

CONWAY PLANNING BOARD

MINUTES

SEPTEMBER 2, 1999

A meeting of the Conway Planning Board was held on Thursday, September 2, 1999, beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Catherine Woodall; Selectmen's Representative, Gary Webster; Vice Chair, Sheila Duane; Robert deFeyter; Arthur Bergmann; John Waterman; Stacy Sand; Town Planner, Dawn Emerson; Interim Town Planner, Paul King; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of August 19, 1999 were amended as follows: page 2, paragraph 4, line 8, should be added, "...lot line. Ms. Woodall asked if the applicant was using all 22 acres. Mr. Lucy answered in the negative."; page 2, paragraph 6, line 4, should read, "...that a structure was used improperly for a commercial purpose in a residential area. Mr. Hastings..."; page 3, paragraph 1, line 5, should read, "...display. Ms. Woodall asked if change-of-use is an issue and what was the previous use."; page 4, paragraph 1, line 3, should read, "...negative. Mr. deFeyter asked if it is a driveway can it be used and if so, is there another..."; page 6, paragraph 2, line 7, should be added, "...situation. Mr. Whetton declined the offer for intervention with the State on his behalf."; page 6, paragraph 3, line 7, should read, "...for Article 123-21.C. Motion unanimously..."; and page 7, paragraph 6, line 3, should read, "...cover our bases by granting...".

Ms. Duane made a motion, seconded by Mr. deFeyter, to approve the Minutes of August 19, 1999, as amended. Motion unanimously carried.

BRYAN MCKAY - MINOR SITE PLAN REVIEW CONTINUED (MAP 80, PARCEL 18) FILE #MR99-07

Ms. Emerson stated that the applicant has asked the Board to withdraw this application without prejudice. Ms. Emerson stated that the application will be over 1000 square feet which will require a full review and not a minor review. Ms. Sand made a motion, seconded by Ms. Duane, to accept the application of Bryan McKay as withdrawn without prejudice. Motion unanimously carried.

MT. WASHINGTON VALLEY LODGE OF FREE MASONS/SMOKE & MIRRORS - MINOR SITE PLAN REVIEW CONTINUED (MAP 68, PARCEL 31) FILE #MR99-10

Laura Joslin appeared before the Board. Ms. Woodall asked if Ms. Emerson or Ms. Meserve spoke to Wayne Derouin, North Conway Fire Department Fire Chief. Ms. Emerson stated that she did speak to Mr. Derouin and he had no concerns, however, the tables cannot be in front of the front door as the door needs to be able to swing open and there must be a direct path to the roadway.

Ms. Woodall stated that in regard to the parking there does need to be a waiver request. Ms. Woodall asked the applicant if they were going with the five tables on the side of the building. Ms. Joslin stated that she would like to proceed with the five tables. Ms. Woodall stated that there is more seating than what is shown on the plans. Ms. Woodall stated that there are 25 seats currently inside rather than the permitted 24 seats. Ms. Emerson stated that the plans have not been changed, but it can be a condition of the approval to remove one seat.

Ms. Woodall stated that there was discussion on the amount of tables and seating. Mr. deFeyter stated that he does not have a copy of the new plan. Ms. Emerson stated that they are the same plans. Mr. deFeyter stated that he thought they needed to be changed and asked why the Board continued the application. Ms. Emerson stated that the application was continued for more details on the waiver requests. Ms. Emerson

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stated that the applicant has submitted a narrative outlining the specific use of the tables. Ms. Woodall read the narrative. Mr. deFeyter stated that at the last meeting the applicant stated that only coffee and soda would be served at the tables and now they have included snacks. Ms. Joslin stated that before they did not have a definite plan.

Mr. deFeyter stated that the applicant has stated that there will not be any entertainment now, but will there be in the future. Ms. Joslin answered not outside. Mr. deFeyter stated that he is concerned about what is going to take place outside. Ms. Joslin stated they would like to can have snacks out there, but if it is too much stress then they won't offer snacks outside. Ms. Woodall asked how many seats will be at each table outside. Ms. Joslin stated that the front tables will have two seats at each table and the side tables will have four seats at each table.

Ms. Emerson stated that the tables do meet the setbacks, seats are indicated on the plans and the narrative indicates what they want to do. Ms. Woodall stated that they want to be specific. Ms. Emerson stated that it is documented. It was recognized that there will be 26 seats outside. Mr. deFeyter stated that he is concerned with snacks outside and trash blowing around. Ms. Duane stated that there are trash containers shown on the plans. Mr. deFeyter stated that he is trying to determine what is going to happen outside. Ms. Joslin stated that there is a trash can outside the door which is being used. Ms. Joslin stated that she is concerned about trash herself and it will be maintained.

Mr. deFeyter asked if the Board wanted to go beyond sodas outdoors. Ms. Woodall stated that she doesn't mind food outside, but she would like to see trash containers outside. Ms. Sand stated that she cannot imagine the applicant wanting to allow a trash problem. Ms. Sand stated that it does not make good business sense. Ms. Woodall polled the Board to see if the Board would allow food and drinks outside. Ms. Sand answered both should be permitted. Mr. deFeyter answered drinks only. Mr. Bergmann stated that he thinks the applicant is creating a restaurant and an outside dining area. Ms. Joslin stated that they are required by law to be a restaurant because they offer beer and wine. Ms. Joslin stated that they offer hot dogs and tuna fish and they have no desire to have waitresses.

Mr. Bergmann stated that whatever the Board decides tonight if two weeks from now the applicant decides to have a restaurant the applicant does not have to come back before the Board because it is included in this approval. Mr. Bergmann stated that the main concern is the entrance to the theater doors. Ms. Joslin stated that the plans do show the theater doors. Ms. Duane stated that the fire chief does not have any concerns. Ms. Woodall stated that Mr. Bergmann would like to see the fire door on the plans. Ms. Woodall stated that she does not have a problem with food and drinks outside. Mr. Waterman asked what is the applicant's intentions regarding alcohol. Ms. Joslin stated that it will be offered inside only. Mr. Waterman stated that he is in favor of both food and drinks outside. Ms. Duane stated that she has no problems with food and drink outside. Mr. Webster stated that he does not have a problem with food and drink outside.

