

CONWAY PLANNING BOARD

MINUTES

JANUARY 15, 1998

A meeting of the Conway Planning Board was held on Thursday, January 15, 1998, beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chairman, Cynthia Briggs; Vice Chairman, Robert Barriault; Secretary, Charlene Browne; Richard O'Brien; Dana Hylen; Town Planner, Dawn Emerson; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. O'Brien made a motion, seconded by Mr. Hylen, to approve the Minutes of December 18, 1997, as written. Motion unanimously carried.

JAMES GARLAND/JOHN AND CATHERINE BURROUGHS - BOUNDARY LINE ADJUSTMENT/LOT CONSOLIDATION (MAP 50, PARCEL 22 & 24)

Ms. Briggs stated that this application was incorrectly notified and had to be renoticed. Ms. Briggs stated that this application has been renotified for January 22, 1998.

PUBLIC HEARING - PETITIONED ARTICLE - SIGNS

A public hearing was opened at 7:10 p.m. Malcolm McNeil appeared before the Board. Mr. McNeil stated that he drafted the petitioned article and he is representing O.V.P. Mr. McNeil stated that the petition attempts to permit signs in private right-of-ways. Mr. McNeil stated that this will provide a ready means of location and entrance area to the site. Mr. McNeil stated that this allows signs in a private right-of-way. Mr. McNeil stated that this petition would not allow the sign any closer to the right-of-way than is already allowed.

Mr. McNeil stated that the applicant would have to come in under a special exception and prove that the sign will not be a hazard. Mr. McNeil stated that the sign must otherwise comply with the rest of the ordinance. Mr. McNeil stated that it would allow a sign in the right-of-way or median strip if it is safe. Mr. McNeil stated that the petition is combining the concept of non-conforming not being desirable and an incentive for the applicant to reduce their sign.

Mr. McNeil stated that the Town attorney's opinion is that this petition is in conflict with Article 147-19.E. Mr. McNeil stated that it relates to non-conformity, but flexible by reducing the non-conformity. Ms. Browne joined the Board at this time. Mr. McNeil stated that this would not be an off-premise sign because it would be in the private right-of-way owned by the developer. Mr. McNeil stated that by changing the section to only private was not to eliminate public right-of-ways. Mr. McNeil referred to Article 147-10 and stated that there is no language in the ordinance that says you cannot have a sign in a public right-of-way.

Mr. McNeil stated that the petition should be in three (3) different sections and he hoped the Board would vote on each section. Ms. Briggs asked if OVP would remove their two (2) non-conforming signs and replace with one (1) sign in the median. Mr. McNeil answered in the affirmative. Ms. Briggs stated that they would no longer have the two (2) signs and have one that is more non-conforming. Mr. McNeil answered in the affirmative. Ms. Woodall stated that it will go to the Board of Adjustment to determine whether the sign is safe or not and they will send it back to the Planning Board to decide the safety issue. Mr. McNeil stated that he clearly thinks that it is within the ZBA's jurisdiction.

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Ms. Briggs asked for public comment; Loren Billings of the Conway Daily Sun asked if someone could lease their land for a sign. Ms. Briggs answered in the negative and stated that the Town does not allow off-premise signs. Ms. Browne stated that it could be interpreted that way. Ms. Emerson agreed and stated that that is why it is in conflict with Article 147-19.E. Mr. Barriault stated that he has a problem with the third item. Mr. Barriault stated that it is inconsistent with the incentive of the ordinance. Mr. Barriault stated that the incentive is to get non-conforming signs into conformance. Mr. Barriault stated that the petition article is proposing to get a little more conforming.

Mr. McNeil stated that he developed a petitioned article that clearly gives an incentive that is not an all or nothing approach. Mr. McNeil stated that this gives the applicant an option to meet a common purpose. Ms. Billings asked if this was for people with non-conforming signs. Ms. Briggs answered in the negative. The public hearing was closed at 7:25 p.m.

