

**CONWAY PLANNING BOARD**

**MINUTES**

**MARCH 12, 2009**

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CONWAY PLANNING BOARD

MINUTES

MARCH 12, 2009

A meeting of the Conway Planning Board was held on Thursday, March 12, 2009 beginning at 7:03 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Selectmen's Representative, Robert Drinkhall; Secretary, Patricia Sell; Theodore Sares; Dana Hylan; Alternate, Steven Hartmann; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

**APPOINTMENT OF ALTERNATE MEMBER**

Mr. Porter appointed Mr. Hartmann as a voting member.

**REVIEW AND ACCEPTANCE OF MINUTES**

The Minutes of February 26, 2009 were amended as follows: page 1, under Review and Acceptance of Minutes, should be amended as follows: "...as written. Motion **carried with Ms. Sell and Mr. Hylan abstaining from voting unanimously carried.**" **Mr. Sares made a motion, seconded by Ms. Sell, to approve the Minutes of February 26, 2009 as amended. Motion unanimously carried.**

**SUZANNE B. CROWLEY REVOCABLE TRUST – BOUNDARY LINE ADJUSTMENT (PID 240-7 & 9) FILE #S09-04**

Diane Smith of Thaddeus Thorne Surveys appeared before the Board. This is an application to add 100.56 acres from PID 240-7 to PID 240-9. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to accept the application of Suzanne B. Crowley Revocable Trust for a Boundary Line Adjustment Review as complete. Motion unanimously carried.**

Mr. Porter asked for Board comment; Ms. Sell asked for the location of the boundary that would be removed. Ms. Smith reviewed the plan with Ms. Sell. Ms. Sell asked if there were any easements. Ms. Smith explained two easements. Mr. Porter asked for public comment; George Pfender asked if there is a purpose for the change. Ms. Smith stated that the family would like the larger land associated with one particular house.

Mr. Porter read the waiver requests for §131-24, 24.A & 25.A; §131-24.E, 25.F, 24.N, 24.O, 24.H & 24.J; and §131-37.1.A. **Mr. Drinkhall made a motion, seconded by Ms. Sell, to grant the waiver requests for §131-24, 24.A & 25.A; §131-24.E, 25.F, 24.N, 24.O, 24.H & 24.J; and §131-37.1.A.** Mr. Porter asked for Board comment; there was none. Mr. Porter asked for public comment; there was none. **Motion unanimously carried.**

**Ms. Sell made a motion, seconded by Mr. Drinkhall, to approve the Boundary Line Adjustment for Suzanne B. Crowley Revocable Trust. Motion unanimously carried.** The plans were signed.

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**PETER RATTAY TRUSTEE OF THE PETER RATTAY REVOCABLE TRUST OF 2001 – FULL SITE PLAN REVIEW (PID 202-182 & 186) FILE #FR09-02**

Mark Lucy of White Mountain Survey Company; and Robert S. Carey of Orr & Reno Professional Association, Attorney for Peter Rattay, appeared before the Board. Peter Rattay was in the audience. This is an application to consider additional parking areas, a new tent garden patio, a new wedding garden patio and associated infrastructure.

Mr. Lucy stated the property under consideration is PID 202 -182 & 186 and is locally known at the Stonehurst Manor. Mr. Lucy stated that the entrance is off Route 16 and then goes along Stonehurst Village Road. Mr. Lucy stated that the site is in the in the highway commercial and residential agricultural districts. Mr. Lucy stated that the zoning district boundary bisects the lot. Mr. Lucy stated that the property is 6.5 acres and the existing greenspace is 75%. Mr. Lucy stated by code there are 96 trees required and the existing trees account for 264. Mr. Lucy stated that those 264 trees qualify for tree credits.

Mr. Lucy stated that the purpose of the plan and this review is to provide the Planning Board with an updated inventory of site improvements that have been made since the adoption of the site plan review regulations in 1982. Mr. Lucy stated that it is also intended to demonstrate to the Planning Board the sites existing level of conformity with the site plan regulations.