Ms. Woodall read a waiver request for Article 123-22, parking, and the requirements to grant a waiver. **Ms. Duane made a motion, seconded by Ms. Sand, to approve the waiver request for Article 123-22.** Mr. Bergmann stated that in the staff notes it states that the waiver request is for 9 seasonal and 8 year round. Ms. Emerson stated that she was just noting it. **Motion unanimously carried.**

Ms. Woodall read a waiver request for Article 123-40, temporary outdoor display. Ms. Emerson stated that the applicant is allowed 5% of their floor space, but they are asking to use 16% of their floor space. Mr. deFeyter referred to Article 123-40.1.B. and asked if this is being considered as one outside area. Ms. Woodall stated that it must be defined. Ms. Emerson stated that it is seating and not display area. Mr. Bergmann stated that seating is not display. Ms. Woodall stated that seating is addressed under temporary outdoor display of goods. Mr. deFeyter asked if is two display areas. Mr. Bergmann stated that it is two display areas. Mr. deFeyter stated asked if the Board wanted to consider it as one display area.

Ms. Woodall read a waiver request for Article 123-30. Ms. Woodall stated that it is one building with multiple uses and asked if the Board should even deal with the greenspace. Ms. Woodall stated that she is

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not sure if we can grant a waiver on something they can pave. Ms. Woodall stated that the Board shouldn't act on the greenspace waiver, but still allow them to do it. Mr. deFeyter asked if they can pave the area or is it greenspace. Ms. Emerson stated that it is currently greenspace and they would have to obtain State approval to pave. Mr. deFeyter stated that they could pave it then. Mr. Bergmann stated that if they pave it what happens to the tables. Mr. deFeyter stated that the owner has taken away their permission for the tables. Mr. deFeyter stated that the tables are only allowed if there is greenspace. The Board agreed.

Ms. Sand stated that the regulations say that you have to have 25% greenspace; if they don't then they still need a waiver. Ms. Sand stated that the only thing the applicant can pave is where the tables are to be located. Ms. Emerson stated that to be consistent with the other applications, the Board should consider the waiver request. Mr. Bergmann stated that other cases have been one business in the building. Ms. Sand stated that she doesn't think the Board should just ignore it. Ms. Woodall stated that the majority of the Board believes the Board should act on the waiver. Ms. Woodall read the waiver request for Article 123-40.B. and the requirements to grant a waiver. Ms. Duane made a motion, seconded by Ms. Sand, to approve the waiver request for Article 123-40.B. Motion unanimously carried.

Ms. Duane made a motion, seconded by Mr. Webster, to conditionally approve the application for Mt. Washington Valley Lodge of Free Mason/Smoke and Mirrors conditionally upon modifying the site plan to show the proper amount of seats as 24; a letter of approval from the North Conway Fire Department Fire Chief; this approval is specifically for eight (8) tables; three (3) in the front with two (2) seats each and five (5) on the side with four seats each; tables are to be located in the grasses area; once the conditions have been met the plans can be signed out-of-session; and this conditional approval will expire on September 16, 1999. Motion unanimously carried.

ROGER DESCHAMBEAULT - 2-LOT SUBDIVISION (MAP 13, PARCEL 37) FILE #S99-13
ALICE DESCHAMBEAULT - 3-LOT SUBDIVISION (MAP 13, PARCEL 47) FILE #S99-14

Ms. Emerson stated that an abutter was not notified on both of these applications. Ms. Emerson stated that the applications need to be continued so the abutters can be notified. Ms. Sand made a motion, seconded by Ms. Duane, to continue the applications of Roger Deschambeault and Alice Deschambeault until September 16, 1999. Motion unanimously carried.

MARION WARREN/LUCY FARM STAND-MINOR SITE PLAN REVIEW (MAP 18, PARCEL 17) FILE #MR99-12

Dan Lucy appeared before the Board. Mr. Lucy stated that he leases the land with an agreement to purchase. Mr. Lucy stated that he would like to extend the existing farm stand to include a wood shed and a sugarhouse for a maple syrup operation. Ms. Emerson stated that there are three waiver requests; one for parking, one for curbing and one for parking within the setback. Ms. Emerson stated that the existing parking is twenty feet from the property line. Mr. deFeyter asked if the applicant is leasing the land. Mr. Lucy stated that he is leasing the property that the farm stand is located on and it is fifteen (15) acres.

Mr. deFeyter stated that this is not exactly a farm stand, but a farm stand and a home occupation. Ms. Duane asked what do they sell that would make this a home business. Mr. deFeyter answered the bakery. Mr. deFeyter stated that it is a combination and a home business is only allowed if it is operated by the person who lives there. Mr. deFeyter asked if it can be separated. Ms. Woodall asked where the baked goods come from. Mr. Lucy answered that they are made right there. Ms. Emerson stated that a bakery is allowed under a home occupation. Mr. Waterman stated that a lot of farm stands have baked goods.

Mr. deFeyter referred to Article 147-11.4. Ms. Duane stated that the bakery percentage of this business is very minuet. Ms. Duane stated that she doesn't see how we can read so deep. Ms. Sand stated that she see no problems with baked goods. Mr. deFeyter stated that he can see a problem with it. Mr. Bergmann stated that he has no problem with baked goods. Ms. Woodall stated that she does not have a problem with baked goods, but the ordinance should be rewritten. Mr. Waterman stated that he does not have a problem with baked goods. Ms. Duane stated that she does not have a problem with baked goods. Mr. Webster

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stated that it is not the intention to have a convenience store, there offering a few baked goods. Ms. Woodall stated it wasn't the intent to be restrictive.

Ms. Sand made a motion, seconded by Ms. Duane, to accept the application of Marion Warren/Lucy Farm Stand as complete. Mr. deFeyter asked if this is a minor or major review because it is over 1,000 square feet. Ms. Emerson stated that it is a matter of interpretation and she thought a minor was appropriate. Motion carried with Ms. Woodall abstaining from voting. Ms. Emerson stated that the commercial farm stand area was less than 1,000 square feet.

