

CONWAY PLANNING BOARD

MINUTES

JUNE 25, 2009

PAGES

- | | |
|---|---|
| 1 | Review and Acceptance of Minutes <ul style="list-style-type: none">• June 11, 2009 – Adopted as Written |
| 1 | Peter Rattay Trustee of the Peter Rattay Revocable Trust of 2001 – Full Site Plan Review Continued (PID 202-182 & 186) File #FR09-02 <ul style="list-style-type: none">• Continued until July 23, 2009 |
| 2 | Other Business <ul style="list-style-type: none">• Proposed Driveway Permit Regulations• North Conway Water Precinct – Fire Department Storage (PID 218-124)• Peter C. Honeycutt, Jr – Lot Merger (PID 259-78 & 79)• Committee Reports |

CONWAY PLANNING BOARD

MINUTES

JUNE 25, 2009

A meeting of the Conway Planning Board was held on Thursday, June 25, 2009 beginning at 7:01 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Porter; Selectmen's Representative, Robert Drinkhall; Vice Chair, Martha Tobin; Secretary, Patricia Sell; Theodore Sares; Steven Hartmann; David Sordi; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve. Attorney Peter Malia of Hastings Law Firm was in the audience.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Drinkhall made a motion, seconded by Ms. Tobin, to approve the Minutes of June 11, 2009, as written. Motion carried with Ms. Sell and Mr. Sares abstaining from voting.

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

This is an application to consider additional parking areas, a new tent garden patio, a new wedding garden patio and associated infrastructure. This application was accepted as complete on March 12, 2009.

Mr. Irving stated that the applicant has requested a continuance and they have waived the 65-day time period to make a decision. **Ms. Sell made a motion, seconded by Mr. Drinkhall, to continue the Full Site Plan Review for Peter Rattay Revocable Trust of 2001 until July 23, 2009.** Mr. Sares stated that this is the second time the Zoning Board of Adjustment [ZBA] has delayed. Mr. Sares stated that Mr. Rattay is prepared to move forward. Mr. Irving stated that it is Robert Schor and Marni Madnick that have submitted the ZBA application, not Mr. Rattay. Mr. Sares asked the probability of having a full board at the next ZBA meeting. Mr. Irving stated that he is optimistic with new appointees.

Mr. Sares stated that this is getting old and asked what basis they are stepping down. Mr. Irving stated some had the necessity to work at that time and another was out of Town. Mr. Sares stated that he hopes we can have this resolved at the next meeting. Mr. Porter asked if by chance the ZBA does not have a full Board the next time they meet can the Planning Board move forward. Ms. Tobin stated that the Planning Board could move forward now. Mr. Porter stated that it would not be fair without all parties present.

Peter Malia stated that the Planning Board can hear the case even if the ZBA has not ruled. Mr. Malia stated both Attorneys are frustrated as well, however, they are entitled to a five member Board. Mr. Malia stated the applicant has requested a continuance tonight in hopes that the ZBA will have a five member board at the next meeting. Mr. Malia stated if they cannot get five members the Planning Board could move forward anyway.

Mr. Sares stated other than a financial reason he does not see any other reason for someone to step down. Mr. Malia stated under RSA 673:14 if the person has a personal interest in the outcome, a financial interest in the outcome or unable to serve as a juror if in court, then they should step down. **Motion carried with Ms. Tobin abstaining from voting.**

OTHER BUSINESS

Proposed Driveway Permit Regulations: Peter Malia, Town Counsel, appeared before the Board. Mr. Sares asked what prompted this. Mr. Malia stated there was a driveway constructed on a Class 6 road and while doing this worked on the town road and did not ask permission to work in the Town road or to connect to the town road. Mr. Malia stated that he asked for a copy of the regulation granting the authorization to apply for a driveway permit and there is not one. Mr. Malia stated that the RSA gives the Planning Board the authority to enact one.

Mr. Sares asked if other towns have this kind of regulation. Mr. Malia answered in the affirmative. Mr. Malia stated that this would not apply to a subdivision or site plan before the Planning Board, but someone who is building a driveway connecting to Town road. Mr. Sares asked if there was one incident and if these were triggered by Paul DegliAngeli. Mr. Malia answered in the affirmative and stated that they realized during this one incident that we didn't have regulations in place.

Mr. Sordi stated item #3 is pretty broad as paving your driveway would trigger a driveway permit. Mr. Malia stated that he doesn't think that was intended. Mr. Porter stated that it should specify that no one should establish a driveway to a town road without a permit. Mr. Malia stated that he agrees that this applies only to driveways that will connect to a town road.

