

**CONWAY PLANNING BOARD**  
**MINUTES**  
**MARCH 13, 2003**

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CONWAY PLANNING BOARD

MINUTES

MARCH 13, 2003

A meeting of the Conway Planning Board was held on Thursday, March 13, 2003 beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Sheila Duane; Vice Chair, Robert Drinkhall; Secretary, Conrad Briggs; Brian Glynn; Martha Tobin; David Robinson; 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 February 27, 2003 as written. Motion carried with Ms. Tobin abstaining voting.**

The Minutes of March 6, 2003 should be amended as follows: page 1, paragraph 1, should include Brian Glynn as attending. **Mr. Drinkhall made a motion, seconded by Mr. Robinson, to approve the Minutes of March 6, 2003, as amended. Motion carried with Ms. Tobin abstaining from voting.**

**CONWAY AREA HUMANE SOCIETY – MINOR SITE PLAN REVIEW (PID 265-11 [FKA 276-1]) FILE #MR03-04**

Roz Manwaring and Paul Pinkham appeared before the Board. Ms. Manwaring explained the project. **Mr. Briggs made a motion, seconded by Ms. Tobin, to accept the minor site plan application of the Conway Area Humane Society as complete. Motion unanimously carried.** Mr. Irving stated that they are incorporating a small building for the smaller animals and adding phasing to the project. Mr. Irving stated that there is no increase in overall floor space and, actually, there will be a decrease.

Mr. Briggs asked why are you adding the small building. Ms. Manwaring stated that it is cheaper to construct and this will allow us to get started immediately. Ms. Tobin asked instead of one large building we are looking at two smaller buildings. Ms. Manwaring answered in the affirmative. Ms. Duane asked for public comment; there was none.

Ms. Duane read the requirements to grant a waiver. Ms. Duane read the waiver requests for Articles 123-5.A.5 (scale); 123-20.E & 123-22.B.; 123-20.I.; 123-21.A.; 123-29.D.1.; and 123-29.D.8. **Mr. Briggs made a motion, seconded by Ms. Tobin, to grant the waiver requests for Articles 123-5.A.5 (scale); 123-20.E & 123-22.B.; 123-20.I.; 123-21.A.; 123-29.D.1.; and 123-29.D.8. Motion unanimously carried.**

**Mr. Drinkhall made a motion, seconded by Ms. Tobin, that the project will be vested upon the completion of phase I. Motion unanimously carried.** Ms. Duane asked for public comment; there was none.

**Adopted: March 27, 2003 – As Written  
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**Ms. Tobin made a motion, seconded by Mr. Glynn, to approve the minor site plan review for the Conway Area Humane Society. Motion unanimously carried.** The plans were signed.

**M & P PARTNERS LTD PARTNERSHIP II – EXPIRED CONDITIONAL APPROVAL (PID 218-55) FILE #MR00-01**

Mr. Irving stated that the conditional approval for M & P Partners LTD Partnership II for a change-of-use to provide retail space for Eastern Mountain Sports expired on February 3, 2003. Mr. Irving stated that the applicant has not met the conditions and there has been no response to certified notices to the owner of the property.

**Mr. Glynn made a motion, seconded by Mr. Robinson, to deny the minor site plan review without prejudice for M & P Partners LTD Partnership II for failing to meet the conditions of the conditional approval granted February 3, 2000. Motion unanimously carried.**

**OTHER BUSINESS**

**Ed Poliquin/Old Mill Estates (PID 268-117.3)**: Dave of White Mountain Survey Company appeared before the Board and asked if it is necessary to submit a subdivision application to change from two duplexes to four single-family homes. Mr. Irving stated that the original approval was based on a waiver request to allow four single-family residences to be arranged in duplexes and served by one driveway. Mr. Irving stated if the applicant wishes to construct four single-family detached residential structures, the Planning Board would have to reconsider the waiver for the driveway standards.

Mr. Irving stated for the Board to reconsider waivers there has to be an application. Mr. Irving stated if the Planning Board finds that four single-family detached residential dwellings served by a single driveway is consistent with the previous waiver approval and does not require another subdivision review and allowed the applicant to construct four single-family detached structures there would be complications if the Board is requested to approve as-built plans. Mr. Irving stated that it would be difficult to accept that they meet the requirement with the note “this as-built plan is submitted pursuantto, and without modification of, the original Planning Board approval.”

Mr. Irving stated without reviewing the subdivision again the Board would not be able to confirm that required building setbacks and separations are satisfied. Mr. Irving stated that the Board could waive for up to three units as long as the road geometrically meets the standards. Ms. Duane stated that it is still four units just in separate buildings. Mr. Irving stated that we would have to make sure the building distance has been met and there is also a note on the as-built plans that it meets the original approval and that would have to be amended.

**Adopted: March 27, 2003 – As Written**  
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Mr. Irving stated that he agrees that the Board would probably grant the waiver, but it is an administration process. Mr. Irving stated that it would be a minor subdivision to accept the changes. The Board agreed that a minor subdivision is necessary.

**Al Landano/Village at North Conway (PID 235-51):** Al Landano appeared before the Board. Ms. Duane stated as a note to look into later she has an issue with the Special Highway Corridor District and that district should be revisited. [Note: The applicant has purchased the building rights at Town Auction and came before the Board to inquire what would be necessary in order to use those building rights].

Mr. Irving stated that anything that affects the common land has to be approved by the Association and be privy of any requests before the Board. Mr. Irving stated that this would require a concurrent subdivision and site plan review. Mr. Irving stated that a waiver request for more than 35 units on a dead end street would need to be requested unless there is a way to obtain a secondary access. Mr. Irving stated that the original approval was based on a second access and that no longer exists with the construction of North-South Road. Mr. Irving stated that Mr. Landano should go to the Association first and receive their comments as they will need to sign the application.

Ken Vance submitted the Minutes of the July 31, 2001 Board of Selectmen meeting. Ms. Duane stated that we are looking at a piece of land that could support the development, but the secondary access has been removed. Ms. Duane stated that she would like to see the original approval information and information from the Board of Selectmen on the sale of the building rights.

Mr. Vance stated that they as an Association have no rights, the Town for non-payment of taxes foreclosed on the rights on Lot #5. Mr. Irving stated that the Association owns common land. Mr. Glynn asked if there are any vesting rights. Mr. Irving stated that the Board of Selectmen put on the stipulation that this must meet all current codes. Ms. Duane stated that the applicant should first review his plans with the Association and the Board should review the original approval.

**Cliffside Restaurant (PID 217-24) - FYI:** Mr. Irving stated that the owners of the Cliffside Restaurant are replacing their septic system and concurrent with that activity they wanted to increase the square footage under the decks by less than 100 square feet to accommodate a concrete slab covered by a roof, but not enclosed. Mr. Irving stated that they will be coming in for a site plan review as there are other modifications to the site proposed, which would include enclosing the slab.

Mr. Irving stated if they do not submit an application or obtain an approval the new work would remain as an open structure. Mr. Irving stated that he would be approving the slab and roof as a small undertaking and the Board indicated that that would be appropriate. Mr. Irving clarified that the reason he was bringing this to the Board's attention was that there will be significant construction activity at the site regarding the slab and septic system replacement and that he wanted the Board to be fully informed.

**Adopted: March 27, 2003 – As Written  
CONWAY PLANNING BOARD – MARCH 13, 2003**

**Parking at Norcross Circle:** Ms. Duane asked how do we bring the re-striping and gain of parking spaces on Norcross Circle to reality. Mr. Irving stated that he has spoken to the Engineer and he is okay with the proposal and the Fire Chief is looking at it. Mr. Irving suggested the Board sending a formal request to the Board of Selectmen requesting the re-striping around Schouler Park. The Board agreed and Mr. Irving agreed to draft a letter.

**123-4.A.5. Amendment:** Mr. Drinkhall made a motion, seconded by Mr. Briggs, to post the amendment to Article 123-4.A.5 to a public hearing on March 27, 2003. Motion unanimously carried.

**Article 131-41 Amendment:** Mr. Briggs made a motion, seconded by Mr., Drinkhall, to post the amendment to Article 131-41 to a public hearing on March 27, 2003. Motion unanimously carried.

**Thomas Fadden/Harold Whitaker (PID 263-56 & 58) File #S03-05 – Plan Signing:**  
The conditions being met, the Board signed the plans.

**William and Arlene Strickland/Wyatt House (PID 215-32) File #MR03-03 – Plan Signing:** The conditions being met, the Board signed the plans.

Meeting adjourned at 8:18 p.m.

Respectfully Submitted,

Holly L. Meserve  
Recording Secretary

**123-4. Applicability.** There are three possible applications of this code to development of a non-residential or multi-family site to be determined by the designee of the Board:

- The code is NOT APPLICABLE;
- The Planning Board provides a MINOR REVIEW; or
- The Planning Board provides a FULL REVIEW.

The following criteria specify the level of review necessary for a proposal to develop a commercial or multi-family site:

A. Not Applicable. The determination of "not applicable" by the designee of the Board shall mean that no site plan review approval is necessary, although other types of approvals or permits may be necessary per other municipal codes and an application shall be kept on file. The Site Plan Review Regulations shall be deemed not applicable for the following:

1. Temporary events which require no permanent alterations to the site and which function safely within the approved configuration of the site as determined by designee of the Board; or
2. Special events approved by the Board of Selectmen.
3. Agricultural buildings as defined in the Town of Conway Zoning Ordinance (§147-6 Definitions).
4. Small undertakings where it is demonstrated that:
  - (a) All proposed changes to the structure and/or site conform to all other applicable codes and reasonably conform to the site design standards of this Chapter;
  - (b) Proposed changes do not increase the intensity of use on the site beyond the service capacity of existing on-site infrastructure (including but not limited to parking, traffic generation and septic loading);
  - (c) Any net reduction in greenspace on the lot is less than or equal to 200 square feet;
  - (d) Any increase in structure floor space is less than or equal to 100 square feet; and
  - (e) This subsection (§123-4. A. 4.) shall not be applied more than twice before a Minor or Major Review by the Planning Board is required so that cumulative impacts can be evaluated in a public forum.

5. Where the Planning Board finds that the change of use and/or physical changes to the site are insignificant relative to the existing development.

B. Minor Review. A Minor Review by the Planning Board shall be required for any development that does not qualify to be "not applicable" or "full review."

C. Full Review. Unless deemed not applicable pursuant to 123-4.A.5., a Full Review by the Planning Board shall be required for the following:

1. Establishment of non-residential use where no non-residential use currently exists;
2. Establishment of multi-family use where no multi-family use currently exists;
3. Reduction in greenspace on the lot exceeds 1,000 square feet; or
4. The increase in structure floor space exceeds 1,000 square feet or 25% of existing floor space, whichever is more restrictive.

**131-41. Commercial/industrial and multiple-dwelling units. [Amended 5/89]**

Each building used for commercial/industrial purposes without dwelling units shall be considered a single unit. In a building containing both commercial/industrial and dwelling units, each dwelling unit shall be counted as one (1) unit, and all of the commercial/industrial occupants shall be counted as one (1) unit. ~~The development of two (2) or more units on a single lot constitutes a subdivision and will require application of the subdivision regulations.~~ In a proposed development of mixed commercial and residential uses, there shall be adequate lot size to accommodate any existing structures and uses, required parking areas, septic areas and required greenspace prior to calculating the available acreage balance for additional units.

**CMF DEVELOPMENT, LLC**

PO BOX 1288  
CONWAY, NH 03818  
(603) 447-3646  
FAX: (603) 447-6628

02-28-03  
left message  
for dl  
13:10 pm

February 25, 2003

Holly Meserve  
Town of Conway  
PO Box 70  
Center Conway, NH 03813

Re: Village at North Conway Subdivision

Dear Holly,

I would like to schedule a conceptual review meeting with the planning board on March 13<sup>th</sup>, if possible. I have enclosed a map of the property for your review. If you feel I should have additional information available for the meeting, please contact me at the number above.

Sincerely,

Alfred J. Landano

1. Village at North Conway; an approved 42 unit condominium development (32 units now exist).
2. The development rights for ten units were sold at public auction on November 16, 2002. The property is subject to all current, applicable ordinances and statutes of the State of New Hampshire and Town of Conway.
3. The development now exceeds the 35 unit rule (see attached, Chapter 131/5).
4. I spoke with Tom Irving; zoning and density does not seem to be a problem.
5. I spoke to Gary Chandler and Pat Priest about life safety issues. They have no problem with access to the property or the water supply. The village is serviced with a 12" water main and there are two fire hydrants within approximately 100-150' of the proposed buildings.
6. The property now falls into the Special Highway Corridor Overlay District, whereas no one building with a footprint greater than 5,000 square feet is allowed. I would propose building one four unit and two three unit buildings (see attached, Chapter 147/9).
7. Second access- what happened to it? Would there be consideration to open the road back up for limited access to emergency vehicles only? The access road would be gated on town property, and improved and paid for by the developer.

### **Questions**

1. How do I go about requesting a waiver of the variance?
2. Is a limited access for emergency vehicles an option, and if so, what would be required?
3. If a waiver is granted, what would be required from the Planning Board to build three individual buildings, (1) four unit and (2) three unit condominiums, in the Special Highway Corridor Overlay District?

Attn: Al Landano

1 page

**CHAPTER 131 - SUBDIVISION OF LAND**

Page 41

Most Recently Revised: January 9, 2003

Previous Revision: April 25, 2002

From: Holly Meserve

31-67.C.(5)

- a. **Level terrain** - A minimum sight distance of two hundred feet is required.
- b. **Rolling and hilly terrains** - A minimum sight distance of one hundred and fifty feet is required.

- 5. **Dead End length and units, maximum** - A dead end street shall not serve more than 35 dwelling units.
6. **Cul-de-sac turn around radius, minimum** - See Detail 4.
7. **Off-Street Parking** - The pavement widths as detailed earlier are predicated on there being no on-street parking. As such off-street parking of two spaces per lot or unit shall be required.
8. **Driveways** - Driveways shall be located and their entrances designed as a part of street design. See Detail 5. The minimum standards which must be met are as follows:
- a. Drainage analysis may be required.
- b. Minimum width of ten foot driveway for residential and twenty feet for non-residential. Maximum width of eighteen foot driveway for residential and thirty-six foot driveway for non-residential.
- c. 90 degree +/- 15 degrees intersection with street.
- d. Intersection flares - at a minimum single family driveways shall provide a fifteen foot curb radii.
- e. Driveway grade shall not exceed a sixteen percent grade and shall maintain a negative grade until it is beyond the ditch line.
- f. Commercial driveways require curbing and a minimum radius of 25 feet.
- g. Unpaved driveways will require paved aprons of 15-30 feet.
- h. No more than 2 curb cuts for residential lots (see also 123-21).
9. **Utilities**- All underground facilities and transformer slabs shall be located at the right of way line.

**131.68. Miscellaneous Standards.****A. Highway Bounds and Signs**

Granite highway bounds, at least twenty-four inches in length and four inches square, shall be set at all points of street intersection and at all points of change of direction as per proper surveying standards.

All projects shall conform with the Manual of Uniform Traffic Control Devices.

**B. Consultants**

The Planning Board or Board of Selectmen may hire consultants to review plans, perform inspections and/or perform other duties related to the project as they deem appropriate. All costs of said consultants shall be paid by the applicant.

- Q. **Building Size.** So as to avoid expansive areas of tree clearing, no building with a footprint greater than 5,000 square feet inside exterior walls shall be permitted. No less than forty (40) feet shall be allowed as separation distance between buildings. When necessary to accommodate larger projects, several structures with building footprints of no more than 5,000 square feet each may be placed on the same lot, provided that all other standards are met. Efforts to save and plant native trees between and among structures shall be encouraged.
- R. **Parking**
- (1) Parking requirements shall be as specified in Section 123-21 of the Town's Site Plan Review Regulations, except as modified herein.
  - (2) So as to avoid expansive areas of tree clearing and asphalt, developments requiring parking in excess of 30 spaces shall provide parking in several parking areas of no more than thirty (30) parking spaces each. Such parking areas, shall be separated by natural or planted landscaped areas or by buildings. Efforts to save and plant native trees between and among the parking areas and buildings shall be encouraged.
  - (3) The requirement for the separation of parking areas, specified under paragraph (2) above, shall not diminish the requirements for traffic control islands and associated landscaping within each parking area, as specified in the Town's Site Plan Review Regulations (Chapter 123). Required traffic control islands, otherwise meeting the minimum requirements of Chapter 123, shall not typically qualify as a "landscaped area" as described in paragraph (2) above.
- S. **Intent of Building and Parking Standards.** The intent of the building and parking standards set forth under paragraphs P., Q. and R., above, is to encourage development forms which take on the appearance of buildings and parking areas nestled under a canopy of trees.
- T. **Site Planning for Scenic Views and Vistas.** When setting principal structures or other land use activities within the Special Highway Corridor District, the developer is encouraged to design the site in a manner to protect, preserve and facilitate scenic views and vistas, thereby furthering the purpose of this section. Scenic views and vistas may include but not be limited to views to significant and/or unique areas of natural beauty such as lakes, ponds, marshes, rivers, mountaintops, trees, open space, and hillsides. Also included may be scenes, which depict the area's historic, cultural, rural and/or farming heritage, and natural recreation amenities such as golf courses and outdoor trails.
- U. **Utilities.** All utility systems shall be placed underground in conformity with the terms and specifications of the utility company involved.

Adopted: 09/04/01

**Minutes of Meeting  
CONWAY BOARD OF SELECTMEN  
July 31, 2001**

The Selectmen's Meeting convened at 4:15 p.m. in the meeting room of Conway Town Hall with the following present: Selectmen, Gary Webster, Dick O'Brien, Jac Cuddy and David Weathers; Town Manager, Earl W. Sires; and Recording Secretary, Karen Hallowell.

**VILLAGE AT NORTH CONWAY RESORT CONDOMINIUM: REQUEST FOR REDEMPTION OF DEVELOPMENT RIGHTS**

Attorney Bob Zimmerman, representing Village at North Conway Condominium Resort, and two members of the Condominium Association joined the meeting along with Town Attorney, Peter Malia. Attorney Malia advised that the Town Tax Collector has deeded development rights to the Town for non-payment of taxes. This involves the Village at North Conway Resort Condominiums, which was approved sometime prior to 1990 for a 42-unit condominium development. 32 Units have been built and 10 remain unbuilt. The developer stopped paying taxes on the 10 units. In 1991 the Town filed a tax lien on the unbuilt units. For two years thereafter, the declarant was still the owner but did not redeem and so in 1993 a tax collector's deed was recorded. For three years thereafter the declarant could also have redeemed, not as the owner, but the prior owner.

Declarant again did not redeem. Now we are seven years removed from the Tax Collector deeding these development rights to the Town and the Association. Now the declarant is now coming forward and asking that they be allowed to redeem these development rights. Mr. Malia advised that similar to the Miller matter heard a few weeks earlier, the Town is not obligated to allow the declarant to redeem. Mr. Malia further stated that if the Board wants to use Miller as a guiding precedent, then these development rights, like those at Cranmore Birches II, would be put up for auction and you won't even have to address the issue of whether the Association has succeeded the declarant as the prior owner. Attorney Malia advised that he has had discussions regarding this with Attorney Bob Zimmerman, who represents the Association in this matter.

Attorney Zimmerman advised that he has represented the Village at North Conway Resort Condominium Association since the mid 1980's

forward and they have been through a lot of things. One of the things that has happened is that for economic reasons the bottom dropped out of the market 80% of the way through this project and nobody ever broke ground on the last ten units. Since that time, there have been some difficulties between the condominium owners and the declarants and one of the declarants went bankrupt and transferred his interest to the other. The essential thing that happened was that the Town began in 1991 to assess these development rights and prior to that time did not.

The taxes were not paid by the developer and he had no economic chance whatsoever of going forward with this and where it is left today is with 32 of 42 planned units. At this point the Association is trying to do some clean up work to finalize this matter one way or another. The Association is currently the sole owner of all of the real estate ever dedicated to this condominium project. The only outstanding interest in the property not owned by the Association is this undivided right to fill out this footprint piece of land which they feel they are entitled to since they pay the taxes there to develop these ten units.

Attorney Zimmerman went on to state that the strongest point he has to make is that this is the only circumstance under which he can think that the title owner of all of the property is not even entitled to statutory notice of what is transpiring with their property because by cutting out and taxing the undivided interest in the property, the right to enter on a premises and complete this project, you separate yourself out from the individual 32 owners and he doesn't believe there was any knowledge on the part of the Association that this was all going down and that they should be looking out for their own interest. Mr. Zimmerman next stated that he thought it would be appropriate if the Selectmen at least agree to reopen and revisit this matter on a question of redemption rather than just following through and selling out this sensitive right to a third party.

Attorney Zimmerman next stated that what he felt were a few distinctions between the Miller situation and the situation with the Village at North Conway Resort Condominiums Association. Mr. Zimmerman stated that he would like to have discussion with the Board members today to make some progress toward a resolution where they reacquire the rights with fair compensation to the Town under the circumstances.

**Mr. Cuddy advised that the only way to develop these units is to open up a second egress and the Association controls this. Mr. Cuddy advised that according to the ordinances you cannot have a build out of 10 more units without having a second egress. Mr. Cuddy advised that if they opened up to the North/South Local Road you would have a second egress and ten units could move forward. Walter Senior of the Association questioned if this assess would strictly be used for emergency vehicles. Mr. Sires advised that it would have to be open for all uses.**

**There was further lengthy discussion. Mr. Cuddy stated that our concern is that we have development rights that the Town has taken and they are assessed at a certain value. At this point in time he does not see any difference in these rights from Mr. Miller. Mr. Cuddy further advised that the Board has already voted to move forward with an auction of town owned property in the spring.**



**VILLAGE AT NORTH CONWAY SUBDIVISION:  
Current Units –Looking Northeast From cul de sac**



**VILLAGE AT NORTH CONWAY SUBDIVISION:  
Actual Site Looking Southwest**



**VILLAGE AT NORTH CONWAY SUBDIVISION:  
Cul De Sac Looking North Toward North-South Road**



**VILLAGE AT NORTH CONWAY SUBDIVISION:  
North-South Road Boundary Looking West**