

MINUTES OF MEETING CONWAY PLANNING BOARD

April 6, 2000

A meeting of the Conway Planning Board convened at 7:00 p.m. in the Meeting Room of Conway Town Hall with the following present: Sheila Duane, Stacy Sand, Conrad Briggs, Arthur Bergmann, Robert deFeyter, John Waterman, Selectmen's Representative, Gary Webster, and Planning Director, Tom Irving.

Approval of Minutes - Ms. Duane explained that because the Recording Secretary, Holly Meserve, will not be present until the first May meeting, she has requested that the Board not take action on the Minutes until that time. After a lengthy debate **Motion was made by Mr. deFeyter, seconded by Ms. Sand, that approval of the Minutes would be suspended until May.**

Mr. Bergmann wished to point out a discrepancy in one set of Minutes, that being that there is no place in the Minutes that reflects the Board's decision to provide an acting Chair, and if they do not reflect that we could get in trouble down the line. Ms. Sand stated if the Minutes have not been approved by the Board, we will not get into trouble. Mr. Bergmann requested it be in tonight's Minutes that we had not done that. **Mr. deFeyter's motion to suspend the Minutes until May carried by unanimous vote.**

Election of Chairman - Motion was made by Mr. Briggs to nominate Sheila Duane Chairman. Seconded by Ms. Sand. The motion carried by a vote of 4-2-1 (affirmative votes by Briggs, Duane, Sand and Webster, negative votes by Waterman and Bergmann, and deFeyter abstaining) and Ms. Duane was declared Chairman.

Election of Vice Chairman - Nomination was made by Mr. Briggs for Stacy Sand to serve as Vice Chairman. Because it was a nomination and not a motion, it was deemed not necessary to have a second. Ms. Sand was declared Vice Chairman by a vote of 5-1-1 (Webster, Briggs, Duane, deFeyter and Sand voting in the affirmative, Bergmann voting in the negative, and Waterman abstaining).

Election of Secretary - Mr. deFeyter stated when discussing the by laws question had been raised as to whether or not we want a Secretary. Ms. Sand stated in last year's discussions and follow up public hearings, it was suggested there would be a recording secretary, and a signing secretary whose main role would be as third officer and to sign plans. Mr. deFeyter stated proposed changes submitted to the by laws last week did not include a secretary and he questioned whether the Board wants to defer that decision until they work on the by laws. **Motion was made by Mr. Webster, seconded by Mr. Briggs, to defer the appointment of the secretary until we clarify the by-laws. The motion carried with five affirmative votes cast by Webster, Briggs, deFeyter, Bergmann and Waterman, and two negative votes being cast by Sands and Duane.**

Public Hearing - Edward Garland/Kurt Moskowitz - Minor Site Plan

Review: Bayard Kennett and Kurt Moskowitz joined the meeting to discuss a minor site plan review to convert retail space into restaurant space (Domino's Pizza) at 2101 White Mountain Highway, North Conway, NH (1999 Tax Map 230, Parcel 109/Old Tax Map 65, Parcel 48) the former Converse shoe store. **Motion was made by Ms. Sand to accept the application as complete. Seconded by Mr. Webster.**

Discussion: Mr. deFeyter expressed concerns with parking. Mr. Irving stated there was a concern as the existing lay out did not conform to standards, however, they have now redrafted the plans and the parking scenario. He provided a sketch with the new parking configuration. Mr. deFeyter asked whether the Board has all the information needed on parking and any other outstanding issues. Mr. Irving said yes. Mr. Moskowitz stated those parking spaces that were on the northern side of the building, based on the seating they are proposing, would not be needed and he proposed to remove those to allow sufficient space for traffic. **The motion carried by unanimous vote.**

