

CONWAY PLANNING BOARD

MINUTES

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Adopted: September 9, 2010 – As Written

CONWAY PLANNING BOARD

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A meeting of the Conway Planning Board was held on Thursday, August 26, 2010 beginning at 7:04 pm at the Conway Town Office in Center Conway, NH. Those present were: 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. Alternate David Sordi was in attendance in the audience.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Tobin made a motion, seconded by Ms. Sell, to approve the Minutes of August 12, 2010 as written. Motion unanimously carried.

MICHAEL KENT (PID 231-97) – CONCURRENT SITE PLAN AND SUBDIVISION REVIEW (FILE #FR10-06 AND #S10-09)

This is an application to subdivide 2-acres into two-lots with the house on one lot and the garage on the other lot and to make alterations to the driveway and parking area for the garage lot with the existing equipment and storage area (PID 231-97).

Mr. Irving stated that the applicant in preparing the application discovered they used the wrong width of the right of way, which made the proposed lots less than an acre. Mr. Irving stated this requires a variance from the zoning ordinance. **Ms. Sell made a motion, seconded by Ms. Tobin, to defer the acceptance of the application for Michael Kent for a concurrent site plan and subdivision review until September 23, 2010. Motion unanimously carried.**

OTHER BUSINESS

Earle and Sarah MacGillivray/East Conway Self Storage (PID 244-7) - §123-4.A.5 (File #NA10-05): Shawn Bergeron of Bergeron Technical Services appeared before the Board. Mr. Bergeron stated that the applicant would like to construct one building instead of the two approved buildings. Mr. Bergeron stated that the building would still be used for storage. Mr. Bergeron stated there will be no modifications to the drainage and it will not generate additional parking. Mr. Bergeron stated that this change would not require any additional waivers. Mr. Bergeron stated that they have reviewed this building with the Fire Chief and the Building Inspector and it will require an alarm system.

Ms. Sell asked if the proposed building is located on the previously approved footprint. Mr. Bergeron answered in the affirmative. Ms. Sell asked if there would be a decrease in greenspace. Mr. Bergeron answered in the negative. Mr. Hartmann asked what the proposal for the new building is. Mr. Bergeron stated that it would be indoor storage and the building would have an indoor corridor and an elevator. Mr. Hartmann asked if it would be used to store boats. Mr. Bergeron answered in the negative. Mr. Hartmann asked if it would just be internal storage now. Mr. Bergeron answered in the affirmative. Mr. Lee asked if this is to offer warm storage. Mr. Bergeron answered in the affirmative and stated that people are looking for climate control storage units.

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Mr. Sares asked what the increase is in square footage. Mr. Bergeron answered 3,200 square feet. Mr. Sares stated this is going up; not going out, so he thinks this is not significant. Mr. Hartmann asked if this site is buffered from the abutters. Mr. Bergeron stated that this site is well buffered. Mr. Drinkhall asked for public comment; there was none.

Ms. Sell made a motion, seconded by Mr. Sares, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that the changing of an approval for two buildings totaling 5,700 square feet with an approval for one, two-story building with a footprint of 8,900 square feet is not subject to a Minor or Full Site Plan Review because it has been demonstrated that the change of use and/or physical changes to the site are insignificant relative to the existing development. Motion unanimously carried.

Richard Badger/Robert Willington (PID 218-17) – §123-4.A.5 (File #NA10-06): This is a request to add 10 restaurant seats accessory to the retail. Mr. Irving stated that the applicant withdrew his request.

Cranmore Mountain Ski Resort, Inc (PID 214-84) – §123-4.A.5 (File #NA10-07): Ben Wilcox, General Manager, appeared before the Board. Mr. Wilcox stated that they are continuing to look at summer operations and they would like to install a zip line park to open in 2011. Mr. Wilcox stated there are no mechanical parts to this and is common at ski areas. Mr. Wilcox stated that this is accessory to our business and a great companion to the mountain coaster and summer tubing.

Mr. Irving stated that the platforms reduced the greenspace by 200 square feet, so he was not able to approve administratively. Ms. Sell asked if there would be 35 new trees. Mr. Wilcox answered in the negative and stated that they would be using existing trees.

Ms. Sell made a motion, seconded by Mr. Lees, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that the addition of an Aerial Adventure Zip Line Park is not subject to a Minor or Full Site Plan Review because it has been demonstrated that the change of use and/or physical changes to the site are insignificant relative to the existing development. Motion carried with Ms. Tobin voting in the negative.

Noise Ordinance: Mr. Drinkhall stated that he reported to the Board of Selectmen that the Planning Board was working on a noise ordinance. Mr. Drinkhall stated that the BOS took a vote to support the ordinance and it failed unanimously. Mr. Drinkhall stated that the BOS insisted on a second motion that the BOS do everything possible to discourage the noise ordinance and that passed unanimously.

Mr. Hartmann asked why. Mr. Drinkhall stated that they thought it was more than what was needed, too many restrictions and there would be a cost to the Town. Mr. Hartmann stated that he doesn't understand the cost to the Town. Mr. Hartmann asked if the BOS doesn't back this does it still go before the voters. Mr. Irving stated that it is the BOS that would put it on the ballot.

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Mr. Sares stated that they haven't even looked at it. Mr. Hartmann stated that it is ridiculous to dump this without going to the voters. Mr. Irving stated he left the BOS meeting before this subject was taken up and he didn't find out until after the fact. Mr. Irving stated that the policing of this ordinance is up to the BOS; it is not the Planning Board and it is not the Zoning Board of Adjustment. Mr. Irving stated if the BOS will do anything to stop this then he is precluded from working on this ordinance as he works for the BOS.