Ms. Sell stated that item #3 conflicts with §123-10 and she thinks under the administration that Paul DegliAngeli is better qualified to review driveways under site plan review and we would be the best designee opposed to the selectmen as we know the regulations.

Ms. Sell asked if under item #5 if a permit fee would still be required. Mr. Malia stated if someone is proposing a non residential or multi unit development and deemed by the Planning Director or the Planning Board to be not applicable but constructing a driveway they would have to apply for a driveway permit under these regulations.

Ms. Sell stated in regard to item #7 any modification of an existing driveway somewhat contradicts item #3. Ms. Sell stated that she doesn't care for the language and personally feel they should not modify or reconfigure a driveway until they bring it to the Board. Mr. Porter stated if this is for a commercial property then he would agree, but not for a residential property. Mr. Porter stated that we don't need to burden the residential property with coming before the Planning Board for site plan review. Mr. Malia stated that this is sort of a grandfathered clause. Mr. Sell stated that it should be under the purview of the Planning Board or Mr. Irving.

Ms. Sell stated under item #11 she would like to attach a \$100 fee to administer the application. Mr. Malia stated he has drafted a proposed one page application which would be made to the Public Works Director/Town Engineer. Mr. Malia stated that currently they collect a \$500 bond and was thinking of increasing to \$1,000.

Ms. Sell stated that we should impose a fine for failing to comply with these rules. Mr. Sordi stated that he wonders if we even need these regulations and asked why we can't amend an existing ordinance. Mr. Sordi stated that this could lead going way beyond the intent. Mr. Sordi stated that he is concerned with item #14D. Mr. Sordi stated if the Town makes emergency repairs and someone is hurt, the way the regulation is written the homeowner is responsible.

Adopted: July 23, 2009 – As Written
CONWAY PLANNING BOARD – JUNE 25, 2009

Mr. Malia stated that the State of New Hampshire requires a driveway permit to access a state road and the same RSA allows the Planning Board to enact rules to connect to the town road. Mr. Malia stated that the Board does not have to delegate anything to the Town Engineer. Mr. Porter stated that the Town of Conway has no regulations in place. Mr. Malia stated only if they are before the Board. Mr. Sares stated that somebody did something and Paul DegliAngeli found out about it and that triggered the need for these regulations.

Ms. Sell stated that the purpose of this is to protect the town as well as the town roads. Mr. Sordi stated that he understands the issue as your talking engineering standards and building permits, but this is beyond that. Mr. Sordi stated that there are other ways other than a whole new regulation. Mr. Sordi stated you should be able to modify or reconfigure your driveway within your property as long as it is not where it joins the road, why do I have to pay \$100.

Mr. Drinkhall stated we don't regulate residential to the same degree as commercial and he thinks we are going overboard with this. Mr. Malia stated no fee to be paid if non-conforming and not going to affect the public interest. Mr. Malia stated in regard to emergency repairs the Town has only once had to make emergency repairs. Mr. Malia stated these did come about due to one incident. Mr. Malia stated that he did forward copies of other Town regulations before this incident, so the town has been kicking this around for some time.

Ms. Sell stated that she supports this concept, but it does require some revisions and several months to review information. Ms. Sell stated that she would like to do a bit more homework herself. **Ms. Sell made a motion, seconded by Mr. Sares, to view the comments, do more work and see what we can come up with over the next several months. Motion defeated with Mr. Sares, Mr. Hartmann, Mr. Sordi, Mr. Drinkhall and Mr. Porter voting in the negative and Ms. Tobin and Ms. Sell voting in the affirmative.**

Mr. Sares made a motion, seconded by Mr. Drinkhall, to drop issue and reject the proposal for this policy. Motion defeated with Mr. Hartmann, Mr. Sordi, Ms. Sell, Ms. Tobin, Mr. Drinkhall and Mr. Porter voting in the negative and Mr. Sares voting in the affirmative.

Mr. Sordi made a motion, seconded by Mr. Drinkhall, to continue discussion within the board to incorporate into the existing regulations. Mr. Porter stated we as a board can come up with something that is not so binding for residential properties. Ms. Sell asked if the Board would be able to speak with Mr. Malia on the final drafting. Mr. Porter stated that we need to come up with something and then go from there. Mr. Sares stated that it is not that difficult to do; you find the cleanest least complicated. **Motion carried with Mr. Sares voting in the negative.**

North Conway Water Precinct – Fire Department Storage (PID 218-124): David Bernier, Superintendent, appeared before the Board. Mr. Bernier stated that they are making a non conforming building a bit more conforming. Mr. Bernier reviewed architectural elevations. Mr. Bernier stated that the building would have an 8/12 pitch with a dark bronze roof and light bronze siding.

