

CONWAY PLANNING BOARD

MINUTES

NOVEMBER 18, 1999

A meeting of the Conway Planning Board was held on Thursday, November 18, 1999, beginning at 7:07 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; Stacy Sand; Arthur Bergmann; John Waterman; Interim Town Planner, Paul King; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Mr. deFeyter to continue the Minutes of November 4, 1999, until December 2, 1999. Motion carried with Ms. Sand voting in the negative.

HAROLD WHITAKER/THOMAS FADDEN – 4-LOT SUBDIVISION CONTINUED (MAP 5, PARCEL 5) FILE #S99-16

Arthur Bergmann joined the Board at this time. Jon Howe of Ammonoosuc Survey appeared before the Board. Mr. Howe stated that he has added the additional information to the plans, but he does not have a dredge and fill application yet. Ms. Woodall asked if the dredge and fill application has been filed. Mr. Howe answered in the negative. Mr. deFeyter asked if there were any other issues. Mr. King went through the five items on his staff review.

Ms. Woodall asked for public comment; David Weathers, abutter, asked if the setback was in connection with the soil scientist or the original soil survey. Mr. Howe answered it is a stream setback. Mr. Weathers asked if the ordinance is based on stream or wetland. Mr. Howe stated that it is a setback from the wetlands along the stream. Mr. Weathers stated that it might be a problem with the State. Mr. Weathers stated that the Conway Conservation Commission also needs to review the dredge and fill application.

Ms. Woodall asked why the soil scientist hasn't submitted the dredge and fill application. Mr. Howe answered he has been busy. Mr. deFeyter stated that when you cross a wetland you're supposed to cross them at a right angle. Mr. Howe stated that he went for the least impact. Mr. Weathers stated that as part of the review process, the State wants it to be the least intrusive. Ms. Woodall stated that we should postpone the application until the dredge and fill application is reviewed.

Ms. Sand asked if there could be a more distinctive line for the setback on the plans. Mr. Howe agreed. Mr. King stated that the contour and soil lines could be removed from the plan that will be recorded. Mr. Weathers suggested just removing the contour lines as the soils show the wetlands. **Ms. Duane made a motion, seconded by Mr. Bergmann, to continue the application for Harold Whittaker and Thomas Fadden until December 16, 1999.** Mr. deFeyter stated that the motion should be amended that all new material must be submitted one week in advance. After a brief discussion, **Ms. Duane amended her motion to include Mr. deFeyter's comment. Mr. Berger Mann seconded the amendment. Motion carried with Ms. Sand voting in the negative.** Mr. King stated that a letter of extension is needed. Mr. Howe agreed to provide the letter.

WAL-MART REAL ESTATE BUSINESS INC/BELL ATLANTIC – MINOR SITE PLAN REVIEW CONTINUED (MAP 61, PARCEL 60-1) FILE #MR99-21

Sam Smith and Dave Richardson of Bell Atlantic appeared before the Board. Mr. deFeyter asked when these plans were submitted. Mr. King answered today and stated that the applicant wasn't aware of the time frame. Mr. deFeyter stated that material is supposed to be submitted 48 hours in advance. Mr. King stated that technically Mr. deFeyter is correct, but the applicant was unaware of the time frame and he has made a good effort.

Mr. Bergmann stated that the Board needs to determine if this is a review or a conceptual. Ms. Woodall polled the Board. Mr. Webster, Ms. Duane, Mr. Waterman, Ms. Sand and Ms. Woodall agreed to go forward with a review.

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Mr. deFeyter stated that he is opposed to going forward with the review because the Board needs time to review it. Mr. Bergmann stated that the application should be postponed in order to review the plans and to do a site visit. Ms. Woodall stated that the Board could always continue the application if a site visit is necessary.

Ms. Duane asked if the applicant had any pictures of what the hut looks like. Mr. Richardson answered in the affirmative and submitted the pictures to the Board. Ms. Duane asked what is the hut that is already located on the site. Mr. Richardson stated that it has nothing to do with Bell Atlantic. Ms. Duane stated that she would like to see the hut with clapboard and a pitched roof. Mr. Richardson stated that those materials are available. Mr. Richardson stated that they would put the rock about 1/3 of the way up and match Walmart on the top end.

Mr. Waterman asked how they would access the hut. Mr. Richardson stated that it is facing Walmart's parking lot, plus it saves them from being on Route 302. Ms. Woodall asked how far the hut is from Route 302. Mr. Smith stated that the distance is indicated on the plans. Mr. Bergmann asked why it was not moved closer to the detention pond. Mr. Smith stated that the land is not owned by Walmart, but by the State. Mr. Smith stated that it would also be a new right-of-way. Mr. Smith stated that the State is not going to wait for us to find a new location.

Mr. Waterman asked the height of the building. Mr. Smith answered nine feet. Mr. deFeyter stated that the Board expressed concerns about having a box along Route 302. Ms. Duane stated that she thinks this is a much better location. Ms. Duane stated that if it looks like Walmart with a pitched roof it would look like an outbuilding. Mr. Richardson stated that he spoke to the State and if this application were denied, they would consider a hardship. Mr. Richardson stated if it is determined to be a hardship it will take a year and we don't have a year.

Mr. deFeyter stated that the Board asked for the hut to be off Route 302. Mr. deFeyter stated that there are other alternatives that need to be looked at. Ms. Sand stated that the Board did not say off Route 302, but we didn't want it on the corner of Route 302 and Mountain Valley Boulevard. Ms. Woodall asked why there is a proposed concrete walkway. Mr. Richardson stated that it would connect to the parking lot.

Ms. Woodall polled the Board on the location of the hut. Mr. Webster stated that the Board asked that the hut be moved closer to the retention pond and address the architectural concerns. Mr. Webster stated that he is okay with what is being proposed. Ms. Duane stated that the applicant has done the best that they can with what is being proposed. Mr. Waterman agreed, but he would like to see higher trees. Ms. Sand stated that she agrees with Mr. Webster. Ms. Sand stated that it should match Walmart's architecture and there should be good growth along the road.

Mr. deFeyter stated that he is concerned with moving so fast. Mr. deFeyter stated that the Board did not get this plan in advance to review. Mr. deFeyter stated that this may be the best location, but he is concerned with pushing it through. Mr. Bergmann stated that he agrees with Mr. deFeyter and stated that they are trying to shove this down our throats. Ms. Woodall stated that it would be the same material as Walmart and a pitched roof. Ms. Woodall stated that there should be additional plantings. Ms. Woodall stated that she does not think it will look that bad as it is far enough off the road.

Mr. deFeyter asked who would be responsible for the additional plantings. Mr. Richardson stated that they would require the contractor to warrantee the trees for a year. Ms. Duane asked if they would be willing to note that on the plans. Mr. Richardson answered in the affirmative. Ms. Woodall asked for public comment; Kim Erickson, NHDOT, stated that the revised location would be less intrusive. Mr. Erickson stated that the hut would be located approximately 600 feet from the local North/South Road. Ms. Woodall asked how far would the hut be located from the bypass. Mr. Erickson stated that it would close to the right-of-way, approximately 160 meters.

Mr. deFeyter asked if the hut is within the setback for the bypass. Ms. Duane stated so is Walmart. Mr. deFeyter stated that it is an existing building. Ms. Woodall stated that it is less than 5,000 square feet. Mr. deFeyter stated that the setbacks need to be shown. Ms. Woodall stated that it would be screened from the off ramp and only seen from the parking lot. Mr. deFeyter referred to page 149 of the Conway Zoning Ordinance, Chapter 147, and stated that the protective buffer is not to be built in. Ms. Sand stated that we are talking about a shed within Walmart's buffer.

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Mr. King stated that it doesn't discuss setbacks. Mr. King stated that he does not see anything specific that would hinder this. Mr. King stated that there are no building or structural setbacks. Ms. Woodall stated that you cannot put structures in the setbacks; it is a buffer area. Mr. King stated that it does not specifically state that. Ms. Woodall referred to Chapter 147-14.2.E. Mr. King stated that he doesn't see where this would be excluded from a permitted use. Mr. King referred to page 50 of the Conway Zoning Ordinance, Chapter 147, section (5).

Arliss Hill stated that the applicant is proposing to put the line underground instead of overhead. Ms. Hill stated that that would be more aesthetically pleasing. Ms. Hill stated that the hut is now out of the corner and she doesn't see what the argument is about. Ms. Woodall stated that the Board cannot override zoning, but now it doesn't appear to be an issue. Mr. King stated that the Board needs to vote to reduce the buffer.

Ms. Duane made a motion, seconded by Ms. Sand, to reduce the buffer to 30 feet. Mr. deFeyter stated that there need to be a justification. Ms. Sand stated that it is not located at the corner of Route 302 and Mountain Valley Boulevard. Ms. Duane stated that the Board asked the applicant to move the hut closer to the retention pond and the Board did not realize we were making a hardship. Ms. Duane stated now the Board will reduce it. **Motion carried with Mr. deFeyter and Mr. Bergmann voting in the negative.**

Mr. Webster asked if it would be more appropriate instead of waiving the architectural guidelines the applicant should meet the architectural guidelines. Ms. Woodall stated that the applicant has agreed to a pitched roof and the same exterior as Walmart. Ms. Sand stated that the standard note regarding plantings needs to be added to the plans. Mr. King stated that the plans should show the 30-foot reduced buffer and submit 100% surety.

Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the minor site plan for Walmart Business Real Estate/Bell Atlantic conditionally upon providing architectural standards meeting Walmart; add a note to the plan regarding plantings; add the 30 foot buffer line and a 100 foot buffer line to the plans; 100% performance guarantee for all site improvements; and this conditional approval will expire December 2, 1999. Motion carried with Mr. deFeyter abstaining.

WAL-MART REAL ESTATE BUSINESS-MINOR SITE PLAN REVIEW (MAP 61, PARCEL 60-1) FILE #MR99-22

Ms. Woodall stated that he applicant has withdrawn the application. Mr. deFeyter made a motion, seconded by Ms. Duane, to acknowledge the letter of withdrawal. Motion carried with Mr. Bergmann abstaining from voting.

PIRATES COVE NORTH CONWAY, INC. – FULL SITE PLAN REVIEW (MAP 64, PARCEL 31) FILE #FR99-15

Mark Woglom of Opechee Construction appeared before the Board. Mr. Woglom stated that an abutter had a change of heart regarding signing the easement. Mr. Woglom stated that the applicant needed to change the location of the dumpster and go to the fire department without an easement. Mr. Woglom stated that fire department has granted a letter of approval. Mr. Bergmann asked if this is a new application. Ms. Woodall answered in the affirmative.

Mr. Bergmann stated that the Board needs to rescind the old application to move forward with this one. Mr. King stated that that the old application will need to be rescinded. Mr. Bergmann made a motion, seconded by Ms. Duane, to rescind file #FR99-14 and #S99-15. Motion was defeated with Ms. Sand, Ms. Duane and Mr. Waterman voting in the negative and Ms. Woodall, Mr. Webster, and Mr. deFeyter abstaining from vote from voting. After a brief discussion, it was determined that rescinding the old applications could be a part of the conditional approval. Ms. Duane made a motion, seconded by Ms. Sand, to accept the application of Pirates Cove North Conway, Inc. for a full site plan review as complete. Motion carried with Mr. Bergmann abstaining from voting.

Mr. Bergmann stated that the vehicle access is still on the plans. Mr. Woglom stated that it notes that it is being removed. Ms. Woodall read a waiver request for Article 123-7.B(2); scale of the plat. Ms. Woodall read the reasons to grant a wavier. Ms. Duane made a motion, seconded by Ms. Sand, to approve the waiver request for Article 123-7.B(2). Motion unanimously carried.

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Ms. Woodall asked when the letter from Fire Chief Wayne Derouin was signed. Mr. King answered November 10, 1999. Ms. Woodall referred to letters from Wayne Derouin dated February 13, 1996 and January 30, 1996. Mr. King stated that those letters are from a different file and not a part of this application. Ms. Woodall stated that they are from the Pirates Cove application for the golf course. Mr. Woglom stated that that is a different application. Mr. Woglom stated that the former building was a wood framed building and the proposed building will be a predominately steel building. David Power stated that those letters were for the original building.

Mr. Webster stated if the fire department needs to get to the building they will. Mr. King stated that the fire department has a right to trespass for safety. Ms. Woodall asked for public comment; Sonnhilde Saunders asked the location of the dumpster. Mr. Woglom showed her the location of the dumpster on the plans. Ms. Woodall read a waiver request for Article 123-21.F. Ms. Sand made a motion, seconded by Ms. Duane, to approve the waiver request for Article 123-21.F. Motion carried with Ms. Woodall and Mr. Bergmann abstaining from voting.

Mr. Bergmann asked to see the plans that were conditionally approved. Ms. Sand stated that Mr. Bergmann could have reviewed those plans on his own time. Mr. deFeyter stated that the plans are supposed to be submitted 15 days before. Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the Full Site Plan for Pirates Cove North Conway, Inc. conditionally upon the previously approved site plan, File #FR99-14, to be withdrawn; the quick claim easement to be reviewed and approved by Town Counsel; to pay the legal cost of the review by Town Counsel for the quick claim easement and the other easements; to pay the recording fee for the quick claim easement; the quick claim easement to be recorded with the site plan; and this conditional approval will expire on December 2, 1999. Motion carried with Ms. Woodall, Mr. deFeyter and Mr. Bergmann abstaining from voting.