Mr. Lucy stated he would like to briefly hit upon the three site improvements done subsequent to 1982. Mr. Lucy stated there is a patio known at the Inn as the Tent Garden, which prior to 1982 was a flagstone covered patio and seasonally covered by a tent where functions were held. Mr. Lucy stated in 2007 the flagstone was removed and concrete put in its place. Mr. Lucy stated today it is a concrete patio seasonally covered by a tent.

Mr. Lucy stated the diagonal parking around the horseshoe one-way drive prior to 1982 was grass and gravel and was used for parking. Mr. Lucy stated from 1982 to 2005 the use did not change. Mr. Lucy stated in 2005 the parking was paved.

Mr. Lucy stated finally the third improvement that has been made since 1982 is known at the Inn as the Wedding Garden. Mr. Lucy stated that prior to 1982 it was just a lawn area where wedding ceremonies and receptions were held. Mr. Lucy stated from 1982 to 2007 it remained in that state. Mr. Lucy stated in 2007 brick pavers were placed in the area known as the Wedding Garden. Mr. Lucy stated that is the summary and thanked the Board.

Mr. Irving stated other than what is in his report he'd like to note the highlight issue. Mr. Irving read from his staff report "Improvements were made to the site prior to securing permits and approvals from the Town. Although the added parking was conditionally approved in 1989, it was not granted full approval nor was it vested. The applicant mistakenly believed that they had authorization to make these improvements". Mr. Irving stated that the reason he required them to come to this Board was because improvements were made and they were sufficient to trigger site plan review. Mr. Irving stated it's kind of getting the permit after the fact.

Mr. Sares stated the improvements had been utilized on-going, nothing new is being added. Mr. Irving stated everything they're talking about is currently on the ground. Mr. Sares stated the wedding garden, the tent garden and the parking have been used. Mr. Irving answered in the

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affirmative. Mr. Sares stated so nothing new has been added to any of that and asked when was all that added. Mr. Irving stated that he believes the parking was paved in 2005 and the tent garden and the wedding garden improvements were in 2007.

**Mr. Drinkhall made a motion, seconded by Mr. Sares, to accept the application of Peter Rattay Trustee of the Peter Rattay Revocable Trust of 2001 for a Full Site Plan Review as complete. Motion unanimously carried.**

Mr. Sares stated that he thought the parking was paved prior to 2005. Mr. Lucy stated it is his understanding that the parking was grass and gravel until 2005 and during the paving season of 2005 it was graded and paved. Mr. Sares stated it was done without permits, but they have been using it. Mr. Sares stated that to not grant this now would be kind of strange because it would be a retrospective rejection to something we'd said yes to. Mr. Irving stated unknowingly. Mr. Sares agreed and asked what disservice has the parking done. Mr. Irving stated none that he knows of. Mr. Sares asked what public disservice has the tent ever have done and what public disservice has the wedding area done. Mr. Irving stated that he would have to defer those questions to the public. Mr. Sares stated these are the questions he would post to the public.

Mr. Porter asked for Board comment; there was none. Mr. Porter asked for public comment; Rob Miller of Sheehan Phinney Bass and Green representing Robert Schor and Marni Madnick stated that they have a number of objections. Mr. Miller submitted a letter to the Board dated March 12, 2009. Mr. Miller stated essentially the Stonehurst Manor which operates as a hotel and restaurant is located, the entirety of the activity we have discussed, the tent garden, the wedding garden, the parking and the expansion, within the Residential Agricultural district.

Mr. Miller stated the Highway Commercial zone is not really at play in this particular application in terms of what is being done here. Mr. Miller stated in the Residential Agricultural zone hotels and restaurants are not allowed uses per the Town of Conway's table of uses. Mr. Miller stated the Stonehurst Manor, however, was operating in some capacity prior to the adoption of the Zoning Ordinance and that makes it to some degree a non-conforming use, but the question is how much and to what degree.