Mr. Bernier stated that it is to be used to store equipment for the fire department. Mr. Sares asked if this would negate the need to expand the fire department. Mr. Bernier answered in the negative and stated after an extensive study it was determined it would be better to put it down by the North Conway Water Precinct building on Sawmill Lane.

Adopted: July 23, 2009 – As Written
CONWAY PLANNING BOARD – JUNE 25, 2009

Mr. Porter asked if this is going to be landscaped. Mr. Bernier stated that this will have a higher level of greenspace than it does now and some parking. Mr. Bernier stated this building is only going to be used if there is a forest fire or if we need something. **Ms. Sell made a motion, seconded by Mr. Drinkhall, that this requires no further action. Motion unanimously carried.**

Peter C. Honeycutt, Jr – Lot Merger (PID 259-78 & 79): Mr. Drinkhall made a motion, seconded by Ms. Tobin, to sign the lot merger for Peter C. Honeycutt, Jr combining lots PID 259-78 & 79. Motion unanimously carried.

Committee Reports: There was none.

Meeting adjourned at 8:09 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Planning Assistant

HASTINGS LAW OFFICE, P.A.

376 Main Street, P.O. Box 290, Fryeburg, ME 04037

Telephone 207-935-2061 • Facsimile 207-935-3939

www.hastings-law.com

DAVID R. HASTINGS II
PETER G. HASTINGS
DAVID R. HASTINGS III
PETER J. MALIA, JR.
MARK T. KREMZNER
GEOFFREY S. LEWIS
CORINNE R. REIDY

DAVID R. HASTINGS 1847-1896
EDWARD E. HASTINGS 1879-1939
HUGH W. HASTINGS 1914-1967

RECEIVED

JUN 15 2009

TOWN OF CONWAY

June 11, 2009

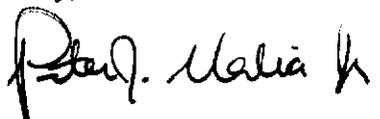
Tom Irving, Planning Director
Town of Conway
1634 E. Main Street
Center Conway, NH 03813

Re: Proposed Town of Conway Driveway Regulations

Dear Tom:

Enclosed please find proposed Town of Conway Driveway Regulations. I will appear before the Conway Planning Board on June 25, 2009 to discuss these Regulations. Please call me if you have any questions.

Sincerely,



Peter J. Malia, Jr.

PJM, Jr.:emd
Enclosure

TOWN OF CONWAY DRIVEWAY REGULATIONS

1. Authority. These regulations are adopted by the Town of Conway Planning Board under the authority of RSA 236:13 – 236:14.

2. Purpose. The purpose of these regulations is to ensure that driveways in the Town of Conway which are not otherwise regulated by the Town's Subdivision or Site Plan Review Regulations are constructed and installed in a way which protects and enhances the continued function and safety of Town of Conway highways and sidewalks, and the driveways themselves, and further, to assure that existing driveways are maintained in a way which does not adversely affect such highways and sidewalks, and also to provide access for emergency vehicles.

3. Permit Required. No person shall construct or establish any new driveway, or shall modify, reconfigure or relocate an existing driveway without first obtaining a driveway permit from the Selectmen or their designee (hereinafter "Selectmen"). The Selectmen shall adopt an application form, and may require additional information or plans, depending on the location and design of the driveway.

4. Permit Contents, and Standards for New Driveways. The contents of all driveway permits, and the location, dimension, and construction standards required for all new driveways, shall, unless a waiver is granted under Section 9, conform to RSA 236:13 and to the requirements set forth in the Town's Subdivision Regulations, §131-67(c)(8).

5. Uses Requiring Site Plan Review. Driveways serving nonresidential or multifamily developments shall be reviewed by the Planning Board pursuant to §123 (Site Plan Review Regulations). In the event that a Site Plan Review is deemed not applicable pursuant to §123-4.A, the proposed driveway modifications shall be subject to review and permitting under this chapter.

6. Uses Requiring Subdivision Review. Driveways serving subdivisions shall be reviewed by the Planning Board pursuant to §131 (Subdivision Regulations).

7. Driveways Approved by Subdivision or Site Plan Review. For all properties subject to an existing Subdivision or Site Plan approval, no new driveway or driveway modification shall be constructed or installed without new or amended Subdivision or Site Plan approval, unless waived by the Planning Board.

