

CONWAY PLANNING BOARD

MINUTES

OCTOBER 11, 2001

A meeting of the Conway Planning Board was held on Thursday, October 11, 2001, beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Sheila Duane; Selectmen's Representative, Gary Webster; Conrad Briggs; Robert Drinkhall; Martha Tobin; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Briggs made a motion, seconded by Mr. Drinkhall, to approve the Minutes of September 27, 2001 as written. Motion unanimously carried.** Ms. Duane appointed Ms. Tobin as a voting member for the evening.

**RIVER RUN COMPANY – FULL SITE PLAN REVIEW CONTINUED (PID 218-51.01/51/52) FILE #FR01-03**

Ms. Duane read a letter from Diane Smith of Thaddeus Thorne Surveys requesting a continuance. **Mr. Drinkhall made a motion, seconded by Mr. Webster, to continue the application for a Full Site Plan Review for River Run Company until October 25, 2001. Motion unanimously carried.**

**EDWARD GARLAND – FULL SITE PLAN REVIEW CONTINUED (PID 253-27) FILE #FR01-07**

Deborah O'Brien of E.R. O'Brien Land Surveyors appeared before the Board. The Board reviewed the necessary changes. **Mr. Briggs made a motion, seconded by Mr. Webster, to conditionally approve the Full Site Plan for Edward Garland conditionally upon satisfying the bonding; when the condition has been met, the plans can be signed out-of-session; and this conditional approval will expire on November 8, 2001.** Ms. Duane asked for Board comments; there was none. Ms. Duane asked if there was any public comment; there was none. **Motion unanimously carried.**

**RUNABOUT BAY REALTY TRUST – SUBDIVISION/LOT CONSOLIDATION REVIEW (PID 268-102.1/102.2/102.3) FILE #S01-13**

Ms. Duane stated that the applicant has withdrawn this application.

**THOMAS AND VICKI FADDEN – 4-LOT SUBDIVISION (PID 255-5.1) FILE #S01-12**

Ms. Duane stated that the applicant has withdrawn this application.

**PUBLIC HEARING – ARTICLE 123-29.D. – LANDSCAPING REQUIREMENTS  
FOR THE INDUSTRIAL-2 DISTRICT**

A public hearing was opened at 7:12 p.m. Mr. Irving read the proposed amendment. Ms. Duane asked if there were any comments from the Board; there was none. Ms. Duane asked if there was any public comment; there was none. The public hearing was closed at 7:14 p.m. **Mr. Briggs made a motion, seconded by Mr. Drinkhall, to adopt the proposed amendments to Article 123-29.D. for landscaping requirements for the Industrial-2 District. Motion unanimously carried.**

**OTHER BUSINESS**

Appointment of Member: **Mr. Briggs made a motion, seconded by Mr. Webster, to appoint Martha Tobin to the remainder [April 2002] of Arthur Bergmann’s position. Motion unanimously carried.**

Ordinance Amendments: The following changes were given to the Board for their consideration at the October 18, 2001 meeting:

• Chapter 88 & 89 – Building Code and Permits	• Article 123-11 – Public Notice
• Article 147-14 – Floodplain Conservation District	• Article 123-47 – Bonding
• Article 147-31 – Wetland and Watershed Protection District	• Article 131-9 – Filing and Submission of Application
• Article 147-6 – Definitions	• Article 131-12 – Notices
• Article 147-19.B.(1)(g) – Signs	• Article 131-30.E. – 3:1 Ratio
• Article 147-10.1 & 123-24 Trailers	• Article 147-17 – PUDs

Heliports/Helipads: Mr. Irving stated that there is an ordinance that bans heliports/helipads except for emergencies and there is an ordinance that allows them under a special exception. Mr. Irving stated if an applicant meets the regulations for a special exception than they can put one in. The Board agreed to discuss this Article after the Board of Selectmen and Planning Board’s joint meeting on October 18, 2001.

2935 White Mountain Realty Trust – File #FR01-06: Mr. Irving stated that the applicant has requested an extension of the conditional approval. **Mr. Briggs made a motion, seconded by Mr. Drinkhall, to extend the expiration date for 2935 White Mountain Realty Trust to December 13, 2001. Motion unanimously carried.**

Meeting adjourned at 7:40 p.m.  
Respectfully Submitted,

Holly L. Meserve, Recording Secretary



# TOWN OF CONWAY

P.O. Box 70 • CENTER CONWAY, NEW HAMPSHIRE 03813-0070

(603) 447-3855

FAX (603) 447-5012

*adopted  
10/11/01*

## Proposed amendment to Town of Conway Site Plan Regulations

§123-29.D. Trees. All lots regulated by this chapter (except those subject to §123-29. C.) in the Commercial Districts shall have trees in accordance with Section 1-11 below.



# TOWN OF CONWAY

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## MEMO

TO: Sheila Duane, Planning Board Chair

FROM: Tom Irving, Planning Director

CC: Planning Board, File

DATE: 10/09/01

RE: Proposed ordinance amendments

### Message:

Please find the attached material relative to proposed amendments to be considered at the October 18, 2001 joint meeting between the Planning Board and the Board of Selectmen. The following items are up for consideration:

Chapter 88 & 89 regarding building code and permits. The proposed revisions update the code, reconciles the conflict between Chapter 88 and the Site Plan Review Regulations, incorporate the substantive elements of Chapter 89 and facilitates the repeal of Chapter 89. You were provided with copies of the proposed revisions to Chapter 88 a month or so ago.

§147-14 Floodplain Conservation District. The proposed revisions updates the code to apply the most current FEMA flood insurance ratings maps (FIRMs) and the Flood Hazard Assessment Map (1974). It also incorporates a dispute resolution mechanism to address inherent inaccuracies in those maps. See attached.

§147-31 Wetland and Watershed Protection District Boundaries. The proposed revisions updates the code to better represent the wetlands that the ordinance intends to protect. It also incorporates a dispute resolution mechanism to address inherent inaccuracies in wetland and soils maps. See attached.

§147-6 Definitions. The proposed revisions move the definitions that are represented in §147-31 to the Definitions section of the ordinance. See attached.

§147-19.B.(1)(g) Signs. The proposed revisions clarify the Town's policy regarding windows covered by signage. See attached.

§147-10.1 and §123-24 Trailers. The recommendations proposed by Ordinance Advisory Committee and the revisions initially proposed in December 2000. See attached.

**147-14. Floodplain Conservation District.**

- A. The purpose of this district is to promote and protect the health, safety and general welfare of the town by providing reasonable regulations governing development and use of the floodplain.
- B. The Floodplain Conservation District is hereby determined to be those areas identified and delineated as a floodplain with a one-percent-or-greater chance of flooding in any given year, which is designated as ~~Zone A and A-1-99~~ on the Flood Insurance Rate Map of Conway issued by the Federal Insurance **Emergency Management** Administration **as amended from time to time** and/or on the Flood Hazard Analysis Map of 1974, prepared by the United States Department of Agriculture Soil Conservation Service, whichever delineates the higher flood level.

**In cases where the floodplain boundary is disputed, a survey plan prepared and certified by a surveyor licensed by the State of New Hampshire, that clearly represents the floodplain boundary and 2 foot contours, may supersede the boundary represented in the preceding paragraph with respect to the Floodplain conservation district provisions of this chapter. This in no way provides any relief from any other local, state or federal requirement of regulation.**

- C. The following uses shall be permitted within the Floodplain Conservation District to the extent that they are not prohibited by any other ordinance, and provided that they do not require structures, fill or storage of materials or equipment. In addition, no use shall adversely affect the efficiency or unduly restrict the capacity of the channels or floodways of any tributary to the main stream, drainage ditch or any other drainage facility or system, nor for any use in the floodway, raise the level of the one-hundred-year floodwaters.
- (1) Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming and wild crop harvesting.
  - (2) Residential accessory uses, such as lawns, gardens, parking areas and play areas.
  - (3) Sealed public water supplies.
- D. Special Exceptions.
- (1) Special exceptions may be granted by the Zoning Board of Adjustment for the following uses within the floodplain, except those areas within the floodway, unless expressly allowed in the floodway hereunder, as defined herein:
    - (a) Uses, but not structures, compatible to open space.
    - (b) Limited agricultural extraction of sand, gravel and other materials for noncommercial use.
    - (c) Boat landings and boat access areas within the floodway.
    - (d) Railroads, streets, driveways, bridges, utility, transmission lines and pipelines.

- [d] Other site dimensions, above and beyond the overall acreage requirement listed above, shall be sufficient to provide safety areas suitable to meet all FAA suggested dimensions and requirements.
  - [e] Previous to zoning board considering any application for a special exception for this land use, all Federal and State approvals, which are required, must be obtained by the applicant with copies of these approvals submitted as part of the request for special exception.
  - [f] A major site plan approval shall be required of the applicant from the Planning Board for the heliport, which is accessory to an approved business. As a condition for the granting of the special exception, no use of the heliport may be engaged by the applicant until all conditions of the special exception, including a major site plan approval, have been satisfied by the applicant.
- (2) No special exceptions shall be granted, however, until the following conditions are met:
- (a) All development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.
  - (b) New and replacement water supply, replacement septic systems and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.
  - (c) All fill, new construction, substantial improvements and other development within the floodway shall be prohibited unless the applicant's New Hampshire registered engineer can show the activity would not result in any increase in flood hazard within the Town of Conway.
  - (d) The granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.

E. Special provisions.

- (1) There shall be no expansion of present nonconforming buildings or pre-existing septic systems in the floodplain, provided that this shall not prohibit the maintenance, repair and/or correction of such pre-existing septic systems, which malfunction. There shall be no allowance of a new septic system in the floodplain.
- (2) Existing nonconforming buildings within this district, which have been substantially damaged may be repaired within one year, provided that they comply with the minimum standards of the regulations of the National Flood Insurance Program (See definition of substantial damage in Section 147-6). Buildings not rebuilt to such standards shall be removed completely.
- (3) Changes to watercourse.

- (d) In Zone AO, the one-hundred-year-flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or, if no depth number is specified on the FIRM, at least two (2) feet.
- (8) Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (9) The Building Inspector shall maintain for public inspection and furnish upon request any certification of floodproofing and the as-built elevation (in relation to mean sea level) of the lowest floor (including the basement) of all new or substantially improved structures and include whether or not such structures contain a basement, and if the structure has been floodproofed, the as-built elevation (in relation to mean sea level) to which the structure was floodproofed. This information must be furnished by the applicant.
- (10) Excavation shall be prohibited in the Floodplain Conservation District.

F. Variances.

- (a) A variance is a relaxation or setting aside in a specific case, of certain specified terms of this ordinance. In accordance with RSA 674:33, I(b), the applicant shall have the burden of showing, in addition to the usual variance standards under state law:
  - [1] That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - [2] That, if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and
  - [3] That the variance is necessary, considering the flood hazard, to afford relief.
- (b) The ZBA shall notify the applicant in writing that:
  - [1] The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - [2] Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

The community shall: [1] maintain a record of all variance actions, including their justification for their issuance; and [2] report such variances issued in its annual or biannual report submitted to FEMA's Federal Insurance Administrator.

The ZBA may approve, approve with conditions, or deny applications for variances following the procedures in this ordinance.

**147-31. Wetland and Watershed Protection District Boundaries.**

- A. The Wetland and Watershed Protection District shall be comprised of all land within one hundred (100) feet from the edge of:
- (1) all water bodies, excluding:
    - (a) Great Ponds, which are covered under the Shoreline Protection District. (See 147-30 above); and
    - (b) certain man-made water bodies, such as fire ponds, agricultural/ irrigation ponds, sedimentation/detention basins, and septage lagoons.
  - (2) all year round watercourses
  - (3) all wetland areas greater than five (5) contiguous acres, excluding
    - (a) constructed or legally altered wetlands not part of a wetland mitigation plan, and
    - (b) vegetated swales and roadside ditches
  - (4) all other wetland areas as shown on the Town of Conway 1997 Wetlands Composite Map abutting a water body or year round watercourse, regardless of the wetland acreage involved.

~~B. Said water bodies, watercourses and wetlands referenced in paragraphs (1) through (4) above shall be only those identified on the map entitled: "Town of Conway, New Hampshire, Wetlands Composite Map, prepared by Complex Systems, University of New Hampshire, January 1997".~~

~~C. Key Word Definitions~~

- ~~(1) A "watercourse" shall be as defined in Section 147-6.~~
- ~~(2) The "edge of the water" shall be determined by the normal high water mark, defined herein under Section 147-6.~~
- ~~(3) The "edge of the wetland" shall be determined by the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, New England Interstate Water Pollution Control Commission, 1998.~~
- ~~(4) A "wetland" shall be as defined in section 147-6.~~
- ~~(5) "Buffers/Wetland" shall be as defined in section 147-6.~~

**D. B. Use of Mapped Wetland Information Contained in the Town 1997 Wetlands Composite Map**

The Town of Conway 1997 Wetlands Composite Map shall be employed for general planning and permitting purposes with regard to the review of development proposals. Such mapping may prove helpful, for example, in determining whether a particular land parcel is likely to contain or abut wetlands of greater than five (5) acres in size. However, due to map scale (1" = 2000") and level of detail, it is recognized that the 1997 Wetlands Composite Map may indicate the presence of a wetland where no wetland is actually present, and it may fail to indicate the presence of a wetland where a wetland is actually present. Any question as to the accuracy or application of the 1997 Wetlands Composite Map to a particular parcel or tract of land **may be resolved with a plan certified by a wetland or soil scientist licensed by the State of New Hampshire delineating the wetlands** shall be determined through on-site verification by in accordance with paragraph B. (3) above the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, New England Interstate Water Pollution Control Commission, 1998.

**Amendments to 147-6**

**EDGE OF WATER – edge of the water shall be determined by the normal high water mark, defined herein.**

**EDGE OF WETLAND – edge of the wetland shall be determined by the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, New England Interstate Water Pollution Control Commission, 1998.**

147-19. Signs.

- B. (1) (g) window signs which are affixed to the interior of the window, not to cover more than 50% of any window ~~the total window area~~ which is available to the use which is advertising the product or service directly inside the window(s).

September 27, 2001

To: Sheila Duane, Chair, Conway Planning Board  
Fr: Martin Frank, (former) Reg. Committee chair  
Re: Storage Trailers

To recap: Over a year ago, the Board of Selectmen sent out enforcement action letters to local businesses that appeared to be out of compliance with what was believed to be Conway regulations related to storage trailers, even though the ordinances do not specifically address storage trailers as such. A number of the business owners who received the letters subsequently appeared before the BOS to protest, and a decision was made to suspend enforcement until the regulations were clarified by the planning board.

The Planning Director proposed a solution (on file) that clarified the planning board's then-current interpretation of the existing regulations (that storage trailers were not permitted except in designated loading areas) and went on to define those areas. The language was reviewed by town counsel and found to be legal in his opinion. The planning board subsequently tabled the discussion related to storage trailers and decided to appoint a subcommittee including representatives of the public and the business community to study the matter further and make recommendations to the full board.

The subcommittee met a number of times over this past summer and made several recommendations (attached and on file). The subcommittee took a different approach by deciding that it was preferable to specifically permit storage trailers and then define under what circumstances they could exist on a site. The recommendations address both permanent and temporary trailers.

The main sticking point that the subcommittee could not effectively address was highlighted by the appearance of Shawn Bergeron before the planning board in regard to the existing storage trailers behind the Ames store in the Northway Plaza. He stated that in his opinion, since there were no references to storage trailers as-such in the existing regulations, any trailers on any site at the time a new regulation or interpretation went into effect would be grandfathered. Though I personally would like to disagree with him, I cannot. It seems far more likely to me that the legal argument that would prevail is that since our ordinance now not only doesn't prohibit them, it doesn't even mention them, they are in fact not prohibited.

I think the planning board would be well advised to get town counsel's opinion on that specific question before proceeding further, and to ask him to review both Tom's original proposal and the subcommittee's recommendations. If he says that he believes Tom's proposal will hold up in court, and the board wants to restrict existing storage trailers to the greatest possible extent, the board should then add the language related to temporary permits, meet with the BOS to be sure they would be willing to enforce if enacted and start the public hearing process. It should be expected that this route will likely result in

## CONWAY ORDINANCE REVIEW COMMITTEE

### Draft Recommendations for regulation of Storage Trailers

1. Temporary storage trailers should be permitted as an accessory use to an existing business. Any such use should be limited to a maximum of two periods per year, each period not to exceed 45 days in length. Permits for temporary storage trailers should be obtained from the town office prior to their arrival at the business site. A fee should be charged for each permit issued. Permits should be returned to the town office on or prior to the expiration of the permit period. If any permit is not returned by its expiration date, a fine of \$100 per day should accrue until such time as the permit is returned and the removal of the storage trailer(s) is confirmed.

The number of temporary storage trailers;allowed at each business site should be based on the square footage area of all buildings at that site. One temporary storage trailer for each 10,000 square feet of total building footprint should be permitted to a maximum of three trailers per site. Temporary storage trailers should be located on a paved surface, not located in any area designated as green space and should have a current registration.

2. Non-temporary storage trailers should not be a permitted use except when they are accessory to the principal business conducted at a business site. The location of non-temporary storage trailers at a business site is considered an increase in the intensity of use of a site and therefore site plan review will be required to insure that the site meets all applicable Town of Conway regulations. Non-temporary storage trailers permitted following a site plan review should be limited to one trailer per 10,000 square feet of building footprint per site to a maximum of three trailers per site. Non-temporary storage trailers should be set on inflated tires, well-maintained and screened from view from highways and abutting properties.
3. In situations where non-temporary storage trailers currently exist, if the business owner can document that the same trailers were in place prior to the enactment of site plan review regulations, such storage trailers will be a grandfathered non-conforming use. In the absence of such documentation, the site plan review process will apply, or alternatively, a temporary permit may be applied for as described above.

These are the recommendations of the Conway Ordinance Review Committee as discussed at the meeting of July 18, 2001. They are only recommendations and as such are not intended to be the actual ordinance language, which should be agreed on by the full planning board, the board of selectmen and approved by town counsel before proceeding to the public hearing process.

Adopted: December 14, 2000 – As Amended  
**CONWAY PLANNING BOARD – NOVEMBER 30, 2000**

get approved without coming to site plan review. Mr. M. Valladares stated that it would depend on how it is interpreted. The public hearing was closed at 9:33 p.m.

Ms. Sand made a motion, seconded by Mr. Frank, to have a second public hearing on Article 147-10.1. on December 14, 2000 with language to make this work or get it out of zoning entirely. Mr. Hounsell asked if changes could be incorporated at that time. Mr. Irving stated that substantial changes would need another hearing. The Board discussed forming a committee to review this ordinance. Motion unanimously carried.

Mr. Hounsell made a motion, seconded by Ms. Duane, to establish a task force on storage trailers to consist of one Planning Board member and two public members. Mr. Frank stated that there should be a member of the Board of Selectmen. Motion was defeated with Ms. Sand, Mr. Waterman, Mr. deFeyter and Mr. Frank voting in the negative. Mr. deFeyter made a motion, seconded by Ms. Sand, to form a task force on storage trailers to consist of two public members, one Planning Board member and one Board of Selectmen member and for the first meeting to be in January, 2001. After a brief discussion, the motion and the second were withdrawn.

Ms. Sand made a motion, seconded by Mr. Frank, to form a task force on storage trailers to consist of two members of the Planning Board, one member of the Board of Selectmen, two members of the public with the Planning Director being a technical advisor and the first meeting to be in January, 2001. Motion carried with Mr. M. Hounsell and Mr. Waterman voting in the negative. After a brief discussion, Ms. Sand made a motion, seconded by Mr. M. Hounsell, to amend the motion to say one member of the Board of Selectmen or their designee. Motion was defeated with Mr. Waterman, Mr. deFeyter and Mr. Frank voting in the negative. Mr. Hounsell made a motion, seconded by Mr. Frank, to table Article 147-10.1. Motion carried with Mr. deFeyter voting in the negative.

**PUBLIC HEARING - ARTICLE 123-24 - LOADING FACILITIES**

Ms. Sand made a motion, seconded by Mr. Frank, to postpone the public hearing on Article 123-24. Motion unanimously carried.

**ARTICLE 147-6 - DISCUSSION ON DEFINITION OF CARETAKERS RESIDENCE AND  
ARTICLE 147-12.2. - ADD CARETAKERS RESIDENCE TO PERMITTED USES**

Tom Dewhurst and Kurt Burke appeared before the Board. Mr. Dewhurst stated that this amendment would allow caretaker residences in the Industrial-2 zone for security reasons. Mr. Irving stated that the proponent is asking that the Board support this amendment so they do not have to go through the petition process. Mr. M. Hounsell asked if there is an RSA that gives a legal definition of family. Mr. Irving stated that he has not found one under an RSA. Mr. Irving stated with the absence of a formal definition we would use the plain and customary definition of no more than three persons that were not related.

Ms. Sand asked if there would be any effect on how many buildings per lot. Mr. Irving stated that it would still be considered a unit and would need a unit subdivision. Mr. Irving stated that the lot would have to be of sufficient size to accommodate two units. Mr. deFeyter stated that in reading the minutes when the industrial-2 district was added the idea was to have an industrial zone and gradually, over time, to be used for industrial uses only and not have it compatible for residential uses. Mr. deFeyter stated if you allow residences in the industrial zone you will need to provide services, such as school busses. Ms. Duane stated school busses have to go through the industrial zone to get to the residential area beyond it. Ms. Duane stated that they are already going there.

Mr. Dewhurst stated that he doesn't see this having a big impact. Mr. M. Hounsell stated that he cannot imagine any trouble, but doesn't mean we cannot further restrict it to just storage facilities. Mr. Waterman stated that any business has a security risk and this should be an option for them. Mr. deFeyter stated that the whole nature of zoning is to find different zones for different uses. Mr. Dewhurst referred to RSA 451:C. Mr. deFeyter made a motion, seconded by Mr. Frank, to amend the proposed wording to Article 147-12.2. to state "...in size. One Caretakers residence shall be permitted as an accessory use

Proposed amendment to §123-24:

~~§123-24. Loading Facilities. All non-residential sites shall provide off-street loading facilities. These facilities shall be located and designed to minimize traffic flow disruptions of entering and exiting vehicles, and so that delivery vehicles can be parked completely out of the right-of-way.~~

1. All non-residential sites shall provide off-street loading facilities. These facilities shall be located and designed to minimize traffic flow disruptions of entering and exiting vehicles, and so that delivery vehicles can be parked completely out of the right-of-way.
2. Outside facilities for trailers or vehicles used for storage or warehousing of goods or material shall be screened from sight from abutting properties and streets by means of a vegetated buffer. The facility and buffer shall be represented on the site plan.