Ms. Briggs asked for Planning Board discussion. Mr. Barriault stated that Article 147-19.D(1)(a) affords the opportunity to bring the sign within ten (10) feet if the size is reduced to thirty (30) square feet. Mr. Barriault stated that the Town already provides that incentive.

Mr. O'Brien made a motion to support the petitioned articles regarding signs. There was no second. Ms. Browne made a motion, seconded by Mr. Hysten, to not recommend the petitioned article on signs. The motion carried with Mr. O'Brien voting in the negative (5-1-0).

PUBLIC HEARING - PETITIONED ARTICLE - HELICOPTERS

A public hearing was opened at 7:30 p.m. Bob DeFeyer appeared before the Board. Mr. DeFeyer stated that he is concerned with how helicopters are used. Mr. DeFeyer stated that scenic helicopter tours have a place at the Fryeburg Airport. Mr. DeFeyer stated that the petition tried to meet needs of certain helicopters such as emergency or special events. Mr. DeFeyer read the petition. Ms. Briggs read a letter from Jerry Coogan. Ms. Briggs stated that this is Town Council's opinion that you cannot totally ban helicopters.

Ms. Briggs asked for public comment; Chester Lucy stated that Mr. Coogan's letter lays in on the line and the Board should recommend the petitioned article. Paul Chapman stated that he is 100% against helicopters in Conway. Mr. Chapman stated that other states have banned them. Mr. DeFeyer stated that the petitioned article does not prohibit flights, but prohibits landings and take-offs. Mr. DeFeyer stated that House Bill 1156 addressed this issue. Mr. DeFeyer read HB1156. Mr. DeFeyer stated that he spoke to Chris Northrop at the Office of State Planning and he is not aware of any requirement to allow helicopters and it is possible to ban. Mr. DeFeyer stated that it would be considered a taking of land if the land could not be used for anything other than a heliport.

Ms. Briggs stated that if there is land available for a heliport than you cannot totally ban. Mr. Barriault stated that it is in reference to take off and landings from private property not commercial ventures. Mr. DeFeyer read a letter from Roger Murray. Mr. Hysten stated that the last paragraph of Mr. Murray's leaves us wide open for lawsuits. Mr. Hysten stated that it is prohibiting heliports versus helicopter business. Mr. Hysten stated that the wording is confusing and he doesn't agree with it. Ms. Woodall disagreed and stated that it is the regulation of the use of land.

Mr. DeFeyer read Section 150/5390-2A, Item #12 from the FAA Circular. Mr. DeFeyer stated that the Town of Lee just passed a ban on helicopters and it is going before the voters. Mr. DeFeyer stated that the Town of Lee got this from the Town of Durham. Mr. DeFeyer stated that the Town of Lee does feel that they can prohibit, but allowed flexibility in the office/research district.

Ms. Briggs asked for public comment; Mr. Chapman stated that were looking at the scenic tours and the Town has the right to ban scenic tours. The public hearing was closed at 8:01 p.m.

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Ms. Briggs asked for Planning Board discussion. Ms. Woodall stated that Peter Hastings is currently defending a case in court on his recommendation to deny and now he's saying the Town cannot ban. Mr. Barriault stated that he does not have a problem with accepting this petitioned article in view of the information and public hearings. Mr. Barriault stated that Sue Stagnone provided the Board with a lot of information. Mr. Barriault stated that the State Legislature has banned in certain areas, but he seriously thinks in his investigation that if this goes to court that the court would probably rule against the Town. Mr. Barriault stated that he would recommend the Town pass both articles on helicopters. Mr. Barriault stated that the more restrictive would apply, but if it is challenged and overturned in court the town would still have something in place to fall back on.

Mr. DeFeyer stated that there is nothing to prohibit scenic tours if they take off from the Fryeburg Airport. Mr. DeFeyer stated that the Town can only deal with take-off and landings. Ms. Browne stated that it is clear under RSA that the authority is given to the Town to take a stand. Ms. Browne stated that the petitioned article specifies what is acceptable. Ms. Browne stated that the Town may end up in a lot more lawsuits if the Planning Board amendment is voted in. Ms. Browne stated that five (5) acres is not a lot of land. Ms. Browne stated that the petitioned article is more precise and much easier to regulate.

Mr. Barriault stated that if the only item the Town has in place is to totally ban and it is overturned by the courts then the Town does not have anything on the books to fall back on. Ms. Browne made a motion, seconded by Ms. Woodall, to recommend the petitioned article on heliports. Motion carried with Ms. Briggs and Mr. Hylen voting in the negative and Mr. O'Brien abstaining (3-2-1).

PUBLIC HEARING - PETITIONED ARTICLE - CENTER CONWAY VILLAGE COMMERCIAL DISTRICT AND THE ADDITION OF DEFINITIONS

A public hearing was opened at 8:14 p.m. Ms. Woodall was present to represent the petitioned article. Ms. Woodall stated that the petitioned article is keeping with the goals of Planning Board. Ms. Woodall stated that the petitioned article is trying to preserve the mom and pop type businesses. Ms. Briggs stated that Peter Hastings does not think the article eliminates the oil tank farm which was recently approved which is what the article was trying to do. Ms. Emerson stated that she does not necessarily agree and stated that she interprets the oil tank farm to be wholesale which this petition prohibits.

Ms. Briggs asked for public comment; Scott Montgomery owner and operator of Frye's Store stated that he doesn't object to the petition, but he questions the wording. Mr. Montgomery asked what is wholesale. Mr. Montgomery stated that he has a problem with how it would be interpreted. Ms. Emerson read the definition of wholesale/light industry. The public hearing was closed at 8:20 p.m.

Ms. Briggs asked for Planning Board discussion. Mr. O'Brien stated that Center Conway Village is no different from Conway or North Conway Village. Mr. O'Brien stated that one village should not be singled out, but done town wide. Mr. O'Brien stated that your prohibiting the land owner to do what he wants to do with his land. Mr. O'Brien stated that there are too many rules and regulations. Ms. Woodall stated that there are different sections in the ordinance for the other villages. The Board had a brief discussion on home occupations. Ms. Emerson stated that there are other uses allowed other than home occupations and retail. Mr. Barriault recommended that if the petition is passed, it should be amended next year to read "for heating fuel for the exclusive one-site commercial or domestic use".

Ms. Browne made a motion, seconded by Mr. Barriault, to recommend the petitioned article for Center Conway Village Commercial District and the addition of definitions. The motion unanimously carried.

PUBLIC HEARING - PROPOSED ZONING AMENDMENTS ON CELLULAR TOWERS

A public hearing was opened at 8:30 p.m. Ms. Emerson stated that at the December 18, 1998, meeting the Board voted to add the requirement of site plan approval. Ms. Emerson asked if the Board wanted to add the level of review. After a brief discussion the board agreed that a major review would be necessary. Ms.

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Browne made a motion, seconded by Mr. O'Brien, to require a major site plan review for cellular towers. Motion unanimously carried.

Ms. Briggs stated that she is rescinding the motion so the public can be asked for comment. Ms. Briggs asked for public comment; there was none. The public hearing was closed at 8:37 p.m. Ms. Browne made a motion, seconded by Mr. O'Brien, to accept the amendment to require a major site plan review for cellular towers to the cellular tower proposal to be posted to the warrant. Motion unanimously carried.

PUBLIC HEARING - PROPOSED ZONING AMENDMENTS ON EAST CONWAY ROAD INDUSTRIAL - 2 DISTRICT

A public hearing was opened at 8:39 p.m. Ms. Briggs stated that there was a typographical error that was changed to allow retail up to 5,000 square feet rather than 500 square feet. Ms. Briggs asked for public comment; there was none. The public hearing was closed at 8:42 p.m.

Mr. Barriault made a motion, seconded by Mr. Hylan, to accept the amendment of 5,000 square feet to the Industrial-2 District proposal to be posted to the warrant. Motion unanimously carried. Mr. O'Brien made a motion, seconded by Mr. Barriault, add "1997" before the words "Tax Map" in Article 147-12.2.A in the 4th sentence to the Industrial-2 District proposal to be posted to the warrant. Motion unanimously carried. Ms. Woodall made a motion, seconded by Ms. Browne, to reletter Article 147-15 to reflect E as there are 5 subsections to the Industrial-2 District proposal to be posted to the warrant. Motion unanimously carried.

PUBLIC HEARING - PROPOSED ZONING AMENDMENT ON VILLAGE RESIDENTIAL DISTRICT

A public hearing was opened at 8:50 p.m. Ms. Briggs stated that the boundary districts had to be described and not just in map form. Ms. Briggs stated that the descriptions have been written out. Ms. Briggs stated that this is not a substantive change. Ms. Woodall made a motion, seconded by Ms. Browne, to add the description of the district boundaries to the Village Residential district proposal to be posted to the warrant. Motion unanimously carried.

Ms. Emerson stated that there was a portion removed from the amendment and therefore required a public hearing. Ms. Briggs asked for public comment; Brian Ahearn asked if about not allowing domestic farm animals in the Village Residential District. Mr. Ahearn stated that he bought a home on Old Bartlett Road and wondered if this would effect him. After a brief discussion, the Board agreed that this amendment did not address animals in the residential/agricultural district which is the district Mr. Ahearn's home is in. The public hearing was closed at 8:57 p.m. Mr. O'Brien made a motion, seconded by Ms. Woodall, to post the amended Village Residential District to the warrant. Motion unanimously carried.

Ms. Emerson stated that there were two other non-substantive changes that needed to be made. Ms. Emerson stated that Article 147-11.3.(A)(1) should be replace "kept as the owner or tenants pets" to "pets owned by the occupant". Ms. Emerson stated that the Board may want to consider the level of review under Article 147-11.3(B)(1). After a brief discussion, the Board decided to require a major review. Ms. Woodall made a motion, seconded by Ms. Browne, to accept the amendments to the Village Residential District proposal to be posted to the warrant. Motion unanimously carried.

NON-SUBSTANTIVE CHANGES TO THE PROPOSED HELIPORT ZONING AMENDMENT

Ms. Emerson stated that the Town Attorney has made some corrections to the proposal on Heliports that are non-substantive. Ms. Emerson read that attached changes. Mr. O'Brien made a motion, seconded by Mr. Hylan, to approve the changes to the heliport zoning amendment proposal to be posted to the warrant. Motion carried with Ms. Woodall abstaining from voting (5-0-1).

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OTHER BUSINESS

Parking Lot Review

Ms. Emerson stated that the Peking Sunrise Restaurant is going to be coming before the Board to add a parking lot over there abandoned leach fields. Ms. Emerson stated that Edgar Allen of Thaddeus Thorne Surveys contacted her to inquire about the fees. Ms. Emerson stated that the way she interprets the ordinance the applicant would be required to file for a major site plan review because they are disturbing over 1,000 square feet of greenspace. Ms. Emerson stated that Mr. Allen stated that the Board has always required a minor site plan review for parking lots. Ms. Emerson stated that she researched the situation and found on two occasions where the Board reviewed parking lots under a minor review.

Ms. Emerson stated that greenspace and drainage should be addressed. Ms. Briggs stated that a major review should have been required for those projects and a major site plan review should be required from now on. The Board agreed.

Bob Barriault's Resignation

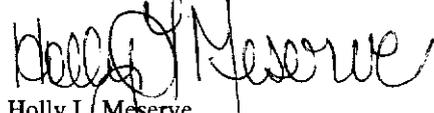
Mr. O'Brien made a motion, seconded by Ms. Woodall, to accept Mr. Barriault's resignation with deep regrets effective as of Town Meeting 1998. Motion unanimously carried.

WMWV - DRIVE TIME

Ms. Briggs stated that on March 4, 1998, she will be on WMWV's drive time to review the zoning amendments.

Meeting adjourned at 9:25 p.m.

Respectfully Submitted,


Holly L. Meserve
Recording Secretary