8. Modifications Of Existing Driveways. For an existing driveway which does not comply with the standards set forth in paragraph 4 above, but which did comply with standards in effect at the time of construction, the owner of property served may modify, reconfigure or relocate that driveway without bringing it into

compliance, so long as the use of the property served is not being changed in a way which requires Subdivision or Site Plan Review. In such cases the Selectman or their designee shall issue a permit upon a finding that the modified driveway protects and enhances the public interests served by these regulations to at least the same degree as the driveway prior to modification.

9. Stone Walls. In accordance with RSA 472:6, no stone wall or other boundary marker which is located along the boundary of a public highway shall be breached by the construction or establishment of a driveway unless specifically authorized by a permit issued under these Regulations. The permit shall specify the width of any authorized breach.

10. Waivers. The Selectman or their designee may waive or modify in writing any of the substantive provisions of these regulations, including the granting of extensions of time, for good cause shown, if consistent with the interests of public safety and welfare.

11. Fees. Driveway permit fees shall be collected in accord with the fee schedule established by the Town, as amended. It shall be the responsibility of the Selectman or their designee to collect the fees.

12. Highway Files. A copy of every permit issued under these regulations shall be placed in Town of Conway's file pertaining to the public highway involved.

13. Continuing Owner Responsibility. All owners of property served by a driveway shall have a continuing duty, including financial responsibility, for keeping and maintaining that driveway, and any grades, culverts, or other structures appurtenant to it, on an ongoing basis, in such a condition that the adequate and safe function of the public highway, and of the driveway, are not adversely affected.

14. Corrective Order.

A. Whenever, by reason of siltation, flooding, erosion, frost action, vegetative growth, or the failure of any culvert, traffic control device, drainage structure, or any other feature, any driveway becomes a potential threat to the integrity of the public highway or its surfaces, ditches, embankments, bridges, or other structures, or a hazard to the safety of highway or driveway users, the Selectman or their designee may issue an order to the owner or owners of property served, or owner's agent, to repair or remove the threat or hazard.

B. The order shall describe the threat or hazard, shall describe what corrective action is required, may set forth a time within which the owner or owner's agent must submit for approval a plan for the repair, alteration, or other work, and shall set forth a time within which the corrective action shall be completed. The order shall be sent by certified mail.

C. If the order is not complied with within the time prescribed, the Selectman or their designee may cause the repair, alteration or other corrective action to be completed by the Town of Conway. As set forth in RSA 236:13, VI, the owner or owner's agent shall be liable for the Town of Conway's full costs in taking such action.

D. If the Selectman or their designee determines that the issuance of an order under this section would create unnecessary delay in correcting an imminent threat or hazard, or would otherwise be contrary to the public interest, the Selectmen may cause the repair or other action to be taken by the Town of Conway without issuing an order. The owner of property served, or owner's agent, shall nonetheless be responsible under RSA 236:11 for the cost of restoring the highway.

E. Nothing in these regulations prevents the Town of Conway from making an agreement with an owner concerning a particular driveway, including, but not limited to, an agreement for the Town of Conway to perform repairs at an owner's expense. However no such agreement shall release an owner from future compliance with the duty set forth in Section 13.

15. "Dig Safe." It shall be the responsibility of the owner or owner's agent to give notice under RSA 374:51 to the Underground Utility Damage Prevention System, commonly referred to as "Dig Safe," prior to performing any work under these regulations.

16. Appeals. Any decision of the Selectman or their designee with respect to a permit, order or waiver under these regulations may be appealed to the Planning Board by any person directly affected. The procedures for notice and hearing of such an appeal shall be the same procedures utilized for minor lot line adjustments, as set forth in RSA 676:4, I(e) and the Subdivision Regulations. If the appeal pertains to a corrective order, the appeal must be filed prior to the deadline for corrective action set forth in the order. Any person aggrieved by the decision of the Planning Board upon an appeal under this section may appeal to the Superior Court under RSA 677:15.

17. Enforcement And Penalties. In accord with RSA 236:14, any person who violates these regulations, or any condition or specification of a permit or order issued under these regulations, shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person; and, in addition, shall be liable for the cost of restoration of the highway to a condition satisfactory to the Selectman or their designee. The Town of Conway may take any appropriate enforcement action to prevent unlawful construction, to recover damages, or to restrain, correct or abate a violation.

18. Definitions. Terms in these regulations shall be interpreted consistently with similar terms in the Town of Conway's Zoning Ordinance and the Conway Subdivision and Site Plan Review Regulations. In addition:

"Driveway" shall have the same definition as is set forth in §131-66.

