

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 3, 2000

A meeting of the Conway Planning Board was held on Thursday, February 3, 2000, beginning at 7:03 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; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

The Minutes of January 6, 2000, should be amended as follows: page 4, paragraph 4, line 8, should read, "...and outdoor displays."; page 4, paragraph 5, line 2, should read, "...or not in compliance..."; and page 5, paragraph 2, line 1, should read, "...was supposed to be in...". Ms. Sand made a motion, seconded by Ms. Duane, to approve the Minutes of January 6, 2000, as amended. Motion unanimously carried.

The Minutes of January 13, 2000, should be amended as follows: page 2, paragraph 3, line 6, should read, "...take it lightly. Ms. Woodall..."; page 2, paragraph 6, line 8, should read, "...the Board has studied..."; and attach the map of the East Conway Road. Ms. Sand made a motion, seconded by Ms. Duane, to approve the Minutes of January 13, 2000, as amended. Motion unanimously carried.

The Minutes of January 18, 2000, should be amended as follows: Page 1, paragraph 1, line 1, should be added, "Mr. deFeyter stated that the Public Notice stated that the Police Department was in Center Conway, but it is actually in Redstone. The Board agreed to continue as public notice was adequately given."; page 1, paragraph 7, line 2, should read, "...structure. Mr. Cooper stated yes and no, that this..."; page 2, paragraph 1, line 2, should read, "...Perrault stated that this facility..."; page 2, paragraph 2, line 4, should read, "...Risley showed a conceptual plan..."; page 2, paragraph 3, line 5, should read, "...why it cannot be done..."; page 2, paragraph 4, line 6, should be added, "...of-way. Ms. Woodall stated if it is platted it is in the Highway Commercial zone and it is a right-of-way. Mr. Cooper stated..."; page 2, paragraph 6, line 2, should read, "...known what was going on. Mr. deFeyter...";

page 2, paragraph 6, line 6, should read, "...copies and read Chapter 14B of the Master Plan to the Board (copy attached). Mr. deFeyter..."; page 3, paragraph 4, line 5, should read, "...Hastings, which stated that the proposal is not spot zoning if it is not contrary to the Town's Master Plan. Mr. deFeyter stated that Town Counsel thinks it is contrary to the Town's Master Plan. Mr. deFeyter stated that it is supposed to be a forested..."; page 3, paragraph 5, line 7, should read, "...Corridor District affected the.."; page 4, paragraph 3, line 9, should be added, "...with the hospital. Mr. Cooper stated that there may be other ways long term to do this, but this is a band-aid. Mr. deFeyter stated that this is not a band-aid..."; and attach copies of Peter Hastings letter dated January 5, 2000; a copy of Chapter 14B of the Master Plan; and a copy of Thomas Irving's recommendation.

Ms. Sand made a motion, seconded by Ms. Duane, to approve the Minutes of January 18, 2000, as amended. Motion unanimously carried.

The Minutes of January 20, 2000, should be amended as follows: page 1, paragraph 2, line 4, should read, "...stipulation. Mr. deFeyter asked if the time limitation starts from December 13, 1999, which..."; page 3, paragraph 5, line 1, should read, "...discussed the Conway lighting policy and there was a question if it has been adopted..."; and page 4, paragraph 1, line 9, should be added, "...Williams agreed. Mr. deFeyter asked about the height requirements. Mr. Lucy stated that the height requirements do not apply to cupolas."

Ms. Duane made a motion, seconded by Ms. Sand, to approve the Minutes of January 20, 2000, as amended. Motion unanimously carried.

**M & P PARTNERS LTD PARTNERSHIP – MINOR SITE PLAN REVIEW CONTINUED (OLD  
TAX MAP 69, PARCEL 28/1999 TAX MAP 218, PARCEL 55) FILE #MR00-01**

Michael Norman of Provan and Lauber appeared before the Board. Mr. Irving stated that applicant submitted new plans on January 25, 2000. Mr. Irving stated that the NHDOT driveway permit application has been submitted, but a permit has not yet been issued. Mr. Irving stated that the cost estimate, revised green space calculations and revised waiver request for parking has been received. Mr. Irving stated that the plans reflect 12 feet of granite curbing, Do Not Enter signs, a note in regard to lights being conforming, and three street trees. Ms. Sand asked what type of lighting is proposed. Mr. Irving stated that that has not been submitted, but you can grant a conditional approval upon the lights being conforming.

