

CONWAY PLANNING BOARD

MINUTES/WORK SESSION

APRIL 8, 1999

A meeting of the Conway Planning Board was held on Thursday, April 8, 1999, beginning at 7:06 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chairman, Catherine Woodall; Selectmen's Representative, Gary Webster; Robert deFeyter; Arthur Bergmann; Stacy Sand; Town Planner, Dawn Emerson; Code Enforcement Officer, Shawn Bergeron; and Recording Secretary, Holly Meserve.

CHANGE-OF-USE DISCUSSION

Mr. Bergeron stated that the reason he is before the Board is because of several conversations between staff in regard to the change-of-use policy. Mr. Bergeron read a memo to Ms. Emerson dated January 21, 1999 regarding setting up a meeting with the Planning Board to discuss change-of-use. Mr. Bergeron stated that there are some concerns and perhaps misunderstandings on how staff has dealt with change-of-use. Mr. Bergeron stated that he has received three (3) lists identifying properties that Board members questioned how they were able to change. Mr. Bergeron stated that six (6) properties were identified on all three lists. Mr. Bergeron submitted a memo (attached) explaining how the six (6) were dealt with. Mr. Bergeron stated that most of these are over two (2) years old.

Ms. Woodall stated that the Breakfast Club (Map 61, Parcel 24) went from retail to restaurant, and, therefore, was a change-of-use which would require Planning Board review. Ms. Woodall stated that bringing the applicant forward would allow them to comply with the current regulations. Mr. Bergmann asked how the Breakfast Club was able to be constructed without going before the Planning Board. Mr. Bergmann referred to Chapter 88. Mr. deFeyter referred to Chapter 123-4.B(2) and stated that a staff review should have been submitted or they should have gone to the Planning Board. Ms. Emerson stated that the site was reviewed to make sure parking was adequate.

Mr. deFeyter stated that he went through the files a couple of months ago and there is no documentation regarding the review of parking, sewer, etc. Ms. Emerson stated that documentation may not have been found, but a review was done. Ms. Woodall stated that anything over one-hundred (100) square feet is suppose to come to the Planning Board. Ms. Emerson stated if the footprint changes then they are required to come to the Planning Board. Ms. Emerson stated that the Town does not have a definition of change-of-use.

Mr. Bergeron stated that the China Chef (Map 64, Parcel 30) came to existence in July, 1997. Mr. Bergeron stated that John Krebs was the Town Planner at the time, and, at that time, a change-of-use was handled by the Town Planner. Mr. Bergeron stated that there is a level of discontent, but there is no benefit in arguing over how these changes came about as it is water over the dam. Mr. Bergeron stated that it is important to leave here with a solution. Mr. Bergeron stated that a change-of-use between building and a change-of-use between Planning and Zoning are two (2) different issues.

Ms. Woodall stated that Chelsea's (Map 64, Parcel 30) came before the Board because the Board was concerned with it changing to a restaurant. Mr. Bergeron stated that since Chelsea's opened they have put in a small restaurant facility. Mr. Bergmann stated that they were initially going to have burgers, pizza, etc. Mr. Bergeron stated that often items come up that are in the Planning Board minutes, but three (3) years down the road they are ancient. Mr. deFeyter stated that the only basis an applicant has to bypass the Planning Board is if the regulations have not changed. Mr. Bergeron stated that what is going to happen is were going to create a review of the history on all application prior to issuing a building permit and that is just going to slow down the process.

Adopted: May 6, 1999 - As Amended
CONWAY PLANNING BOARD - APRIL 8, 1999

Ms. Woodall stated that this allows the Board to have street trees planted and to address other items. Mr. Bergeron stated that we need a definition of change-of-use. Mr. Bergeron suggested using the "use group" from the BOCA National Building Code (attached). Mr. Bergeron stated that this will get the applicants to the Planning Board and the regulations would apply. Ms. Woodall stated that she would agree, but she wants to review the document first.