Mr. Miller stated that the burden of proof to that issue lies with the Stonehurst Manor under NH law. Mr. Miller stated that they have to show the Board and the abutters precisely what its business activities and precisely what its physical layout was at the time it became a non-conforming use, which, in this case, was on or about March 11, 1980. Mr. Miller stated that what the site plan application does not include, based on his review, is any physical layout or existing plan of what was there in 1980 that would "vest" a non-conforming use of that date.

Mr. Miller stated we also don't know precisely or imprecisely what kind of business activities were going on at the Stonehurst Manor as of that date, March 11, 1980. Mr. Miller stated the reason that's important because the courts look at that as a sort of snap shot. Mr. Miller stated that everything gets frozen in time as of that moment and that is the use that is vested as a non-conforming use. Mr. Miller stated anything subsequent to that, different uses, expanded uses, all of that gets put through the filter of whether or not its permissible or impermissible under NH law.

Mr. Miller stated that the issues at play tonight, the concrete tent garden gazebo structure, the 33 additional paved diagonal parking spaces and significant additional paved areas, the concrete wedding garden structure, the one-story wood frame garage and shed, pole mounted commercial

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lighting, a commercial generator on a concrete pad, the construction of additional gravel drives and retaining walls and the location of dumpsters were all made subsequent to the adoption of the ordinance and to our knowledge without any special exceptions, without any variances, without site plan approval or without any building permits being granted by the Town.

Mr. Miller stated that the question then becomes to what degree the additional uses requested by the site plan tonight constitute impermissible or unlawful expansions of the non-conforming use. Mr. Miller stated that on March 11, 1980, as best as we can tell, the Stonehurst Manor was a small, quiet hotel consisting of 26 units. Mr. Miller stated, however, it is the applicant's burden to establish this not ours.

Mr. Miller stated therefore the analysis under Town of London vs. Leskiewicz 110 NH, 462 is a three factor test. Mr. Sares asked to interrupt and stated if he is going to discuss Leskiewicz as an attorney before he's had an opportunity to review this that's an exercise of futility as far as he's concerned. Mr. Sares stated whatever Mr. Miller has to say is going to sound legal and good and persuasive and argumentative, but he's not had the chance to read this as he's just received it. Mr. Sares stated to site the persuasive points of these legal cases on something that he doesn't even know what the issues are yet are a little bit premature.

Mr. Sares stated that he thinks it's a little bit before the fact, not that he thinks he shouldn't do it, but premature with that; going a little too fast. Mr. Sares stated that after Mr. Miller does what he's going to do he's not sure the impact as he's not had a chance to review the information submitted. Mr. Miller stated that the point of raising tonight was because he didn't want the hearing to be closed and a decision made on the site plan based on the fact that we believe this to be an expansion of a non-conforming use. Mr. Miller stated the fact that it did not appear on Mr. Irving's report it wasn't even called out as far as he can tell. Mr. Sares stated that the letter submitted by Mr. Miller is now part of the record.

Mr. Porter stated that he has to agree with Mr. Sares. Mr. Porter stated that at this time if we're going to get into this before we've even had a chance to digest what you've presented us then he agrees with Mr. Sares that it is premature. Mr. Porter stated that we don't need to get into naming legal documentation pertaining to certain cases at this point in time. Mr. Miller stated that he would stay back to move the process along but he doesn't want to give up their rights. Mr. Porter stated that he wouldn't let that happen.

Mr. Porter asked for other public comment; Tom Eastman of the Conway Daily Sun asked why this is coming to light. Mr. Porter stated he is trying to figure that out. Mr. Porter asked if the Stonehurst Manor came before the Board in regard to the wedding garden. Mr. Irving stated a while back they were going to come before the Board asking for a non-applicable under §123-4.A.5 for these improvements. Mr. Irving stated subsequently they withdrew that request and filed for a site plan review. Mr. Porter asked when did they pursue the §123-4.A.5. Mr. Irving answered he'd guess 2007. Mr. Porter asked if at that time were any concerns brought to the Town's attention as far as the noise level goes. Mr. Irving stated it was brought to the Town's attention by Mr. Schor.