Mr. deFeyter stated that we couldn't approve this application tonight. Mr. Irving stated that it is not a judgment call as the applicant has to lower the lights to 20 feet for compliance. Mr. Norman stated if the lights couldn't be lowered, but will be removed and replaced. Mr. deFeyter stated that the light needs to be contained on the property. Ms. Duane stated at the last meeting the Board discussed the safety of keeping the parking lot lit. Ms. Woodall asked if the lights were going to be lowered. Mr. Norman stated that the lights will be replaced. Mr. Irving stated that the cost estimate for the lights is \$3,000.

The Board discussed the Conway Lighting Policy and whether it had been adopted. Mr. Irving stated that the Board of Selectmen forwarded the lighting policy to the Planning Board to adopt. Mr. Irving stated that it is in the works of coming to the Planning Board so a policy can be established. Mr. deFeyter stated that it was adopted, but it applies to streets and not this situation. Mr. Webster stated that the policy was passed onto the Planning Board for review and adoption. Ms. Woodall asked the date of the Minutes [which forwarded this to the Board]. Mr. Webster answered approximately October 12, 2000. Ms. Woodall stated that the policy has not been presented to the Planning Board to date.

Mr. deFeyter asked if the Board can approve the lights as a condition as it is more than just lowering them to 20 feet, but new fixtures. Ms. Woodall asked the location of the lights. Mr. Norman stated that they will be replaced in-kind, where they are located. Mr. Norman stated that one light is on the property and one is not on the property. Mr. Norman stated that the applicant will pay the electric company to replace the lights. Ms. Duane asked if there is anything else on the poles. Mr. Irving stated that one pole has a transformer. Mr. deFeyter asked if the lights will be replaced by the applicant and no longer be the NHCOOP lights. Mr. Irving asked if the poles do not belong to the applicant and they are not on the property, do they have the authority to take them down. Mr. Irving asked if the lights were the applicant's responsibility or the NHCOOP's.

Mr. Bergmann stated the Board can require the applicant to put lights on their own property. Mr. deFeyter stated we need a lighting plan that is adequate for a parking lot. Ms. Woodall stated she does not have a problem with making a motion since the bonding is there. Mr. Waterman stated that the applicant is here in good faith. Ms. Woodall read a waiver request for Article 123-22.A.(1) and the requirements to grant a waiver. **Ms. Duane made a motion, seconded by Mr. Webster, to approve the waiver request for Article 123-22.A.(1).**

Mr. Bergmann stated that he has a problem with the way the waiver request is written. Mr. Bergmann asked why the parking calculations were met at the last meeting and now they don't. Ms. Sand stated that they did not include the storage space. Ms. Sand stated that considering this parking lot is used heavily for other events it is in the general welfare and public benefit to grant the waiver. Mr. deFeyter stated that he doesn't have a problem with this particular site, but there was supposed to be a parking survey done by the previous town planner. Mr. Irving stated that a parking survey is on his agenda. Mr. Bergmann asked if the ten reserved parking spaces are a part of the parking calculations. Mr. Norman answered in the negative. **Motion carried with Mr. deFeyter and Mr. Bergmann voting in the negative.**

Mr. deFeyter referred to RSA 676:4 and stated that it will be conditional upon Mr. Irving reviewing for compliance based on height. Mr. Irving stated that the only decision is if it meets the regulation or not. Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the minor site plan application for M & P Partners LTD Partnership conditionally upon an approved NHDOT driveway permit;

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conforming light plans and constructed in conformance; and a performance guarantee for 50% of all site improvements. Motion carried with Mr. deFeyter and Mr. Bergmann abstaining from voting.

**SETTLER'S R1, INC. – FULL SITE PLAN REVIEW (OLD TAX MAP 11, PARCEL 62-3/1999  
TAX MAP 235, PARCEL 99) FILE #FR00-02**

Mark Lucy of White Mountain Survey and Roger Williams, Project Manager, appeared before the Board. Mr. Irving stated that Building J was originally 10,000 square feet and now is proposed at 15,180 square feet. Mr. Irving stated that the increase is assumed from other projects that were smaller. Mr. Irving stated that there is no increase to the intensity on the entire parcel. Mr. Irving reviewed his Planning Staff Report (attached). Ms. Woodall asked for public comment; Al Landano of Northern Property Management stated that that he represents the Washington Building on Wylie Court and the applicant is going to address some of their concerns.

Mr. Lucy stated that this is the last building in this phase at Settler's Green. Mr. Lucy reviewed green space, trees, parking, handicap parking spaces and the ULI shared parking analysis. Mr. Bergmann asked if this is two lots of record. Mr. Lucy stated that the Sheraton is two separate lots. Mr. Bergmann asked if the parking and green space has nothing to do with this lot. Mr. Bergmann asked if lot R1 as appropriate parking and green space for that lot. Mr. Lucy answered in the negative and stated, therefore, the shared parking. Mr. Bergmann asked with whom. Mr. Lucy answered with all of the uses in Settler's Green. Mr. Lucy stated that the Board is looking for more pedestrian interaction and that is what the shared parking wraps itself around.