"Property Served" by a driveway means any property to which that driveway is appurtenant, including the property abutting the highway at the driveway access point, as well as any other property for which that driveway provides an access for vehicles parked or stored on that property.

"Public Highway" means highway as defined by RSA 229:1, and as further set forth by the common law of New Hampshire, and includes the entire right-of-way in addition to the traveled way.

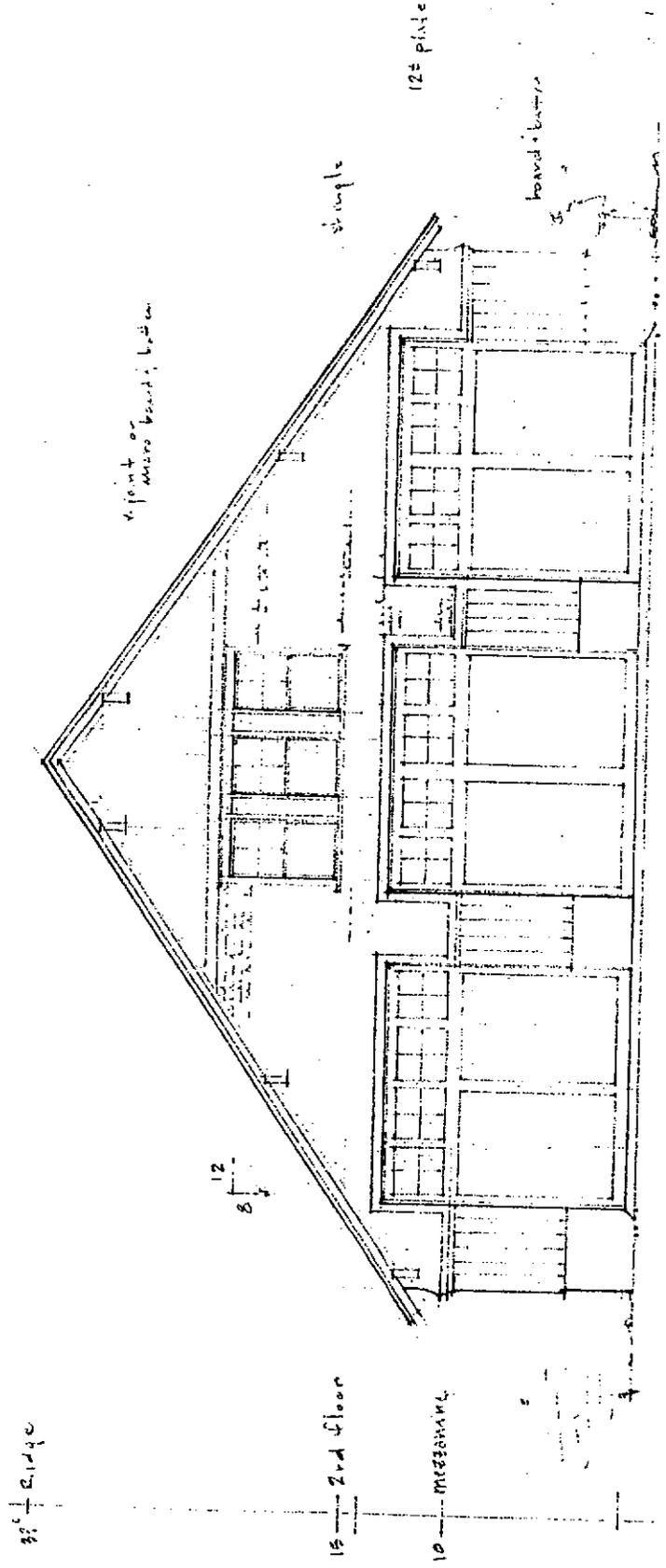
"Structures" means any and all features appurtenant to the driveway, including surfacing, ditches, culverts, headers, swales, pipes, grates, catch basins, retaining walls, and traffic control devices.

"Traveled Way" means that portion of the public highway which is used for vehicular travel, or which has been improved with a surface suitable for travel, not including shoulders or ditches. For paved highways, the edge of the traveled way shall be considered the edge of the pavement.

19. Amendments. These regulations may be amended by a majority vote of the Planning Board, after a public hearing, notice for the time and place of which shall be provided at least ten (10) days in advance by publishing the notice in a paper of general circulation in the municipality and posting the notice in at least two (2) public places. Any amendments shall be filed with the Town Clerk.

218-124

218-124
06/25/2009



Seaview Street elevation
6/11/09
5:10