Ms. Woodall asked if there were any questions or concerns regarding the parking. Ms. Sand stated that this is located in the residential/agricultural district and paving would be out of place. Ms. Sand stated that she thinks the waiver for pavement should be granted, plus it is a seasonal business. Mr. deFeyter asked if this will be a seasonal business if they are sugaring. Mr. Lucy stated that it will be open for sugaring. Mr. deFeyter stated that a note regarding snow removal should be added to the plans. Ms. Emerson asked if it will be open for personnel or patrons. Mr. Lucy stated that patrons could come in and see the operation. Mr. deFeyter stated that if you apply the standard for a farm stand the applicant is required to have fifteen (15) parking spaces which is obviously not necessary. Ms. Woodall read the staff notes regarding parking areas.

Ms. Woodall read the waiver request for Article 123-21.I., curbing, and the requirements to grant a waiver. Ms. Sand made a motion, seconded by Ms. Duane, to approve the waiver request for Article 123-21.I. Motion unanimously carried. Ms. Woodall read a waiver request for Article 123-23.B., paving. Mr. Bergmann made a motion, seconded by Mr. Webster, to grant the waiver request for Article 123-23.B. Motion unanimously carried.

Ms. Woodall read a waiver request for Article 123-30.A.(2) & (3), parking within the setback. Mr. Bergmann asked if the parking could be moved five feet back. Mr. Lucy stated that if he moves the parking lot back he would not meet the sixty foot requirement for the parking area. Ms. Woodall asked if the Board can grant a waiver for parking within the setback. Ms. Emerson stated that driveways are allowed within the setback and the Board has granted waivers for the Conway Daily Sun and Great American Ski Company for parking within the setback.

Mr. Bergmann stated that four spaces are required, but Mr. deFeyter stated that fifteen parking spaces are required. Ms. Emerson stated that she only used the retail portion of the building and did not include the storage area or the wood shed. Ms. Woodall asked if this was a minor review because the wood shed wasn't included. Mr. deFeyter asked if the applicant could move the building back. Mr. Lucy stated that it makes it easier to have the building in line with the existing building. Mr. deFeyter asked about extending the parking lot toward the west. Mr. King stated that if you do that you would lose a lot of nice pine trees.

Mr. Bergmann asked how many parking spaces are there now. Mr. Lucy answered eight or nine. Mr. Bergmann asked instead of granting a waiver, can we get five feet of greenspace along the road. Ms. Emerson stated that you would have to reconfigure the building. Mr. King stated or get into the pine trees. Mr. Lucy stated that twenty feet from the driveway is to the road right-of-way and not from the road. Ms. Woodall read a waiver request for Article 123-30.A.(2) & (3), parking within the setback. Mr. deFeyter stated that he doesn't see a problem with what already exists. Ms. Duane made a motion, seconded by Ms. Sand, to approve the waiver request for Article 123-30.A.(2) & (3). Motion carried with Ms. Woodall and Mr. Bergmann voting in the negative. Ms. Woodall stated that the math does not add up.

Ms. Woodall asked if there were any questions or concerns regarding the loading area; there was none. Ms. Woodall asked if there were any questions or concerns regarding snow removal. Ms. Sand stated that a note regarding snow removal needs to be added to the plans as well as a snow storage area. Mr. Webster asked if the applicant intends to sell Christmas trees. Mr. Lucy answered not at this time. Ms. Woodall asked if there were any questions or concerns regarding pedestrian access; there was none. Ms. Woodall asked if there were any questions or concerns regarding lighting. Ms. Emerson stated that lighting is existing. Ms. Woodall asked the hours of operation. Mr. Lucy answered 9:00 a.m. to 6:00 p.m. Ms.

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Woodall asked if this was for the summer months. Mr. Lucy answered in the affirmative. Ms. Woodall asked if the applicant sells Christmas trees will additional lighting be necessary. Mr. Lucy stated that the existing lighting illuminates quite a great deal.

Ms. Woodall stated that drainage is not applicable. Ms. Woodall asked if there were any questions or concerns regarding utilities; there was none. Ms. Woodall asked if there were any questions or concerns regarding landscaping; there was none. Ms. Woodall asked if there were any questions or concerns regarding architectural guidelines. Ms. Emerson stated that the applicant has submitted a sketch of the elevation. Ms. Woodall commented that it looks nice. Mr. deFeyer stated that materials of the building need to be added. Mr. Lucy stated that it will be natural wood. Ms. Woodall stated that pedestrian restrooms are not applicable. Ms. Woodall stated that there is a note on the plan regarding the dumpster.

Ms. Woodall stated that this is not a historic site. Ms. Woodall stated that there is an on-site well and a septic system. Ms. Woodall asked about a wheelchair access. Mr. Lucy stated that there is an existing ramp. Ms. Woodall stated that floodplain is not applicable. Ms. Woodall asked if there were any concerns regarding nuisance; there was none. Ms. Woodall asked if there were any concerns regarding health, safety and welfare; there was none. Ms. Woodall asked if there is going to be an outdoor display area. Mr. Lucy answered in the negative. Mr. Bergmann asked if there was going to be no outdoor display of goods. Mr. Lucy corrected himself and stated that there will be pumpkins. Ms. Woodall stated that it needs to be labeled on the plan.

Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the minor site plan review for Marion Warren/Lucy Farm stand conditionally upon adding a snow removal area to the plans; adding a outdoor display area to the plans; adding the materials to the architectural design; this conditional approval will expire on September 16, 1999; and once the conditions have been met the plans can be signed out of session. Motion unanimously carried.

**PETERSON PETROLEUM OF N.H. – MINOR SITE PLAN REVIEW (MAP 33, PARCEL 75)
FILE #MR99-13**

Shawn Bergeron of Shawn Bergeron Technical Services and Lloyd Helm of Peterson Petroleum appeared before the Board. Mr. Bergeron stated that the applicant would like to convert the existing Conway Sunoco to a convenience store. Mr. Bergeron stated that the applicant has submitted all the information to meet the requirements necessary. Mr. Bergmann stated that he objects to the Town of Conway Building Inspector submitting an application to the Conway Planning Board. Mr. Bergeron stated that he currently is under contract to complete two projects for the Town of Conway; Shaw's and Walmart. Mr. Bergeron stated that that limits his capacity with the Town of Conway.