Driveways and Vehicular access - 123-20.F - Mr. Irving said the application refers to a 44' wide driveway. Mr. Kennett said this really is not a driveway, it is an entrance, the radius of a turn coming onto the site. It is 40' at its narrowest point, not the length of the driveway. He stated to narrow it down would be to narrow the radius to that turn and would make the handicap spot a tighter turn. Ms. Sand did not see a need for that wide an access at that point, noting there is more than enough turning radius. She suggested consideration be given to turning that into green space or a buffer area, or curbing - something to direct the traffic and fill in that space since they have no parking on the street side. Ms. Duane noted the handicap spot looks like 2-1/2 spaces, it is drawn on the plan as green space. Mr. Moskowitz stated the handicap spaces there are not wide enough, they will repaint to have only one there.

Mr. Bergmann pointed out the driveway permit says not to exceed 30' in width and may be flared as it approaches the pavement. Mr. Irving stated the Town standard is 36'. Mr. Kennett stated what we are talking about is a flared entrance that opens into a parking lot - there really is no driveway there - it is an entrance. Ms. Sand saw a driveway as an entranceway to a parking lot. Mr. Bergmann, making reference to 123-21.A, stated if the State Highway Dept. did not figure that was a driveway they would not have put a limit of 30' to it. Mr. deFeyter said we did require a driveway permit, this is a driveway and the State did issue a permit. Ms. Duane pointed out the letter from the State of NH reads "no actual changes in the driveway are to be made." The State has accepted the driveway as is. She felt the solution is to go back to the State, or withdraw the waiver and then go back to the State.

Mr. Moskowitz said the State is saying we complied and they are giving us permission and waiving the 30' rule. Mr. deFeyter felt they need to go back and find out

exactly what it is that the State is approving. He suggesting moving on from this issue after someone has contacted the State and find out their intent.

Mr. Kennett summarized then you want clarification from NH DOT as to what they mean by "no changes to be made," and the statement on Page 1 of the letter addressing the 30'. It was his contention that it is a printed form, the 10 points listed are for new driveway permits. Ms. Sand stated we are still talking about a driveway wider than the specifications. She said she would be afraid they will have people parking in the entrance way. Mr. Kennett said he is not sure that is a real concern, it is a slope, an elevated driveway and elevated green space. Ms. Duane suggested striping. Ms. Sand wished instead to have curbing and extend the green space. Mr. Kennett questioned what she would suggest replacing it with. Ms. Sand stated gravel and flowers.

Mr. deFeyter noted also attached to the State's letter is a driveway permit which talks about doing construction and getting notice from them and completing work, etc. He stated it would appear they expect some kind of construction to take place. Mr. Moskowitz stated there is only one place to mark something on the application and that they marked as accepting our proposal. Ms. Duane asked that the applicant have the State clarify that they can keep that 40' wide driveway. The applicant requested that the Board act on the waiver making it subject to the State's clarification.

Mr. Bergmann said since we need clarification, he believes the Board should move upon the assumption that they do not yet have the permit - the front page says 30', and if that is what the State has in mind, the Planning Board cannot even grant them 36' on a State highway. Mr. Kennett asked whether it would be plausible to consider that it be reviewed and, if every other condition is met, approve it subject to what the State requires. Mr. deFeyter said if it is going to be something less than what it is now, you will have to do something to restrict it. Ms. Duane commented you are asking for us to disregard the waiver and instead make it a condition of your site plan that the driveway access is to adhere to what ever the State says they intended in that driveway permit.

Motion was made by Ms. Sand to accept the waiver for 123-21.F, the width of the driveway. Seconded by Mr. Webster. The motion was defeated with three affirmative votes being cast by Duane, Briggs and Webster, and four negative votes being cast by deFeyter, Bergmann, Sand and Waterman.

Parking Lot Design - Mr. Irving stated it does meet the 24' requirement between the building and the parking. Mr. Bergmann questioned employee parking. Mr. Moskowitz stated they will use those shown - there are thirteen 9'x18' spaces plus a handicap space. Mr. deFeyter noted the building is 95', there is an additional 21' from the building to the retaining wall in the rear. Mr. Irving stated there is sufficient space to put a row of 13 spaces at 9' each. Mr. Moskowitz commented there are presently 17 spaces lined. Mr. deFeyter noted, however, they are smaller (a little over 7' wide), the current site does not meet the standard.

Ms. Sand said she had parked in the space to get a feel for it and had no problem at all. There was a good 4' to 5' distance from the wall - plenty of room for someone to get out of that angle. Mr. Moskowitz pointed out that 85% of their business is delivered - it is not a waiter/waitress service, not a lot of employees in the building - not like a regular restaurant. Ms. Duane explained we still have to make sure the parking and the number of seats match. Mr. Irving advised the new parking lot design satisfies the standards. Ms. Duane questioned loading area. Mr. Irving said it is in the rear and is off the street.

Snow Removal - Mr. Bergmann noted the snow dump area is on the elevated green space area in the front of the building and regulations state snow cannot be stored on a landscaped area. Mr. Kennett stated it is a grassed area, not flowers or shrubs. He added that in most places in the Mt. Washington Valley snow is pushed onto the grass, there is also a foot note that if there is not sufficient storage area for the snow, it will be removed from the site. Mr. Bergmann stated the snow dump area shows two bushes on the plan. Mr. Kennett said any snow that is pushed onto that section will be pushed to the end of the parking lot. Mr. Waterman wished to know the length of the lease. Mr. Moskowitz stated there are three 5-year terms.

Pedestrian Access and Circulation - No questions.

Lighting - Mr. Moskowitz said there are three lights on the site and one on the building. Mr. deFeyter requested they be put on the plan. He said also it appears that they are reflector lights and he questions whether the light will be contained on the property. It was noted also there is a light by the cemetery and one next to the restaurant site adjacent to this lot. Mr. deFeyter asked that lights be put on the plan, and emphasized that the light must be contained on the property. Ms. Sand commented there is a note on the plan saying the light does not spill off the property - they will be required to make sure it is contained on the property. It was pointed out there is no lighting in the back of the building, but there is no access through the back of the building. Ms. Duane advised the applicant he must add the lights on the plan, make a decision about the back light, and take measures to make sure when the lights are turned on they do not spill over. Mr. Irving noted the Certificate of Occupancy will make sure standards are met.

Drainage - There were no issues with drainage.

Utilities - Requirements satisfied.

Landscaping - Mr. Irving stated there is a waiver request regarding street trees - the street tree requirement is not satisfied. There is available 104' (the requirement is one tree for every 50') and only one tree is there. They are seeking a waiver for two trees. Mr. Kennett said it is a narrow lot, not a lot of space to plant trees in the front section that do not have a lot of impact on visibility from the traffic - it would block the building and block visibility. He suggested in replacement of that, some lower shrubs be included. Ms. Sand disagreed, stating she thinks a proper street tree, once it has grown will have foliage higher than the building - she feels there is plenty of room for it and it would not block

... onto Rte. 16. It was Ms. Sand's contention that at least one additional street tree should be on the front. Mr. Bergmann agreed, as did Messrs. deFeyter and Waterman.

Mr. deFeyter felt there was room for two trees in the front and, as regards visibility to Rte. 16, the cemetery comes out quite far. Mr. Irving pointed out the need to take utility wires into account. Mr. Moskowitz asked whether the waiver for the 50' ruling could be amended. He felt he could get three in to meet the number requirement, but not with 50' between, otherwise they would be on the edge of the driveway (possibly one at 10', one at 10', and one at 80'). Mr. Irving stated depending on the species, there should usually be at least 25' between them. Mr. deFeyter stated our goal is to have street trees that are spread along the road. Mr. Moskowitz pointed out then it would be in the line of sight which is why he wanted a waiver for the trees - it would be right on the edge of the south end of the driveway entrance to the parking lot.

Mr. Bergmann noted in the snow dump area there is approximately 60' and he could put two trees in there. Mr. Moskowitz agreed, but noted the distance would be greater than 50'. He agreed he could concede to put two trees in the 60' area - he would want a waiver of the 50' ruling with the understanding that there would be two trees in the 60' space on the southern side of the driveway. Ms. Duane expressed concern that if the trees are planted too close together they will not survive. Mr. Briggs noted Mr. Irving has stated 25' and that should be acceptable. Mr. Irving stated depending on the species, the provider can advise appropriate distances and type of street trees that should be planted - they should be a minimum of 25'. Mr. deFeyter reminded Mr. Moskowitz that if anything dies he will have to replace it.

123-30.D - Motion was made by Ms. Sand to accept the waiver of 123-30.D.8. for the distance between the proposed street trees. Seconded by Mr. Bergmann and carried by unanimous vote.

Architectural Design - Mr. Bergmann questioned how they propose to block the exhaust fan from the sight of the road. Ms. Duane stated in the architectural guidelines it states all roof top mechanicals must be shielded from the street. Mr. Kennett noted the kitchen in this case is very small and is to the rear. Ms. Bergmann noted if you are going out the back with exhaust, you have to consider neighbors in the back. Mr. Irving noted on this side there is an elevated embankment of 30'.

Ms. Sand noted concerning outward appearances, when screening the dumpsters, whether the applicant could extend that to include the gas tank. Ms. Duane stated as regards the safety issue, they usually require them to be protected. Mr. Moskowitz did not believe gas tanks are allowed to be enclosed with another structure, and felt it would require cement pilons to prevent someone driving into it. It was Mr. Bergmann's opinion that if it would be out in the open someone would be less like to run into it.

Mr. deFeyter questioned plans for the front of the building. Mr. Moskowitz said there is one proposed change - to the left of the canopy he proposes to change the display case to a window, making two windows there.

Ms. Duane proceeded to go through the checklist: Restrooms are marked; solid waste has been addressed; there is wheelchair access, the building is at grade; water is provided by North Conway Water Precinct; sewer is hooked up; there is no nuisance noted.

Public health and safety - Mr. Irving noted the embankment on the northeast corner appears to be failing. Mr. Kennett stated the leaning trees will be removed and fill brought in; it is the opinion of the Town Engineer that it should be shored up. Ms. Duane suggested making it a condition, subject to review by the engineer.

Zoning - Mr. Irving stated there is an issue with the air conditioning which appears to be in the setback and buffer on the southern side, about 10' from the building and 3' from the front of the building; it is behind a fence. Ms. Sand felt due to the fact that it is screened, it is not really an issue.

Mr. deFeyter said we need to wait for the State. Mr. Kennett felt he could have that answer by tomorrow. Ms. Sand said we need to see that before we can give conditional approval. Mr. Kennett asked if we were to show you that on the plan tonight would that be sufficient? Mr. Bergmann stated no, because if you put it on the plan that is the way you have to do it.

Motion was made by Mr. deFeyter, seconded by Ms. Sand, and carried by unanimous vote to continue the Minor Site Plan Review. Mr. Irving reiterated the revisions to include treatment of the embankment, State word on the driveway width, space between the trees, lights, dimensions on parking.

Charles S. Marshall - Appeal of Staff Decision regarding requirement of site plan review for the proposed project on the building permit application to raise his building two feet at 230 East Conway Road, Conway, NH (1999 Tax Map 252, Parcel 49/Old Tax Map 12, Parcel 4-1). Mr. Marshall was not present.

Mr. Bergmann questioned whether it was really necessary for Mr. Marshall to be present, and whether we need him here to say we will accept or reject this appeal. Mr. Irving felt it would be appropriate that the Board hear it. Mr. deFeyter said he has appealed, we can decide his appeal tonight, but can wait until the end of the meeting in case he appears. Ms. Duane said we can simply move him to the April 20th meeting if he does not show up. Mr. Irving noted the appeal time is 30 days from staff decision; the appeal was submitted in writing on time. **Motion was made by Mr. deFeyter to defer**

this to the last item of the meeting. **Seconded by Mr. Bergmann. The motion carried with six votes in the affirmative and Mr. Waterman abstaining.**

Other Business - It was reported that the Hill Whitaker Fadden Boundary Line Adjustment was signed out of session.

Settler's Green - It was reported Settler's Green has submitted a new elevation according to the requirements of the Board and to satisfy the architect's suggestions that were made, and they have submitted surety bond to satisfy the bonding requirement. Mr. Irving recommended looking at the existing elevations and comparing them to the ones previously given. There was a great deal of confusion and discussion as to whether the plans were accurately labelled. Mr. Irving said the question is "do these elevations satisfy the requirements and the Board's concerns?", noting changes were suggested and the applicant has made the changes. In his opinion they appeared to comply with the numbers in the ordinance.

Motion was made by Ms. Sand to accept the new plans as long as the applicant changes the elevation labels and south becomes east and east becomes south, and that they be signed out of session. Seconded by Mr. Webster. The motion carried with five votes in the affirmative and Messrs. deFeyter and Bergmann voting in the negative.

After a short recess, Edward Labonville and Robert Roy of Guldie's Restaurant approached the Board. Mr. Labonville stated they have been open since July and there has been controversy about their exhaust hoods. He stated on August 13th the temporary Occupancy Permit ended, and he wished to know how they can stay open if they do not have the right to have people eating in the restaurant. Mr. Irving pointed out the current roof vents have not been enclosed and are visible from the street.

Mr. Webster reminded the gentlemen that this was not an interrogatory session, that they have to make a decision whether they are going to make an appointment to come back to the Planning Board or make a decision downstairs with the Selectmen. He said it is his understanding that the Interim Town Manager visited his facility but found those gentlemen work at night and were not available.

Ms. Duane said the situation is the roof top. Mr. Labonville stated just before they were to open the question of hoods came up; it was his contention they are not deemed mechanical units, they are hoods. He stated Dawn Emerson was supposed to come back to them and did not. He stated the second issue is that these are hoods, there is a fire issue and he does not want to do what they did with the Muddy Moose restaurant [structural enclosures]. He questioned whether hoods fall under this regulation. Ms.

Duane stated we have reviewed this before, if we did not consider them to be roof top mechanicals we would not have required Muddy Moose to cover them - the same piece of equipment you are talking about is covered on the Muddy Moose because it is considered a roof top mechanical - it is the same situation regarding your site plan. Ms. Duane said the interpretation she was aware of was that these are what our ordinance calls roof top mechanical units located so as to not be visible from the street level.

Mr. Labonville stated they were not on the plans, on the original plans they went out the back; however, when they built the building the architect advised them to do it this way. He suggested going back to the Minutes to see how they addressed them. Mr. Bergmann stated if they were not on the plan, they were not discussed. Mr. Labonville stated he was looking for an interpretation from the Town and wants in writing what the architectural guidelines state when they were enacted, and what can be done about it.

Ms. Sand noted one problem is that people are not following their original site plan, if that is the case, you have the responsibility to come back to us. Ms. Duane said you are telling us your fans were on the back of your building for your site plan review, you then changed it, you did not come back to us, we had no record of it until we drove by. She said they are now on the roof and do not satisfy our ordinance. This Board considers those fans roof top mechanicals.

Ms. Duane advised Messrs. Labonville and Roy that the Board will send them a letter with a date when we can meet, and that Ms. Duane will look up the 1991 architectural guidelines and provide a definition of roof top mechanicals.

Mr. Waterman made a proposal that the Planning Board require applicants to supply photos of the site as it exists. Mr. deFeyter agreed and suggested also he would donate a cheap Polaroid camera to the Town for people to borrow if they do not own one. Mr. Irving expressed concern with the liability of the Town loaning out equipment. He said he will bring a draft amendment to the checklist including photos at each elevation, and policy will have to be made on what constitutes sufficient photos of the lot which will be at the discretion of the Planning Director. Mr. Irving advised that amending the checklist will require a public hearing.

Since Mr. Marshall did not appear, **Motion was made by Mr. deFeyter, seconded by Mr. Webster, to continue his appearance until April 20.** Mr. Irving will call him to confirm he does want the appointment. Ms. Sand stated she had been by the property and the building has already been raised. Mr. Irving noted since the owner has acted as though he has won the appeal in advance of same, it may be an issue the Board wants added to the compliance tracking. Mr. deFeyter suggested it is now a Building Inspector issue. **The motion to move to April 20 carried with six votes in the affirmative and abstention by Ms. Sand.**

Discussion returned to issue of Guldie's Restaurant. Mr. deFeyter wished to know what the Planning Board approved, and whether there was a lack of follow up. Mr. Webster stated the gentlemen asked for an appointment, were directed to the Town Engineer, they need to define the issue and come in and settle it. Mr. Irving stated if he is to be requested to sign off on a Certificate of Occupancy, his position will be that these are roof top mechanical devices, and asked whether the Board would support him in that decision, and require some sort of visible shield from the street? He said that is his interpretation until it is appealed and overturned. Ms. Sand said the question is "what is the definition of roof top mechanicals, and has the applicant followed his original site plan?"

Discussion of By Laws - **Motion was made by Mr. Bergmann to continue by laws. Seconded by Mr. Webster.** After some discussion as to the correct set of proposed amendments they would be addressing, it was agreed they would use the set which states "48 hours" at the bottom. **The motion carried with six votes in the affirmative and Ms. Sand voting in the negative.**

Conway Sunoco - Mr. Bergmann questioned status of the Conway Sunoco. Mr. Irving reported he has revisited the site - there is no window where there should be one. It is currently being addressed by the Planning Board under the regulations of the Selectmen. They are preparing to come back to the Board for a site plan amendment.

China Chef - Mr. Bergmann questioned the site plan issue of China Chef on 3/18/00. Mr. Irving will check with the Zoning Officer who did the research; if it is a building issue the Building Inspector would look into it, for zoning, the Code Enforcement Officer would deal with it. He said he is not yet satisfied that China Chef is resolved and wants to look closer at their parking to see if they are currently in compliance with whatever regulations were in place that gave them authorization.

Information Items - Mr. Irving said there is a Planning and Zoning Conference on Sat., May 6th, and two people from the Town will be attending. He will bring materials back for the other members.

Mr. Irving reported the Chair of Selectmen is requesting that the Planning Board and Board of Selectmen set up a joint meeting in an attempt to determine how the Selectmen can help in the preparation of the masterplan. He suggested the time to do it would be immediately following a workshop (the next one is April 27th). Mr. deFeyter suggested an agenda be provided. Ms. Duane asked everyone to have their agenda items ready for that meeting. Ms. Sand suggested that at the masterplan meeting agenda items be submitted and the Selectmen would compile theirs, and set a date at that time. Ms. Duane suggested the second meeting in May would allow sufficient time for both Boards

to compile agenda items. Ms. Sand suggested meeting with the Selectmen one hour before the regular meeting on May 11th.

Response to Seeking Alternates - Mr. Irving has received one indication by letter, and an ad was published in the paper. He stated the surveys are currently being compiled, out of that will come a contact list and we will know what levels and what kind of assistance we are going to need, i.e. task force, feedback committee, newsletters.

At 9:58 p.m. Motion was made by Mr. Waterman, seconded by Ms. Sand and carried by unanimous vote to adjourn the meeting.

Respectfully submitted,

Gail T. Carrier
Acting Recording Secretary