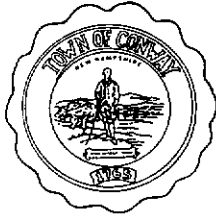
Mr. Porter stated that we have to take baby steps as the Town has to vote on this. Mr. Porter stated if you complicate the issue they will vote it down. Mr. Irving asked that the Board email him their suggestions and he will try to incorporate them. The Board agreed to table this until the next meeting.

Meeting Adjourned at 8:42 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant



TOWN OF CONWAY

1634 EAST MAIN ST. • CTR. CONWAY, NEW HAMPSHIRE 03813

(603) 447-3855

FAX (603) 447-5012

August 12, 2010

Dear Representative,

Please be advised that the Town of Conway Planning Board unanimously adopted a motion in support of the New Hampshire Municipal Association's (NHMA) policy relative to amending RSA 674:54.

NHMA SUPPORTS legislation to strengthen RSA 674:54 to permit municipalities to require that development of property for governmental uses, excluding transportation and telecommunications facilities, be subject to local land use regulations.

On Behalf of The Conway Planning Board we respectfully request that you, as our area representatives, support this amendment. Moreover, we urge you to champion this worthy cause. We thank you in advance for your support.

Sincerely,

Theodore Sares,
Planning Board Member

Robert Drinkhall,
Selectmen's Planning Board Representative

Holly L. Meserve

From: Thomas Irving [tirving@conwaynh.org]
Sent: Friday, August 13, 2010 11:05 AM
To: Holly Meserve
Subject: FW: Email addresses for State Reps

From: Holly L. Meserve
Sent: Friday, June 25, 2010 10:20 AM
To: 'tedsares'
Cc: 'Thomas Irving'
Subject: Email addresses for State Reps

Ted-
Here is the information you requested.
Have a nice weekend.
Holly

Tom Buco
PO Box 3149
Conway, NH 03818-3149
(603)986-5629
tombuco@yahoo.com

Edward Butler
2 Morey Rd
Harts Location, NH 03812-4105
(603)374-6131
mail: ed@butlerinthehouse.com

Gene Chandler
PO Box 296
Bartlett, NH 03812-0296
(603)374-6603
gene.chandler@leg.state.nh.us

Karen Umberger
PO Box 186
Kearsarge, NH 03847-0186
(603)356-6881
karenu@ncia.net

Holly L. Meserve, Planning Assistant
1634 East Main Street
Center Conway, NH 03813
Phone: 603-447-3811, X25 Fax: 603-447-5012
hmeserve@conwaynh.org
www.conwaynh.org

TOWN OF CONWAY, NEW HAMPSHIRE
CHAPTER _____ An Ordinance Regulating Noise

Section I: Purpose

The purpose of this Ordinance is to regulate the making, creation, or maintenance of excessive, unnecessary or unusually loud noises that, in their time, place and manner adversely affect and are a detriment to public health, comfort, safety and welfare of the residents of the Town of Conway.

Section II: Authority

This Ordinance has been enacted pursuant to the statutory authority granted to the Town of Conway by RSA 31:39, I (n)

Section III: Definitions

For the purpose of this Ordinance, the following words and phrases when used herein shall be construed as follows:

- A) Town - The Town of Conway, New Hampshire.
- B) Board - Board of Selectmen of the Town of Conway.
- C) Construction - Any site preparation, assembly, erection, substantial repair, alteration or similar action, but excluding demolition.
- D) Continuous Sound - Any sound that exists, essentially without interruption, for a period of 10 minutes or more.
- E) Demolition - Dismantling or intentional removal of structures, utilities, public or private right of way surfaces or similar property.
- F) Impulse Noise - Any noise of short duration, usually less than one second, and of high intensity, with an abrupt onset and rapid decay.
- G) Noise Disturbance - Any sound, whether a continuous sound or an impulse noise which is loud or unreasonable and which disturbs a reasonable person with normal sensitivities.
- H) Person - Any individual, partnership, company, corporation, association, firm, organization, governmental agency, administration or department, or any other group of individuals, or any officer or employee thereof.
- I) Power Tool - Any device powered mechanically, by electricity, by compressed air, by gasoline, by diesel fuel or by any other fuel, which is intended to be used or is actually used for but shall not be limited to, the performance of such functions as cutting, blowing, nailing, stapling, sawing, vacuuming or drilling.
- J) Residential Property - Any real property developed and used for human habitation and which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, unless such premises are actually occupied and used primarily for purposes other than human habitation.
- K) Undue hardship - A situation or circumstance in which it is unreasonable to require the applicant to conduct the regulated activity during the hours permitted under the ordinance.

Section IV: Regulation Applicability

It shall be unlawful for any person to carry on the following activities if such activities create a noise disturbance that generates a complaint:

- A) Between 10:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10:00 p.m. and 9:00 a.m. (Sunday) the loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, trashcans, dumpsters, or similar objects.
- B) Between 10:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10:00 p.m. and 9:00 a.m. (Sunday) the operation or use of heavy construction vehicles and equipment involved in construction, demolition, property maintenance or similar activity, including, but not limited to, bulldozers, graders, dump trucks, backhoes, earthmoving equipment, front end loaders and log skidders.
- C) Between 10:00 p.m. and 7:00 a.m. (Monday through Saturday) and 10:00 p.m. and 9:00 a.m. (Sunday) the operation or use of tools, power tools, or construction equipment to include, but not limited to: cement mixers, rock crushers, hammers, staple or nail guns, power tools whether involved in construction, demolition, repair, maintenance or similar activity.

Section V: Exemptions

The following uses and activities shall be exempt from the foregoing noise/time restrictions:

- A) Noise of safety signals, warning devices, and emergency pressure relief valves.
- B) Noise resulting from any public safety vehicle when responding to an emergency call or acting in time of emergency, or any public safety personnel when otherwise performing their duties.
- C) Noise resulting from emergency maintenance work or work that cannot be performed during the day due to mitigating factors such as traffic volume or facility use, as performed by the Town, the School District, the State, public utility companies, or a private property owner in the event of a legitimate emergency.
- D) Noise resulting from snow removal operations performed by the Town, the State, and other types of private or commercial snow removal operations.
- E) Any other noise resulting from activities of a temporary duration permitted by the law and for which a license or permit therefore has been granted by the Town.

Section VI: Waiver

An application for a waiver the provisions of this ordinance on the basis of undue hardship may be made to the Board of Selectmen. Any such waiver granted by the Board of Selectmen shall set forth all conditions pertaining to the specified noise, and a reasonable time limit for its abatement.

Section VII:

These requirements shall not apply where such matters are governed by State Law.

Section VIII: Enforcement and Penalties

Upon receipt of a noise complaint, the Conway Police Department, shall investigate, record their finding(s), and take appropriate action, in the officer's discretion.

Any person who violates the provisions of this ordinance or any landowner who permits violation of the provisions of this ordinance shall be guilty of a violation under RSA 625:9 (V)(a) and may be penalized by a fine of \$100 for the first offense, \$250 for the second offense, and \$500 for the third and any subsequent violations thereafter. Such sums to inure to the general fund of the Town.

Section IX: Severability

Should any provision of this Ordinance be held invalid by any court of authority or competent jurisdiction, such holding shall not affect, impair or invalidate any remaining provisions which shall remain in full force and effect. To this end, the provisions of this Ordinance are severable.