Mr. Lees stated before the draft was done, it went before the BOS. Mr. Drinkhall stated that he read it to them. Mr. Lees asked why we should do anything if we are going to be shut down before it is finished. Ms. Sell asked if the vote was unanimous. Mr. Drinkhall answered in the affirmative. Ms. Sell stated that Mr. Drinkhall voted against it. Mr. Drinkhall stated that he has been against the ordinance from the beginning. Ms. Sell asked if this could be a petitioned article. Mr. Irving stated that he is not sure if that can be done with this type of ordinance. Ms. Sell stated that she would like to see the BOS reconsider.

Mr. Sares made a motion, seconded by Mr. Hartmann, to withdraw the draft. Mr. Lees stated that he agrees with the motion, but he is angered. Ms. Sell stated that she is disappointed. Mr. Lees stated they are trying to do something good for the citizens and this makes him not want to work on anything. Mr. Lees stated that he has talked to many people who have construction going on in front of their house at 6 am. Mr. Lees stated that he knows they will be in front of his house soon and he will be contacting the Police.

Ms. Sell stated that so much work has gone into this and it is almost complete. Ms. Sell stated past history indicates this needs to be addressed. Ms. Sell stated that she is not going to support withdrawing this because of the work that took place to create this. Mr. Drinkhall stated one of his concerns was the load that this would put on the Police Department, so he called the Police Department and they were thankful that he gave it to them. Mr. Drinkhall stated their initial reaction was that they were opposed to it, but they did not get back to him. **Motion defeated with Mr. Sares, Mr. Hartmann and Mr. Drinkhall voting in favor and Ms. Tobin, Ms. Sell and Mr. Lees voting in the negative.**

Ms. Sell made a motion, seconded by Ms. Tobin, to keep it alive. Mr. Hartmann asked what the difference between the two motions is. Mr. Irving stated not much as it is a dead issue. Mr. Hartmann asked if there is a way to turn this into a petitioned article. Mr. Irving asked if the question is if there is a way for the Planning Board to get this on the warrant. Mr. Hartmann answered in the affirmative. Mr. Irving stated not that he is aware; however, there may be a way for a private citizen to get it to the BOS and get it on the warrant.

Mr. Sares stated if they have already turned it down, why you would think they wouldn't turn down a member of the Planning Board. Mr. Drinkhall disagreed and stated he has seen BOS members change their minds if there is a good argument. Ms. Sell stated that this is in the best interest of the citizens of this Town. Ms. Sell stated that he doesn't think the BOS is looking out for the best interest of the citizens in the community.

Mr. Lees stated that he thinks we are tainted; a Planning Board member cannot go in front of the BOS. Mr. Lees stated that they have not seen a draft and they still voted us down; they didn't let

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us finish. Mr. Lees asked how we can not protect the Town by not having an ordinance and to turn it down without even looking at a final draft.

Mr. Drinkhall stated that he read the proposed ordinance to the Board. Mr. Drinkhall stated that he gave them the three problems he saw with it and what he thought would be changed. Mr. Drinkhall stated that they felt this went too far, too restrictive. Mr. Sares stated that he thinks in the future when we embark on these projects anyone who has bureaucratic objections should state them at the beginning of the process; this is disgraceful. Mr. Sares stated for the BOS to say no to a draft that he has not even seen is dysfunctional.

Ms. Sell stated we are elected members and we are focusing on trouble shooting and correcting numerous noise issues in the Town. Ms. Sell asked Mr. Drinkhall to express our views to the BOS. **Motion carried with Mr. Sares voting in the negative.**

Mr. Sares made a motion, seconded by Ms. Sell, that any other projects similar to this be stopped immediately. Ms. Sell stated that she has been tasked with driveway regulations and she is not ready to toss it out. Mr. Irving stated the other tasks before the Planning Board are the driveway regulations, which is a part of the Subdivision Regulations and under the purview of the Planning Board; amendments to sign lighting, which is part of the Zoning Ordinance and under the purview of the Planning Board; and site lighting, which is a part of the Site Plan Review Regulations and are under the purview of the Planning Board. Mr. Irving stated there are no other projects similar to the noise ordinance. **Mr. Sares withdrew his motion and Ms. Sell withdrew her second.**

Ms. Tobin stated that Mr. Sares has done a lot of work on this ordinance and she would like to keep moving forward with it. Ms. Tobin stated that she is not 100% behind what we have, but she is not ready to give up on it. Ms. Sell stated there was a noise ordinance in the 1990's, but it disappeared from our books.

Committee Reports: Mr. Drinkhall stated the Board of Selectmen took a vote on the proposed changes to RSA 674:54 and it was a 1-4-0 vote to not support the changes. Mr. Sares asked why. Mr. Drinkhall stated that the main reason is that it is too restrictive for the Town and the Town shouldn't be held to the same standards. Mr. Drinkhall stated that he disagrees with the vote. Mr. Sares stated that the Planning Board should write a letter to the newspaper. Mr. Irving stated that would check if there is anything against the Board writing to the paper.

Meeting Adjourned at 8:15 pm.

Respectfully Submitted,



Holly L. Meserve
Planning Assistant

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) Reasonable Person - A hypothetical person in society who exercises average care, skill, and judgment in conduct that society requires of its members for the protection of their own and of others' interests.
- J) 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)K) _____ 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)L) _____ 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

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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 municipal construction or maintenance work.
- ~~C)D)~~ 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)E)~~ Noise resulting from snow removal operations performed by the Town, the State, and other types of private or commercial snow removal operations.
- ~~E)F)~~ 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.