Mr. Drinkhall asked if there were any conditions not met back in 1989. Mr. Irving answered in the affirmative and stated that he doesn't believe all the conditions of approval were satisfied and the conditional approval expired. Mr. Irving stated he believes the primary condition was bonding. Mr. Drinkhall asked if this was before us today without any of the work being done is there any legal reason why we could not approve this.

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Mr. Irving stated that's the point he would like to make regarding the non-conforming nature of the site relative to zoning. Mr. Irving stated as the attorney might not be aware the usual and customary practice of the Town of Conway it's the Zoning Officer that makes the zoning decisions in the Town of Conway not the Planning Board. Mr. Irving stated with respect to non-conforming he read §147.14.1.1.

Mr. Irving stated at this meeting given that the Board has accepted the application it is his finding that the use of the property is a legally existing nonconformity based on representations made by the applicant and the Town records. Mr. Irving stated secondly, the proposed expansion for the tent garden patio, the parking area and the wedding garden area are not creating any more nonconformity. Mr. Irving stated in the Residential Agricultural district you are allowed to have patios, you are allowed to have parking and/or these are accessory to the existing nonconforming use.

Mr. Irving stated if the attorney and their client disagree with that zoning decision they have 30 days from now to appeal to the Zoning Board of Adjustment with their argument that this is not a permissible accessory expansion. Mr. Sares stated so there was an objection made as soon as it was discovered. Mr. Irving agreed. Mr. Sares stated there was no period of time in between. Mr. Irving stated as soon as it came to the Town's attention we began the investigation.

Mr. Sares stated given what you said if it then came to the Board under Mr. Drinkhall's scenario if it just happened today, at that meeting there could be, when opened to the public, an objection based on the abutter's claim that maybe there was some noise problem. Mr. Irving agreed. Mr. Sares stated that would have been a legitimate issue to discuss. Mr. Irving answered in the affirmative. Mr. Sares stated that he would hate to see this one get settled tonight because there is so much to chew on. Mr. Sares stated that he needs a little more time to think about it.

Mr. Irving stated if it is the pleasure of the Board to continue you certainly have every right and privilege to do so and if the Board does continue he would recommend continuing for 30 days to the second meeting in April which would give any one the opportunity to appeal the zoning decision if they wanted to and at that time the Board would know about the appeal. Mr. Irving stated secondly, he would like to bring to the Board's attention that you do have a 65-day window from now to render a decision unless the applicant waives the 65-day limitation pursuant to RSA 574:I,c.

Mr. Sares stated the waivers are in effect retroactive they're not waivers on something that is being done now they're waivers on something that has already been done. Mr. Irving stated that it has been done, but asking for your approval. Mr. Sares stated that they have to ask for waivers bothers him a bit, but not much. Mr. Irving stated that the waivers they are requesting are not for the actual improvements they're for some of the other elements of the site. Mr. Irving stated for instance, there is an existing garage that pre-dates zoning that encroaches into the buffer that is still there. Mr. Irving stated that they are seeking a waiver for all of the parking that might be required, they're seeking a waiver relative to curb radius at the driveway entrances, and they are seeking a waiver relative to street trees.

Mr. Irving stated so they are all things nonconforming to the site relative to site plan that they are asking to allow to remain as they are. Mr. Irving stated that there are no waivers required for the developments that they are actually making. Mr. Sares asked why there is an issue. Mr. Irving stated that they did it without first getting a permit. Mr. Sares asked if there would have been an issue if the abutters hadn't raised it. Mr. Irving answered in the affirmative and stated if it had come to our attention that these improvements were made without permits it still would have been an issue.

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Ms. Sell stated that she is not ready to make any decisions tonight and she would like some more time to review the information. Ms. Sell stated in reviewing the abutter's attorney's information there was a commercial strength electrical generator installed on a concrete pad, dumpsters have been added, various things have taken place and she would prefer more time to review the information. Mr. Porter agreed with Ms. Sell and stated that he thinks maybe the Board should take some time to look over the whole picture.