Ms. Woodall asked if any other Board member had a problem with Mr. Bergeron representing this application. Mr. deFeyer asked if there is anything from the Town Attorney. Ms. Woodall stated that we haven't asked him for anything. Ms. Emerson asked what is the conflict. Mr. Bergmann stated that he works for the Town of Conway. Mr. Bergeron stated that he will not permit or inspect for this project. Ms. Sand made a motion, seconded by Ms. Duane, to accept the application of Peterson Petroleum as complete for a Minor Site Plan Review. Motion unanimously carried.

Ms. Woodall asked if there were any questions or concerns regarding the driveways or vehicular access. Mr. Bergeron stated that he has been in contact with the NHDOT and the applicant will install granite curbing along the Route 16 curbing. Ms. Woodall asked if a waiver is necessary. Mr. Bergeron stated that he does not believe a waiver is necessary. Ms. Woodall stated that a waiver request is needed just for the two curb cuts. Mr. Bergeron agreed. Ms. Sand stated that curbing needs to be added to the plans. Ms. Emerson stated that it needs to be labeled on the plans.

Mr. Webster stated that it is indicated in the narrative that there will be fuel retail and asked if there is diesel. Mr. Helm stated that there is one diesel pump. Ms. Emerson stated that the pumps already exist. Mr. Bergeron agreed. Ms. Sand asked if there is anything indicating entrance and exit or are they two-way.

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Mr. Bergeron stated that the driveways are not intended to be one-ways and the NHDOT didn't have any desire. Mr. Bergeron stated that he sent a letter to Ken Kyle and a state driveway permit application on August 20, 1999.

Mr. deFeyter asked if the curbs are rounded or at a 90 degree angle. Mr. Bergeron stated that they will not be a sharp ninety degree angle. Ms. Woodall asked with two, 30 foot driveways are they going to be able to accommodate a tractor trailer. Mr. Helm stated that it will not present a problem. Mr. Bergeron referred to Cobble Pond Farms in Center Conway stating that there is a much tighter situation at Cobble Pond Farms than on this site. Mr. Bergeron stated that he can mention it to the landscape architect and have it confirmed.

Ms. Woodall read a waiver request for Article 123-21.C. **Ms. Duane made a motion to approve the waiver request for Article 123-21.C.** Ms. Sand asked if the last sentence could be left of the waiver. Mr. Bergeron stated that the number of trips a day for a gas station to the number of trips a day for a convenience store is the same or less. Mr. Bergeron agreed to remove the last sentence on the waiver request. **Ms. Sand seconded the motion.** Ms. Woodall stated that she does not have a problem with two (2) curb cuts for safety. Ms. Sand stated that they are existing and will make it controlled. **Motion unanimously carried.**

Ms. Woodall read the staff notes regarding parking and the two parking spaces between the street and the gas pumps. Mr. Bergeron stated that the applicant has enough parking and would be more than happy not to stripe and indicate those two spaces on the site, but have them remain on the plan. Ms. Sand stated that they should be removed from the plans since the applicant already meets the regulations. Ms. Woodall asked if there were any questions or concerns regarding loading; there was none. Ms. Woodall asked if there were any questions or concerns regarding snow removal. Ms. Woodall stated that a snow area needs to be indicated on the plans. Mr. Bergeron stated that snow will most likely have to be removed from the site. Ms. Emerson stated that the standard plat note should be added to the plan.

Ms. Woodall asked if there were any questions or concerns regarding pedestrian access; there was none. Ms. Woodall asked if there were any questions or concerns regarding lighting. Ms. Woodall asked the height of the light poles. Mr. Bergeron stated that they are existing and there is no proposal to modify the lighting. Ms. Sand stated that there should be a note on the new plans. Mr. Bergeron agreed. Ms. Woodall asked about the drainage. Mr. Bergeron stated that the proposed changes to the site, reduction of curb cuts and the addition of greenspace improves the capability for that site to handle drainage.

Ms. Woodall asked if there were any questions or concerns regarding utilities; there was none. Ms. Woodall asked if there were any questions or concerns regarding landscaping. Mr. Bergeron reviewed the greenspace and stated that they are doubling the greenspace. Mr. deFeyter stated that they are just under 25% greenspace. Mr. Bergeron stated that there is 440 square feet of greenspace. Ms. Woodall stated that it will need a waiver. Ms. Sand stated that the type of street trees needs to be indicated. Mr. Bergeron stated that he can tell you which are trees on the plans, but he cannot tell you the type. Mr. Bergmann asked about the corners. Mr. Bergeron stated that they will have trees.

Ms. Woodall asked if there were any questions or concerns regarding the architectural design. Ms. Woodall asked if there will be cooking similar to Cobble Pond Farms which has a grill. Mr. Helm stated that they will have some sort of a deli. Ms. Woodall asked about the hood. Mr. Bergeron stated that it would be concealed. Mr. Bergeron stated that he understands that it needs to be concealed, but he does not know the location at this time. Mr. deFeyter asked the material for the face of the building. Mr. Bergeron stated that it is going to be a masonry building with different types inlaid. Mr. deFeyter stated that the standards call for brick and asked if the applicant will go with brick to match the existing building. Ms. Woodall asked if Mr. Bergeron meant cement block. Mr. Bergeron stated that it is not the standard gray block, but a glossed block. Mr. Bergeron stated that they have not worked out the details yet. Mr. deFeyter stated that he would prefer brick. Mr. deFeyter stated that this will need to be resolved.

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Ms. Woodall asked if there were any questions or concerns regarding restrooms. Mr. Bergeron stated that there are bathrooms on the east side of the building which will be modified and brought up to code. Ms. Woodall asked if there were any questions or concerns regarding the dumpster. Ms. Woodall asked what type of material will be used to enclose the dumpster. Mr. Bergeron answered a wooden fence. Ms. Woodall asked if there were any questions or concerns regarding historic value; there was none. Ms. Woodall asked if there were any questions or concerns regarding water. Ms. Woodall stated that there is a letter from Thomas Steele, Superintendent, Conway Village Fire District in the file. Ms. Woodall asked if there were any questions or concerns regarding sewer. Ms. Woodall referred to the same letter regarding water.