Mr. deFeyter asked if there are cross easements. Mr. Lucy answered in the affirmative and stated that all of the easements are listed on the plans (sheet SP2). Mr. deFeyter asked Mr. Irving if he has reviewed this. Mr. Irving answered in the affirmative and stated that he has reviewed it to his satisfaction. Ms. Woodall stated that the reason the easements are necessary is because the separate lots could be sold.

Ms. Sand stated that the building elevations state painted concrete block. Mr. Williams stated that it is actually split face block. Mr. deFeyter stated that one wall does face into a wooded area, but also a parking area. Mr. Irving referred to the ordinance and read "will serve no useful function. Mr. Irving stated that the wall faces a dumpster, employee parking and a wooded area. Mr. Irving stated that windows in that area could create a security issue. Ms. Sand asked if there are signs that state that that is employee parking. Mr. Williams stated that they are striped in a different color and most employees are there before the stores open.

Mr. Landano stated that they had a question on lighting, but it has been noted that the lights will be shielded. Mr. Landano stated that there will be access to the back of the Washington building for the septic and for North Conway Water Precinct. Mr. Bergmann stated that the Board is questioning windows on that side of the building, but this is the same Board that has required windows in a bathroom and in a warehouse. Mr. Bergmann stated that this applicant should be required to also put in windows. Ms. Woodall stated that the Inn in relation to the warehouse was directly next-door. Mr. Williams stated there are windows facing the Apte home. Mr. Williams stated that there is 27 square feet of window, which is less than the requirement. Mr. Williams stated that it will not be visible from the Washington Building. After a lengthy discussion, the applicant agreed to an architectural design on the side of the building.

Ms. Woodall read a waiver request for Article 123-7.B.(2). Ms. Duane made a motion, seconded by Ms. Sand, to approve the waiver request for Article 123-7.B.(2). Motion unanimously carried. Mr. Irving asked if the applicant would like an endorsement of the parking. Mr. Lucy answered in the affirmative. Ms. Woodall read the Substitution Request. **Ms. Duane made a motion, seconded by Ms. Sand, to accept the Substitution Request.** Mr. Lucy explained the shared parking. Mr. Bergmann asked if the retail was opened at the same time. Mr. Lucy stated that the bulk is retail, but rate of parking is a curve. Mr. Lucy stated that there are different uses and different times. Mr. deFeyter asked if there is enough parking for proposed building. Mr. Lucy answered in the affirmative. **Motion carried with Mr. Bergmann abstaining from voting.** Ms. Duane made a motion, seconded by Ms. Sand, to accept the application of Settler's R1, Inc. as complete for a full site plan review. Motion unanimously carried.

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Mr. Bergmann questioned revising File #FR97-10 and asked if that file needs to be rescinded. Mr. Irving stated that this application amends File #FR97-10. The Board had a brief discussion on a conditional approval based on the architecture on the building. Ms. Woodall polled the Board to see if they agreed to lowering the proposed windows to meet the requirements and agree to the architectural design. Ms. Sand stated that it is a non-discretionary item and the applicant has agreed to break up the architectural variation. Ms. Sand stated that she has no problem with a conditional approval.

Mr. Waterman stated that he will go along with that, but Mr. Irving should verify that it complies. Mr. deFeyter stated that there is an element of judgment and under State law you cannot grant a conditional approval if there is discretionary judgment. Mr. deFeyter stated that the applicant should have the architect put something on that wall that will please the neighbors. Mr. Bergmann stated that it is not discretionary. Ms. Duane stated that a conditional approval should be granted. Mr. Webster stated with all the buildings Settler's Green has constructed we are holding them up on the last one for this. Ms. Woodall stated they should put in windows and do the architecture to break it up.

**Ms. Duane made a motion, seconded by Ms. Sand, to conditionally approve the full site plan for Settler's R1, Inc., conditionally upon submitting an updated elevation to meet the window requirement and show split face block; and a performance guarantee for 50% of all site improvements.** Mr. deFeyter stated that a conditional approval cannot be discretionary. Ms. Duane stated that they are going to give you an additional 25 square feet of windows. **Motion carried with Mr. deFeyter and Mr. Bergmann voting in the negative.** Mr. Bergmann stated that legally we cannot give conditional approval under these circumstances according to the RSA. Mr. Waterman stated that common sense overruled. Mr. Bergmann stated that common sense does not hold up in Court.