ROMAN CATHOLIC BISHOP OF MANCHESTER/HEB CIVIL ENGINEERS – PLAN SIGNING (MAP 68, PARCEL 32A) FILE #MR99-20

Ms. Duane made a motion, seconded by Mr. Webster, to take HEB Civil Engineers plan signing out-of-order. Motion unanimously carried. Ed Bergeron of HEB Civil Engineers appeared before the Board. Mr. Bergeron stated the granite curbing has been installed and a performance guarantee for site improvements has been submitted. Mr. Bergmann made a motion, seconded by Ms. Sand, that the conditions have been met for the Roman Catholic Bishop of Manchester/HEB Civil Engineers and the plans can be signed. Motion unanimously carried. The plans were signed.

PIRATES COVE NORTH CONWAY, INC. – 2-UNIT SUBDIVISION (MAP 64, PARCEL 31) FILE #S99-18

Mark Woglom of Opechee Construction appeared before the Board. Ms. Duane made a motion, seconded by Ms. Sand, to accept the application of Pirates Cove North Conway, Inc. for a 2-unit subdivision as complete. Motion unanimously carried. Mr. Woglom stated that there was a relocation of an easement and the relocation of the dumpster. Mr. Bergmann stated that the plans were not received in a timely manner as they are date stamped November 4, 1999.

Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the 2-unit subdivision for Pirates Cove North Conway, Inc. conditionally upon the previously approved subdivision, File #S99-15, to be withdrawn; to be submitted concurrently with the Site Plan [File #FR99-15] and easement; and this conditional approval will expire December 2, 1999.

Ms. Woodall asked for public comment; Sonnhilde Saunders asked about parking. Mr. Woglom stated that it is shared parking. Mr. deFeyter asked Mr. King if he has reviewed the old plans to the new plans. Mr. King answered in the affirmative. **Motion carried with Ms. Woodall, Mr. deFeyter, and Mr. Bergmann abstaining from voting.**

WEST SIDE ROAD SCENIC ROAD TREE CUTTING – PUBLIC HEARING

Mr. King reviewed the attached plans with the Board. Mr. Bergmann asked the reason for the tree cutting. Mr. King answered safety. Mr. deFeyter asked if there were any reports of accidents. Mr. King stated that he did not know. Mr. King stated that Paul DegliAngeli received a letter from residents on Evergreen Drive and also spoke to

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the plow driver. Mr. Bergmann stated that he thinks this is purely to see the sign. Mr. Bergmann stated that he thinks it is a waste to take down the trees.

Mr. deFeyter stated that he drove down there and he does not see a visibility problem. Mr. deFeyter referred to RSA 273:158 and asked if this was notified twice. Ms. Meserve answered in the affirmative. Mr. deFeyter stated that they can remove dead wood. Ms. Woodall asked how long this subdivision has been there. Mr. King answered maybe mid-1980. Ms. Duane asked when it became a Town road. Mr. King answered last fall. Mr. Waterman stated that the operator of the snowplow should have some barring.

It was a consensus of the Board to find out how many people requested the removal of the trees. Mr. Bergmann made a motion, seconded by Mr. Webster, to continue the public hearing until December 2, 1999. Motion unanimously carried.

OTHER BUSINESS

Steve Morrill/Change of Zoning District: Steve Morrill and Shawn Bergeron appeared before the Board. Mr. Morrill stated that he would like to rezone 188 acres to Highway Commercial. Mr. Morrill stated that the district will extend 2,000 feet back from Route 302. Mr. deFeyter felt the Board should wait for input from the new planner and the master plan. Ms. Sand agreed. Mr. Morrill stated that he wants to act now by taking this to the voters and hopes the Board will support him.

Mr. Morrill stated that he wants to put the back land into a conservation easement and is willing to not sell the rezoned land for one year. Mr. Morrill stated that during this year he hopes some conservation group will buy the development rights and this entire tract will be a tree farm forever. Ms. Sand pointed out that a few weeks ago Ms. Woodall and Mr. Bergmann insisted that individuals who came to discuss zoning changes were thrown out without discussion because no information was submitted in writing. It was decided to continue this discussion until December 9, 1999 and have the applicant submit it on December 2, 1999.

Notice Of Decisions: Ms. Woodall read the notice of decisions for the Cabernet Inn, Holiday Inn and Joe Berry. Mr. deFeyter left at this time.

Santa Maria/Public Hearing: The Board voted to hold a public hearing on the rezoning of the Liberty Santa Maria property on December 2, 1999.

Meeting adjourned at 11:35 p.m.

Respectfully Submitted

Holly L. Meserve
Recording Secretary