Ms. Sell stated if we were to wait and see some potential problems we as a Board could make them come more into compliance or some other things to accept this, like move the dumpsters or enclose something, just a few things to get the ball rolling. Mr. Porter stated also keep in mind this has always been a nonconforming site since the day we adopted zoning which falls under that grandfathering rule which we need to keep in the back of our minds.

Mr. Porter stated there are certain things we are not going to have a lot to say on, in his opinion. Mr. Porter stated we have to take an enabling approach in that moving forward is what we have to look at and does it create more detriment to the area or not. Mr. Porter stated that he thinks that is what we have to look at, in his opinion. Ms. Sell agreed.

Mr. Porter stated that he remembers the Stonehurst growing up and he used to sneak there as a kid and look at the weddings. Mr. Sares asked if this was before 1980. Mr. Porter stated that he was raised on Birch Street in the 1960's and the Stonehurst was a much smaller scale back then but on a nice day you could hear the weddings going on. Mr. Porter stated back then we didn't have an issue, but that is beside the point.

Mr. Miller stated separate and apart from the nonconforming use issue, under §123-39 of the site plan regulations that are currently in existence, Mr. Irving has to make a determination, he thinks, before the plan is deemed complete that the site plan as proposed would constitute a nuisance to abutters.

Mr. Miller asked if the Board had received a copy of the Injunction Relief [Petition for Preliminary and Permanent Injunction Relief and Damages dated March 10, 2009] that was hand delivered to the court yesterday. Mr. Miller stated that he had a copy hand delivered to Mr. Porter to distribute to the Board. Mr. Porter answered in the negative and stated that he just distributed what he submitted tonight; that's all he has.

Mr. Irving stated that he believes Mr. Miller's interpretation of §123-39 is incorrect as it is not him that makes that determination it is the Planning Board. Mr. Miller stated fine as he was going with his earlier comment. Mr. Irving stated that's a zoning issue. Mr. Irving stated that he would try to make this simple as possible site plan is Planning Board, zoning is the Zoning Officer. Mr. Miller stated that he is well aware of that and that he guesses it's an issue for the Board.

Mr. Sares stated that it's already been raised and we have already covered that. Mr. Sares stated that the Board said in the scenario by Mr. Drinkhall if this were coming to us now one of the issues if it were raised with the public would be the possibility of noise from an abutter. Mr. Sares stated that we are aware of that. Mr. Miller stated that he just wanted to make the Board aware that we have an acoustical study that was done this past summer. Mr. Miller submitted a copy of the study to the Board.

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Mr. Irving stated the Injunction Mr. Miller was speaking of is something that involves the Stonehurst and Peter Rattay and the Town is not named in it. Mr. Irving stated that there is a copy in the Board's information file and it arrived late yesterday afternoon to our office. Mr. Porter stated that he recommends the Board continue this to another time and at that time he would like Town Counsel present as it seems the water is getting murkier and murkier.

Mr. Miller asked to finish his point he was making in regard to the exhibit he just gave the Board so the Board can understand how it ties together. Mr. Miller stated that the acoustical study that he submitted was part of that and goes to the issue of what the tent garden patio is being used for. Mr. Miller stated that it is being used for outdoor wedding receptions with amplified music and live bands and the level of noise that comes from these events were measured on his client's property at various places and by a third party independent expert.

Mr. Miller stated that report is now before the Board and part of the record. Mr. Miller stated that the conclusions in that report are that by a series of objective levels the decibel of noise that comes from those events is way beyond what is a legal nuisance. Mr. Sares asked legal. Mr. Miller answered in the affirmative and stated legal. Mr. Porter asked if we even have a noise ordinance in the Town of Conway. Mr. Miller stated there are specific guidelines. Mr. Sares stated that guidelines are not legal laws. Mr. Miller stated there are guidelines for acoustical levels that are widely accepted by courts all over the country as to what constitutes acceptable. Ms. Sell called for a point of order.