**THE ROCK DEVELOPMENT, LLC (FORMERLY ZODIAC, INC.) – FULL SITE PLAN REVIEW  
CONTINUED (OLD TAX MAP 15, PARCEL 21/1999 TAX MAP 235, PARCEL 78) FILE #FR00-01**

Mark Lucy of White Mountain Survey and Roger Williams, Project Manager, appeared before the Board. Mr. Irving revised his Planning Staff Report (attached) and read a memorandum from Paul DegliAngeli regarding the driveway (in the file). Mr. Irving stated that the landscaping plan needs to be revised for consistency with the other plans. Mr. Irving stated that the applicant reviewed the lighting policy, but is maintaining their current plan. Mr. Irving stated that the ownership has changed and there is a copy of the deed in the file. Mr. Irving stated that the applicant has followed the Board's suggestion for a sidewalk in the buffer.

Mr. Lucy stated that the striping of Barnes Road and the shifting of patron entrance allows for more stacking room. Mr. Lucy stated that the sidewalk was continued from Route 16 to the service access. Mr. Lucy stated that the drainage is slightly different. Mr. Lucy stated that the landscape plan does not reflect the shift in the driveway. Mr. Lucy stated that the landscape plan is no different from what was in place last August [1999]. Mr. deFeyter stated that there was an other issue on walkways and bike plans. Mr. deFeyter stated that he spoke to Paul DegliAngeli regarding the plans for Barnes Road, which include plans for a bikeway, but not sidewalks. Mr. deFeyter stated to make it consistent we should retain the bike lane as that is the way it is designed now. Mr. Lucy agreed.

Mr. deFeyter stated that this is one piece of land and asked about the remaining land. Mr. Lucy stated that there is no proposal for the rest of the land. Mr. deFeyter asked if this is one piece of land. Mr. Lucy answered in the affirmative. Mr. deFeyter stated that it should be addressed at this time. Mr. Lucy stated at the last meeting the Board was just addressing up to MacMillan Lane and asked if now they are looking at something else. Mr. deFeyter answered in the affirmative. Mr. Lucy stated if the back land is developed it would be a perfect time to do that. Ms. Woodall stated that she can see the purpose for the sidewalk, but don't know if the road will be widened. Mr. deFeyter stated that it should be considered. Mr. Webster stated that it doesn't make sense to continue down the whole thing as the sidewalk may have to be broken up.

Mr. Waterman asked if it could be done in phases. Mr. Waterman stated that it does not make sense if the voters are going to say yes. Ms. Sand stated that there is no purpose for a sidewalk to a residential road or

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the athletic club. Ms. Sand stated if it becomes a connector road, but at this time she agrees with Mr. Webster that the sidewalk may have to be broken up. Ms. Sand stated that there is not a lot of traffic there since the shortcut has been eliminated. Ms. Woodall stated if the voters approve widening the road does the applicant agree with the sidewalk. Mr. Williams asked where does it go. Ms. Duane stated that she does not see how a sidewalk to nowhere would benefit anyone. Mr. Webster stated if the voters approve the upgrade, he doesn't know if the design is done and he doesn't now how far the Town's project goes. Ms. Woodall stated we don't know what is happening to that road. Mr. deFeyter stated that we are going to voters for an extension, but no one knows where it goes.

Mr. Webster answered in the negative and stated that he doesn't know if there are sidewalks or not. Mr. Webster stated that the design will be done after the money is approved. Mr. Bergmann asked how do they know how much money to ask for. Kenneth Vance stated that he is an abutter, has no problem with this project, but thinks the Planning Board is getting into a delicate area if the sidewalk is extended into the residential/agricultural area. Mr. Vance stated that there are different feelings on that. Mr. Vance stated that the applicant has been given permission to use some of the area in the residential/agricultural district, but the zone has not been change. Mr. Vance asked if the Planning Board is giving the applicant permission to do something. Ms. Woodall stated that that was her concern.

Ms. Woodall asked if there were any questions on lighting; there was none. Mr. deFeyter stated we need the height of the building with the cupolas. Ms. Woodall asked if the cupolas would be lit. Mr. Lucy stated that there is no reason why they cannot be lit. Mr. Lucy stated the structure is 34 feet and the cupolas are 44 feet. Ms. Woodall stated the architecture needs to be broken up a bit. Mr. Williams stated that it is with colors and different types of block. Ms. Woodall asked if the Board was agreeable to the architecture. Mr. Webster agreed. Ms. Duane agreed. Mr. Bergmann disagreed. Mr. deFeyter disagreed as it does not meet the regulations. Mr. Waterman stated that he would like to see something there. Ms. Sand agreed and stated that it does meet the regulation. Mr. Waterman reviewed the landscaping plans and stated since there are shrubs he doesn't see a problem.