Ms. Woodall asked if there were any questions or concerns regarding handicap access. Mr. Bergeron stated that the building is handicap accessible as there will be a ramp to the door. Ms. Woodall stated that floodplain was not applicable. Ms. Woodall stated that site construction standards were not applicable. Ms. Woodall asked if there were any questions or concerns regarding nuisance; there was none. Ms. Woodall asked if there were any questions or concerns regarding health, safety and welfare; there was none.

Ms. Woodall stated that there was no proposed temporary outdoor display of goods. Mr. Bergmann stated that every convenience store has an outdoor display. Mr. Bergmann stated that it is usually under the canopy and asked if there should be something mentioned. Ms. Sand stated that outdoor display is allowed within five feet of the building and doesn't need to be mentioned. Mr. Bergmann stated that he understands that, but there are times when you want something else. Mr. Helm stated that they have never used outdoor display. Ms. Woodall stated that under plat notes the snow removal note needs to be added to the plan.

Mr. Bergeron stated that the items that need to be resolved are as follows: granite curbing; remove parking spaces #13 and #14; snow removal note; indicate existing lighting; indicate architectural material as brick in fill; indicate handicap ramp; and specify what type of trees and location. Ms. Woodall stated that a waiver request is needed for the greenspace. Ms. Duane stated that when the applicant is modifying the architectural design it should be looked at again. Ms. Duane stated that the landscaping is adding to the site, but the building is a little boring. Ms. Duane asked that the applicant review the architectural design again and maybe add some plantings. Mr. Bergeron stated that it is quite possible for availability for plantings. Ms. Duane stated that if the applicant is going to go this far they should make the building a little more interesting.

Ms. Woodall asked if there was any proposed seating indoors. Mr. Helm answered in the negative. Ms. Sand made a motion, seconded by Ms. Duane, to continue the minor site plan review for Peterson Petroleum of N.H. until September 16, 1999. Motion unanimously carried.

MARK AND LAURIE LUNDBLAD – FULL SITE PLAN REVIEW (MAP 12, PARCEL 4A) FILE #FR99-13

Mark and Laurie Lundblad and Hugh Hastings, surveyor, appeared before the Board. Ms. Woodall stepped down. Mr. Lundblad stated that they are proposing an auto body repair shop and repair garage. Ms. Emerson stated that there are two waiver requests; one for pavement and one for curbing. Ms. Emerson stated that the other requirements should be satisfied. Ms. Sand made motion, seconded by Mr. Webster, to accept the application of Mark and Laurie Lundblad for a full site plan review as complete. Motion unanimously carried.

Ms. Duane asked if there were any questions or concerns regarding the driveway. Ms. Duane read a waiver request for Article 123-2A and the requirements to grant a waiver. Ms. Sand made a motion, seconded by Mr. Webster, to grant the waiver request for Article 123-2A. Motion unanimously carried. Ms. Duane asked if there were any questions or concerns regarding the parking. Mr. Bergmann asked if an indoor show room is necessary. Ms. Emerson stated that per State requirements they are not looking to do

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car sales. Ms. Emerson stated that they will sell one or two cars a year. Ms. Emerson stated that car sales are not a great part of the business.

Mr. Lundblad stated that they can legally sell five cars a year without being registered with the State. Mr. Bergmann stated that the Board could limit to a certain amount such as no more than three cars for sale at any one given time. Ms. Emerson agreed. Mr. deFeyter stated that another way to approach it is to remove car sales from the plan if the State does not require a license for less than five (5) cars. Mr. Bergmann stated that it is better to put a limit on it because of a conflict with another business. Mr. DeFeyter stated that no more than three cars at a time and no more than five a year. Ms. Emerson asked if a display of three cars at a time was acceptable to the Board and the applicant. The Board and the applicant agreed.

Ms. Duane read a waiver request for Article 123-21.E. and read the requirements to grant a waiver. Mr. Lundblad stated that the handicap parking space will be located on the pavement that is proposed. Mr. deFeyter stated that another problem that needs to be looked at is the parking lot is within the setback. Ms. Emerson stated that it is an existing condition. Ms. Emerson stated that this site has an approved site plan for that parking. Mr. Lundblad stated that this site was used for parking for the Oakhurst trucks. Ms. Woodall asked if it is a five acre wetland. Ms. Emerson stated that it was difficult to determine and need someone to look at the soils and determine if it is a wetland.

Ms. Duane stated that this is an existing parking lot. Ms. Emerson stated that the building would need to be setback, but the parking lot can remain. Ms. Woodall stated that if you change the site then it should conform. Ms. Sand asked what it would take to move the parking lot out of the 75 foot setback. Ms. Duane referred to Article 147-17.D, setbacks, of the zoning ordinance. Ms. Duane stated that it does not mention parking lots. Mr. deFeyter referred to Article 147-13.C. of the zoning ordinance. Ms. Emerson stated that this site is not within the Wetland Conservation District.

Mr. King stated that the soils in question here are not wetlands. Mr. deFeyter stated that the way it is suppose to work is if there is a wetland on the map then a soil scientist needs to determine where the wetland(s) are located. Ms. Emerson stated that there is no setback for a parking lot because it is not a structure. Ms. Duane asked if the applicant was willing to change the parking lot design. Mr. Hastings stated that where the parking lot is gravel and not going to be paved maybe something can be put in front of it so nothing will go that way. Mr. deFeyter stated that we should get a more accurate picture of where the wetland is located.

Ms. Emerson stated that there is not a setback for a parking lot. Mr. deFeyter stated that it does not discuss parking lots. Ms. Sand stated that a structure has to be constructed. Mr. King stated that the Town of Conway has not considered a parking lot a structure. Mr. Bergmann stated that if it is a wetlands than something should be done, but he doesn't think it will hinder anyone to have it looked at. Mr. King stated that the question is does a parking lot have to be setback which he doesn't think it does. Mr. Bergmann asked about drainage. Mr. King stated that there is no drainage ditch as it has be excavated out. Mr. deFeyter stated that there is more wetlands than what is shown on the plans.