Mr. Porter stated that we just went through a very pain staking ordeal [Red Jacket] and the Town of Conway does not have a noise ordinance; just wanted to make that clear. Mr. Porter stated that we can take into consideration with the other information and he is not going to go any further pertaining to noise whether it is legal or illegal because he doesn't think we are even qualified to make that decision as Town Counsel hasn't had a chance to look at it. Mr. Porter stated that he is going to give the other side an opportunity to speak.

Mr. Carey submitted three letters and an affidavit from neighbors and an abutter. Mr. Carey stated that Ms. Sally Davis who is a native and her Aunt Connie use to live in the Schor home and she talks about the noise never being a problem in all her years. Mr. Sares asked when she moved. Mr. Carey stated her Aunt Connie sold her home to the Schor's. Mr. Carey stated there is also a letter from Kathy Brassill, a letter from Kenneth Moldow who owns a unit at the Stonehurst Condominium and Alan Haddad who is the President of the Stonehurst Condominium Association. Mr. Carey stated that they are all attesting to their awareness of the prior use and lack of any objection to the noise.

Mr. Carey stated that the Injunction Relief document is a legal document and he expects to see the same thing with a pleading caption because a lawsuit was filed yesterday. Mr. Carey stated that he received a copy yesterday afternoon, too. Mr. Carey stated what Mr. Schor is trying to do is use a public forum to get information in a private law suit. Mr. Carey stated §123-39 is helpful because it talks about abutters and the public.

Mr. Carey stated that we have no other objections except for one person, the private lawsuit and he has chosen that as his forum in Superior Court in Ossipee and he is entitled to bring it there. Mr. Carey stated that a judge is going to listen to all those arguments; the jury is going to listen to whether a reasonable person would think this is objectionable. Mr. Carey stated one of the things the Court and the jury are going to look at is that this is a seasonal thing that happens during the warm months. Mr. Carey stated were talking maybe 140 days that happens 12 times during those 140 days. Mr. Carey stated that it is done by 7:00 pm.

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Mr. Carey stated that we're not looking at a Red Jacket we're you have something 24 hours a day 7 days a week. Mr. Carey stated this is a limited window a limited period of time. Mr. Carey stated that this has been going on for many many years' decades. Mr. Carey stated the Town files and the liquor permits talk about going into the 1970's and this has been a use at the property for a long period of time. Mr. Carey stated that this has been a use of the property since the Schor's moved there in 2003, 2004, 2005 until today.

Mr. Sares asked how many weddings they have there today. Mr. Carey answered approximately 10 to 12 and there were 12 last year. Mr. Carey stated that this is a private lawsuit that will be hashed out in Court and he doesn't think the Board should be pulled into it as much as the Schor's would like the Board to be dragged into it. Mr. Carey stated that this is going to be hashed out in Superior Court where they have chosen to file a case. Mr. Sares asked Mr. Carey if he was an attorney. Mr. Carey answered in the affirmative. Mr. Sares asked with what firm. Mr. Carey answered Orr & Reno Professional Association in Concord, NH. Mr. Carey stated that we are talking one person and he doesn't think that rises to the level of a serious nuisance.

**Mr. Sares made a motion, seconded by Ms. Sell to continue the full site plan review for Peter Rattay until April 23, 2009.** Marni Madnick asked if she could say something. Mr. Porter stated that it is closed to public comment. Mr. Sares stated perhaps we could make an exception because Dr. Madnick and Mr. Schor are the abutter's and believe she was out of the room when we opened it to the public attending to her baby and then she came back. Mr. Porter agreed to take her comment.

Dr. Madnick stated that she just wanted the Board to know a few things, we're the only full time abutters and basically where the weddings take place are literally in their back yard right behind their house. Dr. Madnick stated that they have been there since 2003 and yes they have been having weddings since 2003, but they have been increasing the number of weddings since 2003 and they have been amplifying the DJ's and the music.

Dr. Madnick stated that they have three little kids and she works full-time as a Doctor here in the Valley. Dr. Madnick stated she knows all of the Board probably works full-time and work hard and your free time is precious. Dr. Madnick stated that her free time is precious and her free time in the summer if there are 10 to 12 weddings that's every single weekend in June, July and August. Dr. Madnick stated for three months straight every single Saturday there is a wedding taking place.