Ms. Woodall stated with the trees and breaking up architecturally she is concerned with the long buildings. Ms. Woodall stated that they have 5% and breaking it up. Mr. deFeyter stated that there is 5% of windows in one area, which doesn't meet the spirit of the ordinance. Ms. Duane stated that the Board has been polled and we should move on. **Ms. Sand made a motion, seconded by Ms. Duane, to conditionally approve the full site plan for The Rock Development [formally Zodiac, Inc.] conditionally upon revising sheet L1 to show location of patron driveway consistent with SP2; and a performance guarantee for 50% of all site improvements.**

Mr. Bergmann stated that we should just throw the regulations away if the Board is not going to follow them. Ms. Sand stated that it is a difference of opinion. **Motion carried with Ms. Woodall, Mr. deFeyter and Mr. Bergmann voting in the negative.** Ms. Woodall stated that she is opposing only because she would have liked to see the building broken up.

#### **OTHER BUSINESS**

Compliance Tracking Sheet: Mr. Irving reviewed the attached compliance-tracking sheet. Mr. Irving asked for feedback and stated that they are currently working on an enforcement policy.

Staff Reviews/Staff Committee: Mr. Irving stated that he has reviewed the RSA and he is of the opinion that the authority for staff reviews is not legitimate. Mr. Irving stated that until that is established he is not going to be performing staff reviews. Ms. Woodall asked why. Mr. Irving stated that a staff committee should review the applications. Mr. Irving stated that the Town Engineer and the Building Inspector could be that committee. Mr. Irving stated that the RSA does not give the Committee any relief and they would still need to hold public hearings.

Ms. Sand stated that she discovered that the Board voted to hold a public hearing to change the residency clause for such a committee and that public hearing has never been held. Ms. Woodall stated that he asked

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Mr. King to set that up and he stated that it was a Board of Selectmen issue and not a Planning Board issue. Mr. Irving stated that he is also developing a ordinance deficiency tracking system as well.

Tent Sales: Mr. Irving stated that he has received an application for a tent sale, which has been done under a staff review in the past. Mr. Irving stated that there is a non-applicable clause in the site plan review regulations. Mr. Irving requested addressing tent sales under non-applicable. The Board agreed that tent sales are not applicable to the ordinance.

2 Foot Contours vs. 5 Foot Contours: Mr. Irving stated that subdivision regulations state 2 foot contours, but the checklist state 5 foot contours. Mr. Irving asked which the Board preferred. After a brief discussion, it was determined that you have to go with the written word and waivers should be requested from the 2-foot requirement.

February 10, 2000 Workshop: The workshop for February 10, 2000 was changed to February 24, 2000 in case Town meeting runs over into a second night.

Memorial Hospital proposed zoning amendment: Ms. Woodall stated that the zoning amendment for Memorial Hospital flies in the face of the Master Plan. Mr. Irving stated that the Master Plan supports the Special Highway Corridor District. Ms. Woodall stated if the amendment flies in the face of the Master Plan then it is spot zoning. Mr. Irving stated that he is not saying that. Mr. Irving stated that the Master Plan has been amended to support the district. Mr. deFeyer stated that this is spot zoning. Mr. Irving stated that the hospital is already there and he will not say it is spot zoning. Mr. Irving stated that the hospital is currently existing.

Ms. Woodall stated that the buildings are grand fathered, but the disconnected items are not grand fathered. Ms. Woodall stated that this is spot zoning. Mr. deFeyer stated that that district now exists and there is a protection corridor. Mr. deFeyer stated if you try to change that, which is the attempt, you are trying to change the intent of the zoning district, which is spot zoning. Ms. Duane asked what is your problem with the expansion of something that is needed and necessary for the well being of the public. Ms. Woodall stated that she has no problem with the expansion, but with the helipad. Ms. Woodall stated that they have 52 acres to work with. Mr. deFeyer stated that nothing prevents them from expanding.

Loren Billings asked Mr. Irving is he is saying that the Board is recommending an illegal action to the voters. Mr. Irving answered in the negative. Mr. Bergmann stated that the way it is written they can put anything there. Ms. Sand stated that this is the way for the expansion, but they suggested that there are better ways to do it.

Meeting adjourned at 10:02 p.m.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary