

CONWAY PLANNING BOARD

MINUTES

SEPTEMBER 28, 2006

A meeting of the Conway Planning Board was held on Thursday, September 28, 2006 beginning at 7:03 pm at the Conway Town Office in Center Conway, NH. Those present were Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Secretary, Steven Porter; Sean McFeeley; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Martin, to approve the Minutes of September 14, 2006 as written. Motion carried with Mr. McFeeley abstaining from voting.

S & C HOFMANN REVOCABLE TRUST OF 2001 – FULL SITE PLAN REVIEW (PID 218-57) FILE #FR06-08

Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. This is an application to construct a 3,360 sf dentist office and convert existing structure to a residential unit. **Mr. Porter made a motion, seconded by Mr. Martin, to accept the application of S & C Hofmann Revocable Trust of 2001 for a Full Site Plan Review as complete. Motion unanimously carried.**

Mr. Drinkhall read the requirements to grant a waiver. Mr. Drinkhall read the waiver requests for §123-20.F./131-67.C.8.f; 123-20.G; 123-29.A.2. & A.3; 123-29.A.4; and 123-29.D.8. **Mr. Porter made a motion, seconded by Mr. McFeeley, to grant the waiver requests for §123-20.F./131-67.C.8.f; 123-20.G; 123-29.A.2. & A.3; 123-29.A.4; and 123-29.D.8.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Scott Henley from the Mt. Washington Observatory asked if there would be any parking implications on their property. Mr. Bergeron stated that this project would not increase the parking demand on their property. Mr. Bergeron stated that the applicant is providing nine more parking spaces than necessary. Mr. Martin asked if there is a written agreement with the Mt. Washington Observatory property. Mr. Bergeron answered in the affirmative and stated that it goes back to when the property was owned by White Mountain Bank.

Mr. McFeeley made a motion, seconded by Mr. Porter, to conditionally approve the Full Site Plan for S & C Hofmann Revocable Trust of 2001 conditionally upon indicating NHDOT Driveway Permit approval number on plan; removing Professional Office from existing building on proposed site plan (to remain on

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existing features plan); submitting a Mylar; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on January 11, 2007. Motion unanimously carried.

PUBLIC HEARING - §131- SUBDIVISION REVIEW REGULATIONS

This is a public hearing to provide discretion as to how the applicant demonstrates compliance with the regulation's design requirements. Mr. Drinkhall opened the public hearing at 7:16 pm. Mr. Drinkhall asked for public comment; there was none. The public comment was closed at 7:17 pm. **Mr. Martin made a motion, seconded by Mr. Porter, to adopt the proposed amendments to §131 as written. Motion unanimously carried.**

PUBLIC HEARING - §123 – SITE PLAN REVIEW REGULATIONS

This is a public hearing to eliminate ambiguity by deleting the word “temporary” and reference to outdoor seating. Mr. Drinkhall opened the public hearing at 7:17 pm.

Mr. Drinkhall asked for public comment; Bob Schor stated that he didn't realize that the Planning Board had been discussing this amendment and stated that outdoor restaurant seating would not be regulated at all. Mr. Drinkhall stated that is correct. Mr. Schor asked how something that is against the Master Plan could be removed. Mr. Schor stated that the Master Plan references §123-41. Mr. Irving stated that he is not aware that the Master Plan referencing any specific section of the ordinance. Mr. Schor stated Chapter 9, section 5, specifically speaks about outdoor seating.

Mr. Martin stated that it discusses it as it is worded in the ordinance, but what the Board is reviewing is the word “temporary”. Mr. Martin stated just because it is in the Master Plan doesn't mean it is there for that reason, but in existence when it was written. Mr. Martin stated that restaurant seating is regulated under another ordinance. Mr. Irving stated that restaurant seating is regulated under the parking demand whether inside or outside.

Mr. Drinkhall stated under a section for “temporary” just doesn't make sense. Mr. Schor stated that it may not be temporary, but it should be regulated. Mr. Schor stated that this regulation is regulating outdoor use and that is why it is lumped in there. Mr. Porter stated any restaurant before us with outdoor seating has to present the seating on a site plan. Mr. Irving stated at this time we don't have any specific regulations that states that they have to indicate the location of outdoor seating.

Mr. Schor stated there seems to be some confusion amongst Board members that it is regulated under another regulation, but it seems they would be able to locate outdoor seating anyway. Mr. Drinkhall stated that except for buffer and setbacks that is correct. Mr. Schor stated that usual and customary approach is if a restaurant has 100-seats and they want to put those 100-seats outside, they could, as long as there were no seats inside.

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Mr. Schor stated most recently the State Line Store appeared before the Board and proposed outdoor seating and the Board had discussion regarding additional parking spaces and the affect on the neighbors. Mr. Irving stated that this amendment would not look at this differently.

Mr. Schor asked how this came to the Board. Mr. Irving stated that the Board of Selectmen requested that the Planning Board make this amendment and the Planning Board concurred with the amendment. Mr. Schor asked why the Board of Selectmen requested this amendment. Mr. Martin stated that it was to remedy confusion and to make it read the way it was applied. Mr. Drinkhall stated that this is a house keeping issue. Mr. Schor disagreed.

Mr. Irving stated that he did do some research and did not yet find examples that regulated outdoor seating on private commercial land in commercial districts. Mr. Irving stated that he did find examples of regulating outdoor seating on public lands, such as sidewalk cafes. Mr. Irving stated that this amendment does not affect how this Board regulates outdoor seating. Mr. Martin stated in essence we do not regulate where such seating is located. Mr. Irving stated he would recommend that the Board require outdoor seating be indicated on site plans.

Mr. Schor stated that he doesn't think the Board should just abandon a town regulation that would then be in opposition of the Master Plan. Mr. Schor stated that a legal opinion is necessary as this regulation provides protection to the residential property owners. Mr. Schor stated that the Board would be tossing out what the Master Plan dictates. Mr. Schor asked why abandon this component without having anything else in place. Mr. Schor stated that the regulation is for outdoor commercial activities and he thinks that it might be premature to take out restaurant seating.

Mr. Drinkhall asked for other public comment; there was none. Mr. Drinkhall closed public comment at 7:34 pm. Mr. Martin stated that the Master Plan is a guide and not cast in stone. Mr. Martin stated that the people sitting on this board has always looked at the overall site plan and outdoor seating has been addressed. Mr. Martin stated that we don't micromanage nor was that ever the intent of that ordinance. Mr. Drinkhall agreed. Mr. McFeeley agreed.

Mr. Martin made a motion, seconded by Mr. McFeeley, to adopt the proposed amendments to §123-41 as written. Motion unanimously carried.

HAMLIN GREENE/THE DRUKER COMPANY, LTD/SCENIC RAILROAD REALTY, LLC – CONCURRENT SITE PLAN AND SUBDIVISION REVIEW CONTINUED (PID 246-23, 24 & 24.001) FILE #FR06-04 & S06-12

This is an application to convey 4.945 acres from PID 246-23 to PID 246-24, create a right-of-way, amend the two-unit subdivision, demolish 49,962 square feet and construct a 68,874 square foot Stop & Shop Supermarket with associated parking and infrastructure at 1584 White Mountain Highway. This application was accepted as complete on May

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11, 2006. Mr. Irving stated that the applicant has withdrawn the application. **The Board acknowledged that the application has been withdrawn.**

JOHN NELSON, JR – SUBDIVISION REVIEW CONTINUED (PID 258-68) FILE #S06-16

This is an application to subdivide 340± acres into 40-lots. This application was accepted as complete on June 22, 2006. Mr. Irving stated that the applicant has requested a continuance. **Mr. Martin made a motion, seconded by Mr. Porter, to continue the Subdivision Review for John Nelson, Jr. until October 26, 2006. Motion unanimously carried.**

OTHER BUSINESS

Charles Sutton (PID 215-71) – §123-4.A.5: Charles Sutton appeared before the Board. Mr. Sutton stated that he would like to construct an addition for his master bedroom.

Mr. Martin made a motion, seconded by Mr. Porter, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that the construction of a 170 sf second floor master bedroom addition is not subject to a Minor or Full Site Plan Review because it has been demonstrated that the change of use and/or physical changes to the site are insignificant relative to the existing development. Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

White Mountain Chapel (PID 265-202) – §123-4.A.5: Pastor Jim Wheatley appeared before the Board. Mr. Wheatley stated that the church would like to construct a shed for storage.

Mr. Martin made a motion, seconded by Mr. Porter, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that the construction of a 10' x 16' shed is not subject to a Minor or Full Site Plan Review because it has been demonstrated that the change of use and/or physical changes to the site are insignificant relative to the existing development. Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Rick Brillard (PID 215-20) – Field Change Request: Shawn Bergeron of Shawn Bergeron Technical Services appeared before the Board. Mr. Bergeron stated that the applicant would like to modify the restaurant seats for Elvio's Restaurant by increasing the number of indoor seats to 48 seats from 24 seats and decreases the number of outdoor seats to 12 seats from 36 seats. Mr. Bergeron stated that the total number of seats would remain at 60, which is the number of seats indicated on the conditionally approved site plan [File #FR05-14].

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Mr. Porter stated that nothing has been done to that property since it came before the Board and was granted conditional approval. Mr. Porter stated that if the conditions of approval are left as they are and they move the seats indoors, once the project starts, they are going to want their outdoor seats back. Mr. Martin stated that the Board could allow the 48-seats inside, but the applicant would have to withdraw the conditional approval. Mr. Martin stated that the Board granted a waiver for 12 parking spaces based on the fact that it was for the outdoor seating, which is seasonal.

Mr. Irving stated that he could grant the applicant the use of 48 indoor seats, but the concern is when the conditional approval becomes a final approval only 24 seats would be allowed indoors and the others would have to be removed. Mr. Irving stated during the site plan review the focus was around the waiver and if the applicant wants to develop what is on that plan they might have to come back to the Planning Board to increase the amount of indoor seating. Mr. Bergeron stated that the total number of seats on the site would never be increased to any more seats than what has been approved. Mr. Martin stated that the waiver was granted based on the whole project. Mr. Bergeron stated once the applicant develops the site they would have to abide by the plan.

The Board and the applicant's agent agreed that the conditional approval as granted would not be changed and at such time that the conditional approval is brought to a full approval the full approval will be based upon and enforced as per the conditional approval.

Joseph and Lisa Querci (PID 218-101) – Concurrent Site Plan and Subdivision (File #FR05-16 and #S05-17) – Extension of Conditional Approval: Mr. Porter made a motion, seconded by Mr. Martin, to extend the conditional approval for Joseph and Lisa Querci until March 22, 2007. Motion unanimously carried.

Settlers' R2, Inc (PID 235-89) – Request for Concurrent Site Plan and Subdivision Review: Mr. McFeeley made a motion, seconded by Mr. Porter, to allow a Concurrent Site Plan and Subdivision Review for PID 235-89. Motion unanimously carried.

Katherine Brassill/Adventure Suites (PID 202-14) – §123-4.A.5: The Board agreed to move forward with the request without representation present. The Board reviewed the proposal submitted by Ronald Briggs of Briggs Land Surveying. Mr. Porter stated that there would be a significant decrease in greenspace and a full site plan review should be required.

Mr. McFeeley made a motion, seconded by Mr. Porter, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that the construction of an 8'-wide sidewalk along the front of the building and redesign the parking area, which results in a loss of 3,866 square feet of greenspace and the addition of three parking spaces is not subject to a Minor or Full Site Plan Review because it has been demonstrated that the change of use and/or physical

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changes to the site are insignificant relative to the existing development. Motion unanimously defeated.

Zoning Amendments: Mr. Irving stated that he had one proposed zoning amendment so far, being the change in minimum size of an apartment. Mr. Irving asked if the Board had any other suggestions. Mr. McFeeley asked about the possibility of a size cap on retail. Mr. Irving stated that it would take some research and he's not sure if a town wide cap would be necessary. Mr. Irving stated that this would be an involved amendment. Mr. McFeeley stated that he had just started researching the issue.

Mr. Irving stated that he asked the Board last spring what they wanted him to research and the Board indicated the Implementation Chapter of the Master Plan, the Capital Improvements Plan and the site plan and subdivision regulations. Mr. McFeeley stated that they could hold off on his amendment; he was just conducting some research.

Mr. Irving stated that there was discussion regarding signage and village plans and he would be meeting with some consultants for a ballpark figure on cost and time. Mr. Irving stated if the Board wants to go with a money article, the Board would be expected to present and promote the article.

Meeting adjourned at 8:07 pm.

Respectfully submitted,

Holly L. Meserve
Planning Assistant