Dr. Madnick stated they stop by 7:00 pm, but that is what time their children go inside to go to bed. Dr. Madnick stated that they are using the outside of their property during those times that the weddings are going on and it's like if your neighbor was having a party every single weekend of the summer with a DJ playing. Dr. Madnick stated that is what it is like. Dr. Madnick stated that she just wanted the Board to understand where they are coming from.

Dr. Madnick stated that the lawsuit is a separate thing. Dr. Madnick stated that they brought this to Tom Irving's attention two years ago when it started to become a nuisance and we didn't get any recourse from it. Dr. Madnick stated they are trying to get something for them just to at least get their due process and just for people to understand that this is a nuisance to the enjoyment of their property where they pay taxes and we're productive members of this community, too. Dr. Madnick stated that she thinks that they may be the only abutters affected by this because they are the only full-time abutters to this right now.

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Dr. Madnick stated that she feels that the Board just needs to understand how this affects the quality of their life right now. Dr. Madnick stated that they have two small little boys that run around and ride their bikes and climb their swing set and they cannot hear us calling to them. Dr. Madnick stated that it is very disruptive to our down time and the enjoyment of our family. **Motion unanimously carried.**

**FRAM DONUTS, INC/DUNKIN DONUTS – FULL SITE PLAN REVIEW CONTINUED  
(PID 277-287) FILE #TR08-04**

Josh McAllister of H.E. Bergeron Engineers appeared before the Board. This is an application to construct a 1,700 square foot/18-seat restaurant and associated infrastructure. This application was accepted as complete on August 28, 2008. Mr. McAllister gave an update on the project.

Mr. Porter read the waiver requests for §123-20.F/§131-67.C.8.b (for drive-thru lane); §123-20.F/§131-67.C.8.b (for loading); and §123-29.D.8. **Mr. Drinkhall made a motion, seconded by Mr. Sares, to grant the waiver requests for §123-20.F/§131-67.C.8.b (for drive-thru lane); §123-20.F/§131-67.C.8.b (for loading) and §123-29.D.8. Motion unanimously carried.**

**Mr. Drinkhall made a motion, seconded by Ms. Sell, to continue the Full Site Plan Review for Fram Donuts, Inc until May 14, 2009 with new information to be submitted by end of business April 21, 2009. Motion unanimously carried.**

**OTHER BUSINESS**

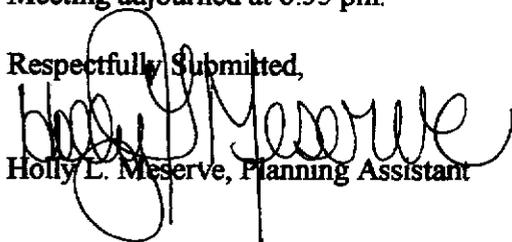
**Earle and Sarah MacGillivray/East Conway Self Storage (PID 244-7) – §123-4.A.5 (File #NA09-07):** Shawn Bergeron of Bergeron Technical Services appeared before the Board. Mr. Sares asked if the first owner improperly filled in wetlands and the second owner is addressing it. Mr. Bergeron answered in the affirmative. Ms. Sell stated she is disappointed that they went and filled in that area. Mr. Bergeron stated that the most important item was the wetlands permit and they concluded then when originally mapped they were not sure if what is under it was a wetland. Mr. Bergeron stated that they decided since it was stable not to disturb it.

**Mr. Drinkhall made a motion, seconded by Ms. Sell, that the Planning Board determined that based on the provisions of §123-4. A. 5., regarding applicability, that allowing a gravel area for snow and equipment storage that reduces greenspace from 32% to 25% and reconfiguring self storage buildings with no increase in square footage 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. Motion unanimously carried.**

**Committee Reports:** There were none.

Meeting adjourned at 8:35 pm.

Respectfully Submitted,

  
Holly L. Meserve, Planning Assistant