Mr. Bergmann asked what is used now to determine if an applicant comes to the Planning Board. Mr. Bergeron answered Article 123-4.B. Mr. deFeyter stated that we have a problem with Article 123-4.B(2). Ms. Woodall stated that we also have a problem with Article 123-4.B(3). Mr. Bergeron stated that those will take the review away from staff and bring the applicant to the Board. Mr. Bergeron stated that 85% of all applicants will have to go before the Board. Ms. Woodall asked how they can bring the properties in question back to the Board. Mr. Bergeron stated that realistically it is water over the dam. Mr. Bergeron stated that we need a level of understanding. Mr. Bergeron stated that what is required is a little more stiff review on the staff's behalf.

Mr. deFeyter stated that in the short term staff needs to review previous approved use before a permit is issued. Mr. Bergeron asked what was the approved use for the Breakfast Club site. Mr. deFeyter answered office. Mr. Bergeron disagreed and stated that the office use never came before the Board. Mr. Bergeron stated that these standards will be brutally applied and 85% of building permit applicants will be before the Board. Ms. Emerson stated that Mr. Bergeron's suggestion will make things clear. Ms. Emerson stated that we would have to review each group and make parking requirements for each.

Ms. Emerson stated that a change-of-use may not need to be a full review, but a minor review. Ms. Emerson stated that what the Board wants to achieve can be done without hiring a professional. Ms. Woodall stated that if the parcel has never been surveyed, a major review gives the Town an accurate survey. Mr. Bergeron stated that the applicant can meet Article 123-4.B(3) without having a surveyor. Mr. Bergeron stated that the Town wants an accurate application, but not make it so difficult that the applicant doesn't even want to come in to the Planning Board at all. Mr. Bergeron stated that we have a balance to meet.

Mr. Webster stated that the Board should see all the important items and the little items should be handled by staff. Mr. Webster stated that we need to share the work load. Mr. Webster stated that it may be a point where the Board cannot meet enough to keep up with the work load. Ms. Woodall stated that we are trying to come up with some resolution. Mr. Webster stated that there are some items that have come before the Board that shouldn't have. Mr. Bergmann stated that it is not consistent and we are not treating every application the same. Mr. Bergeron stated that the assurance he will offer is that staff is going to try to more stringently apply regulations to these applications. Mr. Bergeron stated that he did not handle some of these items and the best that he can offer from now on is more stringent application of the regulations.

Ms. Emerson stated that for this to work, Mr. Bergeron's suggestion needs to be adopted into the regulations. Ms. Emerson stated that we need a definition of change-of-use and change-of-use should be a minor review and not a major review. Ms. Emerson stated that the Board can still make necessary changes under a minor review. Ms. Woodall stated that it is a good idea and it is something the Board needs to address. Ms. Woodall stated that the Board also needs to address empty buildings that divide themselves up. Mr. Bergeron stated that what is being proposed will not address the empty building issue. Mr. Bergmann asked if that was fair, and stated that these buildings have been there a long time and it is not a change-of-use.

Ms. Woodall stated that by bringing them to the Board it will bring the property up to standards. Ms. Sand asked if a building is upgraded to code when an occupant changes. Mr. Bergeron stated that the structure is brought up to code for a new use group, but requirements are minimal. Mr. Webster asked if a portion of a building is demolished can it be rebuilt. Mr. Bergeron stated that if it is the same footprint or smaller it would not go before the Board, but if there is any additional footprint it would go before the Board. Mr. deFeyter asked for a definition of the use groups.

Mr. Bergmann asked about the Norcross Suites (Map 69, Parcel 5 & 7). Mr. Bergeron stated that it was reviewed and approved by John Krebs approximately three (3) years ago. Mr. Bergeron stated that the proposed use was less site intensive than what was there. Mr. Bergmann stated that it was just storage and it looks like they've added another floor. Mr. Bergeron stated that it was office space and storage space. Mr. Bergeron stated that they raised the roof for more head room, but they did not add another floor. Mr. Bergeron stated that they increased the available floor space.

The Board asked for an update on Northern Woods Property Management (Map 12, Parcel 62). Mr. Bergeron stated that there was a list of seventeen (17) items and all but four (4) items have been addressed. Mr. Bergeron stated that he has not shut them down because cease and desist orders are difficult to get, and to even to impose a fine you need to go through the formal notice of violation. Mr. Bergeron stated that enforcement is not straight forward and we never have success overnight. Mr. deFeyter asked if Mr. Bergeron if he didn't think pulling out into the road constitutes life threatening. Mr. Bergeron stated that it was addressed in the violation, but we received a letter from the State stating that it was not required. Mr. deFeyter stated that it is a site plan problem. Mr. Bergeron agreed, but we don't have the authority. Mr. Bergeron left at this time.

SET UP NEXT WORK SESSION

The next work session will be Thursday, May 13, 1999.

ACCEPTING OF PLATS - RSA 676.4

Mr. deFeyter stated that the law use to allow the Board to have a designee, but they have taken that away and the only people who can accept an application is the Board. Mr. Bergmann stated that we have already been here. Ms. Sand stated that the Board determines the application complete, but the Board gave the Planner the authorization to notice. Mr. Bergmann stated that he has a problem with plans being changed after they are submitted. Ms. Emerson stated that there are staff notes with superseded plans. Ms. Sand asked what does it have to do with being complete or not complete. Mr. Bergmann stated that the plans should come to the Board as it was deemed complete.

Mr. deFeyter stated that we have had some cases where things have changed. Mr. deFeyter stated that an application is suppose to be complete and not come in in bits and pieces. Mr. deFeyter stated that your suppose to be able to review the application ten (10) days in advance and not worry about it changing. Ms. Woodall stated that an application is suppose to come in with a checklist and have the items checked off. Ms. Woodall stated that the Town has been noticing applications for completeness and a public hearing so it does not have to be noticed twice. Ms. Woodall stated that staff notes are provided and then the application sits for fifteen (15) days as it was submitted.

Ms. Woodall stated that this Board in the interest in trying to streamline and be consistent has allowed an applicant to come in, have the application reviewed by the Town Planner, have the Town Planner provide staff notes and have the application noticed by the Town Planner, if it meets the checklist. Ms. Woodall stated that this allows an applicant to come to the Planning Board with an application that should be accepted when noticed. Mr. Bergmann stated that an application should not be noticed or given to the Board or accepted as complete until staff has reviewed it.

Mr. deFeyter asked what specifies a completed application. Mr. deFeyter stated that an applicant can bring in an application, the Town Planner can review it for problems and let the applicant know if there appears to be problems, but the Town Planner cannot reject an application. Mr. deFeyter stated that the Board determines if the submitted application is complete and votes on its acceptance. Ms. Woodall stated that an applicant can come in with an application and review it with Ms. Emerson. Ms. Woodall stated that Ms. Emerson can notice the application for review if it meets the checklist.

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CONWAY PLANNING BOARD - APRIL 8, 1999

Mr. Bergmann stated that he has a problem with waivers being written at a meeting. Ms. Woodall stated that an applicant should not be writing a waiver during a meeting. Mr. Bergmann stated that he has a problem with not noticing a waiver in the paper. Mr. Webster stated that it is up to the abutter to follow the process. Mr. deFeyter stated that we'd be opening a Pandora's box by advertising waivers. Mr. deFeyter submitted a memo to the Board (attached).

SITE WALK - NORTHERN WOODS PROPERTY MANAGEMENT (MAP 12, PARCEL 62) FILE #FR97-12

A site walk was scheduled for April 15, 1999, at 3:00 p.m. at the Northern Woods Property Management site with the owner, the Board and NHDOT.

Meeting adjourned at 10:15 p.m.

Respectfully Submitted,



Holly L. Meserve
Recording Secretary

Attachments: Memo from Shawn Bergeron dated April 8, 1999
Definition of Change-of-use/Use Group list from BOCA National Building Code
Handwritten information from Robert deFeyter