Mr. Bergmann read the drainage note. Mr. Bergmann stated that any drainage created in the parking lot will run to the back portion which is the wetland. Mr. King stated that it will go to the drainage ditch which is really a sand trough. Mr. Lundblad stated that the parking lot is designed to be lower in the middle. Ms. Sand stated that she walked the site with the applicant and there is quite a substantial drainage trough. Ms. Sand stated that it is steep at the back end and everything is sloped to that area. Ms. Emerson stated that Paul DegliAngeli, Public Works Director, has reviewed and approved the drainage.

Ms. Woodall asked if the question if it is in the wetlands been answered. Ms. Emerson stated that it hasn't been determined, but at the same time the parking lot does not apply. Ms. Emerson stated that there is no setback for a parking lot. Ms. Woodall stated that it shall have a 75 foot minimum setback. Ms. Emerson stated that setback is for a structure and this is not a buffer area. Mr. King stated that it may or may not pertain to wetland setback depending upon if the wetland is five acres or if it abuts a year round water course. Mr. King stated that a setback pertains to a structure and not a parking lot.

Mr. Bergmann asked where does it say structural setback and not a buffer setback. Mr. King referred to Article 147-17.D of the zoning ordinance. Mr. deFeyter stated that there should be a line showing the 75 foot buffer on the plans. Ms. Emerson stated that she reviewed this with Mr. deFeyter when he came in to review the plans. Mr. deFeyter stated that there has been water standing there and the line should be shown completely around. Ms. Emerson stated that it shows the setback of the building. Mr. deFeyter stated that there is no line there. Ms. Duane stated that that is Mr. deFeyter's interpretation.

Ms. Sand made a motion , seconded by Mr. Webster, to grant the waiver request for Article 123-23.B. Ms. Sand stated that if you pave it your going to cause more drainage based on the use. Ms. Sand stated that this is the industrial district and personally cannot see paving necessary on this lot. Mr. Bergmann stated that it is an auto repair facility. Mr. Bergmann stated that all of the fluids will leak into the ground, but if it is hot topped it will be contained. Ms. Sand stated that the work is done inside and is contained. Mr. Webster stated that he is not comfortable with granting the waiver because they have not determined the wetland.

Mr. Bergmann made a motion, seconded by Mr. deFeyter, to continue the application of Mark and Laurie Lundblad until such a time that the wetland has been determined. Motion was defeated with Mr. deFeyter, Mr. Bergmann and Mr. Webster voting in the negative. **Motion for the waiver request was defeated with Mr. deFeyter and Mr. Bergmann voting in the negative and Mr. Webster and Mr. Waterman abstaining from voting.** Ms. Duane polled the Board if the parking lot needs to meet the setback. Mr. deFeyter asked if the setback line needs to be around the entire plan. Mr. King stated that technically he is correct, but no problem with the Board accepting the setback from building of the wetland.

Mr. deFeyter stated that it should be determined if it is a five acre wetland. Mr. deFeyter stated that if it is not, the issue is moot. Mr. deFeyter stated that if it is then there should be a 75 foot setback indicated on the plans. Ms. Sand stated that parking is not a structure. Mr. DeFeyter stated that it is a structure. Mr. Bergmann stated that it could be considered a structure. Mr. Waterman stated that it is not a structure. Ms. Duane stated that it is not a structure. Mr. Webster stated that he is confused with the whole conversation. Mr. Webster asked if it was possible to add a guard rail. Mr. Bergmann stated that it is marked over 75 feet to the wetland. Mr. deFeyter stated that it needs to be determined if it is a five acre wetland. Ms. Duane asked who determines. Ms. Woodall stated that we can ask Town Counsel, Peter Hastings.

Mr. Lundblad stated that there is a 35 foot drop off from the top of the of the property to where anything starts to get wet. Mr. deFeyter stated that it needs to be determined by a soils scientist. Mr. Lundblad stated that you have already made that determination. Mr. Hastings stated that it is 75 from the building. Mr. deFeyter stated that there is an approved map that has wetlands on it. Mr. deFeyter stated that it needs to be determined if it is affected. Mr. deFeyter stated that if it is there needs to be a line on the plan and we can move forward. Mr. deFeyter stated that the wetland needs to be identified and then we can address the paving.

Ms. Duane asked if there were any concerns or questions regarding snow removal; there was none. Ms. Duane asked if there were any questions or concerns regarding pedestrian access and circulation; there was none. Ms. Duane asked if there were any questions or concerns regarding lighting. Ms. Duane asked if there was any security lighting. Mr. Lundblad stated that there are four (4) lights on the property now. Mr. Hastings stated that the lights are indicated on the plans. Ms. Emerson stated that it is existing lighting. Mr. Lundblad answered in the affirmative. Ms. Duane asked if there were any questions or concerns regarding drainage. Ms. Emerson stated that the drainage has been approved.

Ms. Duane asked if there were any questions or concerns regarding utilities; there was none. Ms. Duane asked if there were any questions or concerns regarding landscaping; there was none. Mr. Bergmann stated that the drainage has been approved, but was it approved for gravel or for pavement. Ms. Emerson answered the drainage was approved for the parking lot as proposed. Ms. Duane asked if there were any questions or concerns regarding architectural guidelines. Ms. Woodall stated that the building is on the edge of the 50 foot setback and asked if it can be moved down. Mr. Hastings stated that the building

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cannot go any further. Ms. Woodall stated that she is concerned with fire. Mr. Lundblad stated that the fire chief reviewed the project and is able to access three sides of the building.

Ms. Duane asked if there were any questions or concerns regarding the dumpster; there was none. Ms. Duane asked if there were any questions for concerns regarding historic value; it is not applicable. Ms. Duane asked if there were any questions or concerns regarding water; there is a well. Ms. Duane asked if there were any questions or concerns regarding sewer; they have a septic system. Ms. Duane asked if there were any questions or concerns regarding wheelchair access; there was none. Ms. Duane asked if there were any questions or concerns regarding floodplain; it is not applicable. Ms. Duane asked if there were any questions or concerns regarding nuisance; none is known.

Ms. Duane asked if there were any questions or concerns regarding health, safety and welfare; there was none. Ms. Duane asked if there were any questions or concerns regarding outdoor display of goods. Mr. deFeyter stated that they can label parking spaces for the location of cars for sale. Mr. Lundblad agreed. Ms. Duane asked if there were any questions or concerns regarding plat notes; there was none. Mr. Bergmann asked about the setback for a septic system. Ms. Emerson stated that there is no setback for a septic system. Mr. Bergmann stated that the shed is in the setback. Mr. Lundblad stated that the shed is existing.

Ms. Woodall asked if the chemicals used are hazardous. Mr. Lundblad stated that some are flammable, but they are stored in steel cabinets. Mr. Lundblad stated that they go to a waste facility plant to dispose of them. Ms. Woodall stated that there will be paint fumes and asked if they have to meet OSHA requirements. Mr. Lundblad stated that they purchased a separate booth that meets the OSHA requirements. Ms. Duane closed the public hearing at this time. Mr. King stated that the items that need to be resolved are to have the wetlands scientifically defined; show 75 foot setback from wetland; and obtain a legal opinion if parking is a structure and needs to meet the setback.

Mr. deFeyter stated that the ordinance has a wetland map that identifies wetlands and it is only those wetlands that are a concern to us. Mr. King reviewed the wetland map and stated that this property is approximately 26,050 feet east of the railroad tracks. Mr. King stated that this property lies just southerly to a mapped wetland. Mr. King stated that there needs to be 75 feet to the structure. Ms. Lundblad stated that the building is 75 feet from the wetland. Ms. Emerson stated that the Board just granted a waiver for a parking lot within the setback. Mr. Bergmann stated that this is a wetland setback. Mr. Bergmann made a motion, seconded by Mr. deFeyter, to have legal counsel define if a parking lot needs to meet the setback. Motion was defeated with Mr. Waterman, Mr. Bergmann, and Ms. Sand voting in the negative and Mr. Webster abstaining from voting.

Ms. Sand stated that the Board voted down the waiver request for pavement so the parking lot will need to be paved. After a brief discussion, Ms. Sand made a motion, seconded by Mr. Webster, to reopen the discussion on the waiver request for Article 123-23.B. Motion unanimously carried. Mr. deFeyter stated that it appears to be within the Wetland District which requires a 75 foot setback shown on the plans. Mr. Lundblad stated that they have determined that it is a wetland. Ms. Sand stated that it needs to be determined if it is a five acre wetland. Ms. Sand stated that she would hate to see the entire area paved for the amount of traffic the site will generate. Ms. Sand stated that it will mostly be employees.

Mr. deFeyter stated that he has mixed feelings and doesn't know what is the least in terms of impact on the site. Mr. deFeyter stated that if the cars are damaged they could be leaking fluids. Mr. Lundblad stated that vehicles brought in are not leaking anything, they have body damage. Ms. Lundblad stated that there are no problems with leaking. Ms. Lundblad stated that vehicles are usually brought in on a weekly basis and they are not in the parking lot, but in the garage. Ms. Lundblad asked why Mr. DegliAngeli would not have had a concern regarding the drainage by the wetlands. Ms. Lundblad stated that if he had a concern he would have said something. Mr. Lundblad stated that Mr. DegliAngeli has stated that it is good drainage and he has approved it. Mr. Bergmann stated that Mr. DegliAngeli reviewed and approved the drainage because he may not have known there was a wetland. Ms. Sand stated that the site is not draining

into the wetland. Mr. Lundblad asked Mr. Bergmann if he reviewed the site. Mr. Bergmann answered in the negative.

Mr. deFeyter stated that they need to put in a 75 foot line showing the wetland. Mr. King suggested the Board conditionally approve the application with the applicant drawing in a 75 foot setback line and redrawing the parking spaces to be southerly of that 75 foot line. Mr. deFeyter stated that the conditions of a conditional approval can only be a yes or no and not judgmental. Ms. Duane asked if there was any further discussion on the waiver; there was none. Ms. Sand made a motion, seconded by Mr. Webster, to approve the waiver request for Article 123-23.B. with the applicant meeting the 75 foot setback and all the parking to be located southerly of that setback line. Mr. deFeyter referred to RSA 677:4.I.(i). Ms. Sand stated that that has nothing to do with her motion. Ms. Sand stated that she added the comment to the motion because it is changed. Motion was defeated with Mr. Bergmann and Mr. deFeyter voting in the negative and Mr. Webster abstaining from voting [see page 12, paragraph , line , for clarification].

Ms. Sand explained to the applicant that they must submit new drainage calculations for pavement and show a 75 foot setback line. Mr. Lundblad stated that the drainage was designed to go into a drainage ditch. Mr. Lundblad stated that it is existing and approved by the Town. Mr. Lundblad stated that this site was used for trucks, refrigerator units and parking. Mr. Lundblad asked why such a big change now. Mr. deFeyter answered because there is a new wetlands ordinance in place. Mr. Lundblad stated that the driveway is already in place and they are constructing a building where a mobile home use to be. Mr. Lundblad stated that now they have to reconfigure the parking lot. Mr. Lundblad asked what is the difference and how are they changing it. Mr. Bergmann stated that it is now a full service auto repair.

Ms. Sand made a motion to continue the application. Mr. deFeyter stated something about the pavement. Ms. Emerson stated that he just voted against the waiver. Mr. deFeyter stated that he voted against it because there was a condition. Ms. Woodall stated that if the applicant is willing to move the parking lot out of the setback they can change their plans to reflect that. Mr. deFeyter stated that they should be able to waive the pavement of the parking if it is outside the buffer area. Ms. Duane polled the Board to see if the Board would waive the pavement of the parking lot if it is outside of the setback. Ms. Sand, Mr. deFeyter, Mr. Waterman, Ms. Duane and Mr. Webster agreed. Mr. Bergmann disagreed.

Mr. King stated that the applicant has shown the existing drainage and asked if it will be acceptable to the Board to have the applicant draw a conservative line around the wetland and have the parking lot located outside of that setback. Ms. Duane polled the Board. Ms. Sand agreed. Mr. deFeyter asked if the person drawing on the wetlands is qualified to do so. Mr. King answered in the affirmative. Mr. deFeyter agreed. Mr. Bergmann disagreed. Mr. Waterman, Ms. Duane and Mr. Webster agreed. Ms. Duane made a motion, seconded by Mr. deFeyter, to postpone the application for Mark and Laurie Lundblad until after Other Business of this meeting. Motion carried with Mr. Bergmann voting in the negative.

OTHER BUSINESS

ZBA Hearing/Zodiac, Inc.: Ms. Woodall rejoined the meeting at this time. Ms. Woodall stated that the ZBA upheld their decision. Ms. Woodall read the Notice of Decision. Ms. Woodall stated that Town Counsel, Peter Hastings, disagrees with the ZBA's decision and we have already voted for the appeal. Ms. Sand stated that she does not want to take it to court. Ms. Duane asked what is the point of taking it to court. Ms. Woodall stated that anyone can conduct a business in the residential/agricultural district. Ms. Duane stated that that is why we have the ZBA. Ms. Woodall stated that that is why we have courts.

Ms. Duane stated that as a Planning Board member she fails to understand why we want to say that the ZBA wasn't doing their job. Ms. Woodall stated that she can see why we can disagree. Ms. Woodall stated that it sets a precedent. Ms. Duane asked who gets who for legal counsel. Ms. Woodall stated that Mr. Hastings is already representing the Planning Board. Ms. Duane stated that the ZBA will have to hire their own legal counsel. Ms. Woodall answered in the affirmative. Ms. Sand stated that she agreed to the appeal, but she doesn't see any point with the Town suing the Town. Ms. Sand stated that the ZBA is an

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authorized Board just like the Planning Board and we have to acknowledge their decision. Ms. Sand stated that the ZBA has to take responsibility in granting it.

Ms. Woodall stated that it is not who is to blame, but it is setting a precedent. Ms. Sand stated that she will not vote for this Board to go to Court with the ZBA. Mr. deFeyter stated that the Board already voted to appeal. Ms. Sand and Ms. Duane stated that they voted only for a rehearing. Mr. Bergmann made a motion, seconded by Mr. deFeyter, to take Mr. Hastings advice and contest this and appeal the ZBA's decision to court. Mr. Waterman asked what Mr. Hastings advice on continuing. Mr. deFeyter stated that they took property that was residential and used it commercially. Mr. Waterman stated that he would like to see it in black and white with Mr. Hastings signature. The motion carried with Ms. Sand and Ms. Duane voting in the negative and Mr. Webster and Mr. Waterman abstained from voting. There was discussion that on the Lundblad application there was a 3-2-1 vote and it was determined defeated and the Board is determining this vote as carried. After a brief discussion, it was determined that an abstention is just that, therefore, both votes carried.

MARK AND LAURIE LUNDBLAD – FULL SITE PLAN REVIEW (MAP 12, PARCEL 4A) FILE #FR99-13 (CONTINUED FROM EARLIER IN THE MEETING)

It was determined under Other Business that the pavement waiver passed, therefore, the applicant is not required to pave their parking lot. The 75 foot setback line was added to the plans; and the parking lot was removed from the 75 foot setback. Ms. Sand made a motion, seconded by Mr. Webster, to conditionally approve the full site plan for Mark and Laurie Lundblad conditionally upon moving the dumpster out of the setback; removing the loading dock from outside of the setback; a performance guarantee for 50% of all site improvements; redraw the plans with the parking configuration; this conditional approval will expire on September 16, 1999; and once the conditions have been met the plans can be signed out of session. Motion carried with Mr. Bergmann voting in the negative.

OTHER BUSINESS CONTINUED

Pearl Goldberg – Extension of Conditional Approval: Ms. Duane made a motion, seconded by Mr. Webster, to extend the expiration date for Pearl Goldberg until October 7, 1999. Motion unanimously carried.

Building Codes: Mr. deFeyter asked if the Board is interested in holding a hearing on Building Codes as there are no regulations for one- and two-family homes. Mr. deFeyter stated that the question is should we have building codes for one- and two-family homes. Mr. Bergmann stated that we should wait for a new building inspector to be hired. Ms. Woodall stated that she thought the Board of Selectmen were discussing this issue. Mr. deFeyter stated that it is appropriate to discuss this before a new building inspector is hired. Ms. Sand stated that the Search Committee meets on Tuesday to review the applications. Ms. Sand stated that at that time applicants will be rated and forwarded to Jim Somerville.

Ms. Woodall stated that she does not object to commercial property meeting the BOCA code, but the Town people will not go for it for their homes. Ms. Sand stated that residential doesn't come under are code. Mr. deFeyter stated that it did. Mr. deFeyter stated that they should hold a public hearing. Ms. Sand and Ms. Duane both disagreed. Mr. Webster stated that the Board of Selectmen have discussed this and a lot are not in favor. Mr. Bergmann stated that they should wait for a new building inspector. Ms. Woodall and Mr. Waterman both disagreed.

Paul Whetton - Minor Site Plan Review - Letter of Withdrawal: Ms. Woodall stated that she does not have a problem as it has been there for years. Ms. Duane stated that the Board determined that they wanted to see every change-of-use application. Ms. Woodall stated that the change did not change the parking requirements. Ms. Woodall stated that the parking calculations are exactly the same. Someone suggested having Mr. Hastings discuss this with the Board. Ms. Sand stated that it is a change of use and the Board needs to make a decision on whether we are going to do something about it. Ms. Woodall made a motion,

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seconded by Ms. Duane, to write a letter to Mr. Whetton asking him to come in and discuss the issue with the Board. Motion unanimously carried.

Master Plan: Ms. Woodall stated that it is too much for one person to bring the Master Plan up-to-date. Ms. Woodall stated that the Board should ask Mr. Webster to bring it up to the Planning Board of Selectmen that this is a critical project. Mr. Webster stated that he has no problem doing that. Ms. Duane stated that the Board should make a presentation to the Board of Selectmen with a couple of the Board members present. Ms. Sand stated that there are two Selectmen on the search committee for a new town planner and they are looking for a person who is qualified to do this. Mr. Bergmann left at this time. Ms. Sand stated that she does not think the Board of Selectmen are oblivious to this. Ms. Woodall stated that this is very time consuming and out dated.

Workshop: The Board agreed to having a workshop on September 23, 1999.

Meeting adjourned at 12:45 a.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary