

CONWAY PLANNING BOARD

MINUTES

DECEMBER 10, 2015

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CONWAY PLANNING BOARD

MINUTES

DECEMBER 10, 2015

A meeting of the Conway Planning Board was held on Thursday, December 10, 2015 beginning at 7:00 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Steven Porter; Vice Chair, Steven Hartmann; Secretary, Kevin Flanagan; Ray Shakir; Alternate, Richard Vitale; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Hartmann, to approve the Minutes of October 22, 2015 as written. Motion carried with Mr. Hartmann abstaining from voting.

KENNETT COMPANY (FILE #FR15-08) – FULL SITE PLAN REVIEW (PID 253-6.2)

Josh McAllister of HEB Engineers appeared before the Board. This is an application to construct a bulk propane storage facility and associated infrastructure on East Conway Road. Bayard Kennett and Peter Donohue were in attendance. Mr. McAllister stated there is a 30-foot gravel driveway that accesses a reclaimed gravel pit on this site. Mr. McAllister stated there is a 60-foot right-of-way along the drive for the Marshall property.

Mr. Hartmann made a motion, seconded by Mr. Porter, to accept the application of the Kennett Company for a Full Site Plan Review as complete. Motion unanimously carried.

Mr. McAllister stated the applicant is proposing a 30,000 gallon tank in the center of an access gravel area; the facility is designed for WB-50 trucks; there is a very small paved handicap access area; and the site will be served by a generator.

Mr. Drinkhall asked for Board comment; Mr. Shakir stated he is not sure if he understands the criteria for electrical service and asked why they would need a generator. Mr. McAllister stated the applicant can utilize a generator and not construct underground utilities at this time. Mr. Shakir asked what the generator powers. Mr. Donohue stated the only thing drawing electricity is the pump. Mr. Shakir asked if the only time they would use the generator is if they were physically on site. Mr. Donohue answered in the affirmative. Mr. Flanagan asked the closest residential neighbor. Mr. McAllister answered at the entrance of the site so 500-feet down the driveway.

Mr. Drinkhall asked for public comment; there was none. Mr. Irving asked if the typography of the land is that it slopes to the north and the east toward the wetland and if a propane leak it would tend to leak that way rather than toward the residential properties. Mr. McAllister agreed. Mr. Hartmann asked if the owner would be willing to pave the access road if there is further development. Mr. Irving stated any further development would have to come back to the Board.

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Mr. Irving read the waiver requests for §123-6.B.2; §123-20.E; §123-21.A; §123-29; and §123-29.A.4. **Mr. Porter made a motion, seconded by Mr. Flanagan, to grant the waiver requests for §123-6.B.2; §123-20.E; §123-21.A; §123-29; and §123-29.A.4.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none.

Mr. Flanagan made a motion, seconded by Mr. Porter, to conditionally approve the Full Site Plan for the Kennett Company conditionally upon Town Engineer Approval; Redstone Fire Chief approval; NHDOT Driveway Permit and indicating permit number on plan; amending the plans in accordance with the NHDOT driveway permit; 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 December 8, 2016. Motion unanimously carried.

EARLE AND SARAH MACGILLIVRAY (FILE #FR15-07) – FULL SITE PLAN REVIEW (PID 244-7)

Victor Manougian of McLane Law Firm appeared before the Board. This is an application to construct a wireless communication facility and associated infrastructure at 819 East Conway Road. Mr. Manougian requested the Board defer the application until February 11, 2016 as they are still working on the site plan. Mr. Manougian stated they waive the 60-day requirement to act on the application. Mr. Irving stated given the work we have put into this application staff recommends the Board defer the application. **Mr. Porter made a motion, seconded by Mr. Flanagan, to defer consideration of Earle and Sarah MacGillivray’s application until February 11, 2016. Motion unanimously carried.**

IPTV-B-C42, LLC/CHARTER FOODS NORTH, LLC (FILE #FR15-06) – FULL SITE PLAN REVIEW CONTINUED (PID 235-8)

Huseyin Sevincgil of MHF Design Consultants, Inc. and Bayard Kennett, representing the owner, appeared before the Board. This is an application to demolish the existing 11,074 square foot retail building and construct a new 2,727 square foot/50-seat restaurant with an interactive menu-board with speakers and drive-up window and associated infrastructure at 1672 White Mountain Highway. This application was accepted as complete on September 24, 2015.

Mr. Irving asked if the site plan had been modified or has just the architectural drawings been modified. Mr. Sevincgil stated just the architectural drawings. Mr. Kennett stated at the last meeting the Board requested the applicant to consider certain building design alterations to better represent a building the Board was hoping to see; the applicant has submitted four different side proposals for the Board’s review.

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Mr. Kennett stated there was some interest in seeing if the building could be turned 90-degrees; that is not possible given the restrictions of the site and the length of the building. Mr. Kennett stated it would have required shortening the building considerably; they are happy to redesign the elevations, but prefer not to turn the building.

Mr. Kennett stated Charter Foods North would ask out of the four elevations submitted what is the Board's preference. Mr. Hartmann asked what would be facing Route 16. Mr. Sevincgil stated the top drawing. Mr. Hartmann asked if there are awnings over the windows on the front side. Mr. Kennett answered in the affirmative. Mr. Hartmann asked if the slightly different colored roofs are awnings. Mr. Sevincgil answered in the affirmative.

Mr. Hartmann stated he likes A or C. Mr. Porter stated A is his first choice. Mr. Porter asked if the electrical junction boxes could be moved to the back of the building. Mr. Kennett answered in the affirmative. **Mr. Shakir made a motion, seconded by Mr. Flanagan, to amend the plans to indicate elevation A with the requirement that the electrical panel be moved to the rear of the building. Motion unanimously carried.**

Mr. Drinkhall asked for public comment; Don Freitas stated he is concerned with the landscaping as he lives behind this property. Mr. Sevincgil stated at the first meeting there was a concern with the buffer in the rear and arborvitaes were added along with the proposed eight-foot fence along the back of the property. Mr. Porter stated that the back of the site has been improved and should help the residents who live behind the site.

Mr. Irving read waiver requests for §123-29.A.2 & A.3; §123-30 with a revised justification that in lieu of the architecture with a pitched roof the Board is accepting rendering A with the electrical panels to be moved to the rear of the building; and §123-30.A.3. **Mr. Flanagan made a motion, seconded by Mr. Shakir, to grant the waivers for §123-29.A.2 & A.3; §123-30 as amended; and §123-30.A.3 as amended.** Mr. Drinkhall asked for Board comment; Mr. Drinkhall asked what will be shielding the lights from the neighbors. Mr. Kennett stated the headlights would be facing the cemetery. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Mr. Flanagan made a motion, seconded by Mr. Porter, to conditionally approve the Full Site Plan Review for IPTV-B-C42, LLC/Charter Foods North, LLC conditionally upon Town Engineer Approval; North Conway Water Precinct Approval; a NHDOT Driveway Permit and indicate approval number on plan; revising the plan set with architectural drawing A and move electrical plan to the rear of the building; submitting supplemental review fees [to be determined]; submitting four revised plan sets [three to remain with the Town]; 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 December 8, 2016. Motion unanimously carried.

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APPOINTMENT OF ALTERNATE MEMBER

Mr. Drinkhall appointed Mr. Vitale as a voting member.

OTHER BUSINESS

BS Investment Property Holdings, LLC (PID 230-42) - §123-4.A.5 (#NA15-09): Ron Briggs of Briggs Land Surveying appeared before the Board. This is a request to allow driveway and drainage improvements at 2317 White Mountain Highway, North Conway. Mr. Irving stated a couple of properties are involved; there is an application currently being prepared for an adjacent property and the driveway crosses the property the Board is considering this evening. Mr. Irving stated this request is for improvements to the site, but it exceeds the square footage that he can approve. Mr. Irving stated the improvements came from the demolition of a substantial building and site rehabilitation; there has been a reduction in floor space.

Mr. Flanagan made a motion, seconded by Mr. Shakir, that the Planning Board determined that based on the provisions of §123-4. A.5, regarding applicability, that the driveway and drainage improvements 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.

Review Sign Advisory Committee recommended Amendments:

Internally Lit Window Sign: Mr. Irving read the proposed amendment and stated the Board needs to determine if they would like to send this article to a public hearing on January 28 as a Planning Board amendment. Mr. Drinkhall asked for Board comment; there was none.

Mr. Drinkhall asked for public comment; Carl Thibodeau asked from an enforcement point of view does that include surface mounted LED lights and can they be white or colored. Mr. Irving stated it includes any internally lit sign, which would include LED; and the proposed ordinance does not reference color, so unless there is some other section of the ordinance that precludes colored lights both white and colored lights would be allowed. Mr. Irving stated he does not believe it was the intent to restrict color. Mr. Thibodeau stated it was not.

Mr. Irving stated the amendment is not limited to color or white only. Mr. Shakir stated he has no objection to color. Mr. Hartmann stated this opens up everything. Mr. Irving stated another section of the ordinance prohibits flashing, blinking and twirling lights. Mr. Irving stated you can have color, but the light inside probably has to be white.

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Mr. Thibodeau stated surface mounted LED has a halo around them; the perimeter is blue and/or green and OPEN is in a red. Mr. Thibodeau stated there was a question if a surfaced mounted LED sign was an internal light and wanted to make sure this type of signage will in fact be allowed under this amendment. Mr. Irving stated he would have read it to say yes as well; and that these internally lit signs can have color. Mr. Shakir stated he would agree.

Mr. Flanagan asked how much input was from the outside public. Mr. Thibodeau stated no one came to the meeting; this was his personal observation. Mr. Thibodeau stated based on the fact that there were several in use he brought this forward on his own. Mr. Porter stated a couple of businesses recently put up signs, how would those be regulated. Mr. Irving stated they exceed 2-square feet in size, but there is an amendment that has already been sent to a public hearing that would affect those signs; the ones currently displayed are window signs and this is the only provision for window signs.

Mr. Flanagan made a motion, seconded by Mr. Vitale, to send the internally lit window sign amendment as written to a public hearing on January 28, 2016. Motion defeated with Mr. Shakir and Mr. Vitale voting in the affirmative and Mr. Flanagan, Mr. Hartmann, Mr. Porter and Mr. Drinkhall voting in the negative.

Illumination: Mr. Irving stated the intent of this amendment was to address an inconsistency from district to district as this is allowed within the Highway Commercial District. Mr. Irving stated this amendment is proposed to make all of the districts consistent with the lighting requirements. Mr. Shakir stated he has a problem with the white lighting requirement in general.

Mr. Hartmann made a motion, seconded by Mr. Flanagan, to send the illumination amendment as written to a public hearing on January 28, 2016. Motion carried with Mr. Shakir voting in the negative.

Roof Sign: Mr. Irving stated this is a provision that would allow roof signs. Mr. Irving stated the only ones that should be out there are legally existing non-conformities. Mr. Irving read the amendment and stated it would affect the Center Conway Village Commercial, Conway Village Commercial, North Conway Village Commercial, Highway Commercial, Industrial-I and Industrial-II districts.

Mr. Drinkhall asked for Board comment; Mr. Drinkhall asked does this mean more signage because it could be two-sided. Mr. Irving answered potentially; and stated it could happen if you have a wall sign and place it on the roof perpendicular to the road, but the surface area of the

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geometric plain does not change. Mr. Flanagan stated that it doesn't seem to keep with our New England look and does not believe it is a good addition to our town. Mr. Drinkhall stated we have a lot of signage now as it is and to add more would be a shame.

Mr. Shakir stated there are some architectural designs that are mostly roof and very little wall, and he would lean to the roof being the display rather than the wall. Mr. Shakir stated it would be what would be more appropriate for the business depending on the architecture. Mr. Drinkhall asked for public comment; Mr. Thibodeau stated he would take issue to the assertion that we are adding more signage; it would make it more visible from both directions.

Mr. Hartmann made a motion, seconded by Mr. Shakir, to send the roof sign amendment to a public hearing on January 28, 2016. Motion defeated with Mr. Shakir and Mr. Vitale voting in the affirmative and Mr. Flanagan, Mr. Hartmann, Mr. Porter and Mr. Drinkhall voting in the negative.

Review zoning amendments recommended by Staff:

Travel Trailers and RVs: Mr. Irving stated the intent of the regulation is to permit travel trailers, RVS and such recreational vehicles to be stored on a lot accessory to a residential use. Mr. Irving stated this amendment provides clarification to clearly indicate that it is a permitted accessory use. Mr. Hartmann asked if the way it is written now it is just one and this amendment is not changing that. Mr. Irving answered in the affirmative. **Mr. Porter made a motion, seconded by Mr. Hartmann, to send the Travel Trailers and RVs amendment to a public hearing on January 28, 2016. Motion unanimously carried.**

Window Signage: Mr. Irving read the proposed amendment. The Board agreed to add the words “are permitted” to the end of the first line of the second portion of the proposed amendment. **Mr. Shakir made a motion, seconded by Mr. Vitale, to send the window signage amendment as amended to a public hearing on January 28, 2016. Motion unanimously carried.**

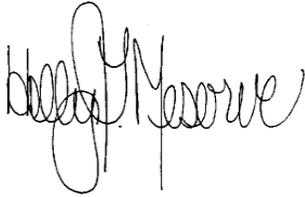
Set public hearing for proposed and petitioned zoning amendments – January 28, 2016: **Mr. Drinkhall made a motion, seconded by Mr. Porter, to hold a public hearing on proposed and petitioned zoning amendments on January 28, 2016. Motion carried with Mr. Vitale abstaining from voting.**

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Consider appointing the Public Works Director as the Planning Board’s designee pursuant to NH RSA 236:13, VI: Mr. Porter made a motion, seconded by Mr. Shakir, to appoint the Conway Public Works Director as the Planning Boards designee pursuant to NHRSA 236:13, VI. Mr. Hartmann asked if the Board would receive notice of anything that does happen. Mr. Irving answered in the affirmative. **Motion unanimously carried.**

Meeting adjourned at 8:30 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
Recording Secretary

Signage Advisory Committee Recommended Amendments

- X The internally lit window sign amendment affects the following sections 147.13.1.6.10.6, 147.13.2.6.10.6, 147.13.3.6.10.6, 147.13.4.6.10.6, 147.13.5.6.8.6, 147.13.6.7.8.7, 147.13.7.6.8.7, 147.13.8.6.8.7, 147.13.10.6.8.6, 147.13.11.6.8.6 and 147.13.12.7.10.6.

147.13.X.X.X.X. Window signs which are affixed to the interior of the window, not to cover more than 50% of any window. Window signage may include one (1) internally lit sign per business. Such internally lit window signs shall not exceed two (2) square feet in area.

NOT SENT TO A PUBLIC HEARING

The white light amendment affects the following sections 147.13.1.6.13.1, 147.13.2.6.13.1, 147.13.3.6.13.1, 147.13.4.6.13.1, 147.13.5.6.11.1, 147.13.6.7.11.1, 147.13.7.6.11.1, 147.13.10.6.11.1, 147.13.11.6.11.1 and 147.13.12.7.13.1.

- ✓ 147.13.X.X.X.X. Illumination. Signs shall not be illuminated from within; signs may be illuminated only by external light. Lighting shall be affixed to and, for dimensional purposes, considered part of the sign structure. Lighting shall be located, directed and/or shielded such that it only sheds light downward and is limited to the message display area. The lighting sources shall be of white light and be energy efficient fixtures when possible. Fixtures shall be located, directed and/or shielded such that no direct light emissions are visible at any point along the property boundary, nor shall they be distracting to vehicular traffic. Lighting sources shall be metal halide or halogen and located, directed and/or shielded such that no direct light emissions are visible at any point along the property boundary, nor shall they in any way be distracting to vehicular traffic.

SENT TO A PUBLIC HEARING ON 01/28/16

The Roof Sign amendment affects the following sections 147.13.5.6.3, 147.13.6.7.3, 147.13.7.6.3, 147.13.8.6.3, 147.13.10.6.3 and 147.13.11.6.3.

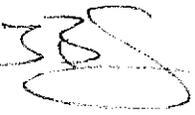
- X 147.13.X.X.X.X. ROOF SIGN. A roof sign is permitted in lieu of a wall sign as permitted is §147.13.X.X.X. Such roof signs shall conform to the dimensional restrictions for the applicable wall sign. Roof signs are also limited to the existing three dimensional envelope of the building on which it is to be located and may not increase the building's three dimensional envelope or two dimensional footprint. Roof signs may be oriented to face any direction and shall have no more than two sides; a front and a back sharing a single geometric plane.

NOT SENT TO A PUBLIC HEARING

SENT TO A PUBLIC HEARING
ON 01/28/16

MEMO

TO: Planning Board

FROM: Tom Irving, Planning Director 

CC: ES, HM, File

DATE: 10/16/15

RE: Zoning Amendments... Travel Trailers and RVs

Message:

The Current language is "One (1) travel trailer or recreational vehicle may be stored on a lot, provided that it is not utilized for dwelling purposes." This has always been interpreted as meaning that one (1) travel trailer or recreational vehicle may be stored on a lot as an accessory use to a permitted residential use. This is much like parking a car or boat on your residential property is a usual and customary albeit subordinate and incidental to the primary residential use.

The following amendment should clarify the language and reaffirm the current and past interpretation:

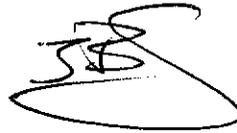
One (1) travel trailer or recreational vehicle may be stored on a lot, provided that it is accessory to a permitted residential use on the subject property and not utilized for dwelling purposes.

The amendment applies to the following sections: §147.13.1.10.3, §147.13.2.10.2, §147.13.3.9.2, §147.13.4.9.2, §147.13.5.10.2, §147.13.6.11.2, §147.13.6.15.2, §147.13.7.10.2, §147.13.7.14.2, §147.13.8.10.2, §147.13.10.10.2, §147.13.11.10.2 and §147.13.12.11.2.

SENT TO A PUBLIC
HEARING ON 01/28/16
* AS AMENDED

MEMO

TO: Planning Board
FROM: Tom Irving, Planning Director
CC: ES, HM, File
DATE: 12/01/15
RE: Zoning Amendments... Window Signage



Message:

In the Zoning Ordinance has some unclear language relative to window signs. The following amendments are intended to remedy the ambiguity. To this end it seems reasonable to simply replace the current language with new simpler and consistent language rather than tweak and further complicate the existing provisions. This should help to resolve the interpretations issues and clearly establish what is meant by a "regulated window sign".

The current definition of a window sign is : "WINDOW SIGN: A window, or portion thereof, on which sign message is displayed, whether by permanent or temporary attachment, but exclusive of merchandise display." As you mentioned the "on" creates some ambiguity and can present a defect for regulating attached or nearby signs that are clearly window signs but might better be regulated by interpreting "on" as meaning "on, in and/or through".

In the ordinance there are also references to window signs as follows: "SIGNS EXEMPT FROM PROPERTY LINE SETBACKS AND NO PERMIT REQUIRED: ... Window signs which are affixed to the interior of the window, not to cover more than 50% of any window." In this case the "affixed to" does adequately or clearly cover signs that are not affixed to the window per se. Such signs that might be set back from the window and or hung from the ceiling but still clearly function as window signs.

In order to address these defects I suggest we consider the following amendments:

1) Amend the definition of window sign as follows:

WINDOW SIGN: A regulated window sign is one that is located within four (4) feet of a window and is plainly visible from the exterior of the building, or portion thereof, on which sign message is displayed, whether by permanent or temporary attachment, but exclusive of merchandise display.

Note: This would address all forms of signage within 4 feet of a window, whether or not it is applied directly to the glazing, attached to the frame suspended from the ceiling or on a shelf or floor stand in front of the window.

2) Amend the provisions for window signs elsewhere in the ordinance sign as follows:

Window signs with a sign area that does not exceed 50% of the window area. Window signage that exceeds 50% of the window area is prohibited. ~~which are affixed to the interior of the window, not to cover more than 50% of any window.~~ → are permitted *

Note: This dimension would cover a single sign or the sum of several signs in/on a single window (see sign area measurement below). The lighting provision would address the inevitable lighting cleverness we will encounter while prohibiting internally light signs (which are a light source) as well as neon signs that are otherwise prohibited.

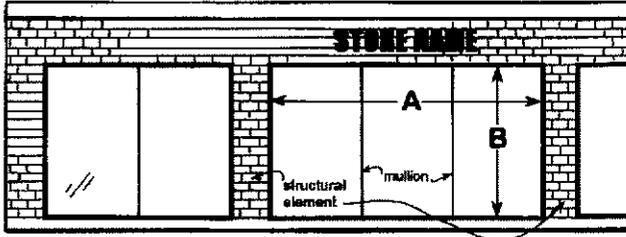
3) Amend the definition of sign message area as follows:

SIGN MESSAGE AREA - The total area used to display a sign's message including all lettering, designs, symbols, logos, together with but not including any support framework or bracing which is incidental to the sign and which is not designed to attract attention. Where the message area consists of letters, symbols, logos or devices affixed to the surface of a wall, building, awning or window, the message area shall be measure by a single, continuous, rectangular perimeter drawn to enclose the extreme limits of the sign elements. The message area of one side of a double-faced sign shall be regarded as the total message area of the sign. For double-faced signs, each face must be attached directly to the other. Window signs less than one (1) foot apart are measured as a single sign; otherwise the sum of the rectangles of window signage constitute a window's sign message area.

Note: see attached window sign measurement guidance exhibit.

Window & Signage Measurements Explained

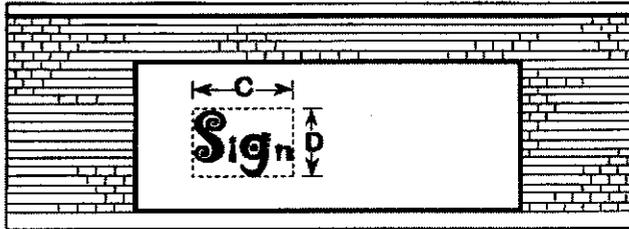
Window Area: the area of glass, including mullions, of a single window unit, set between structural materials



'A' x 'B' = window area

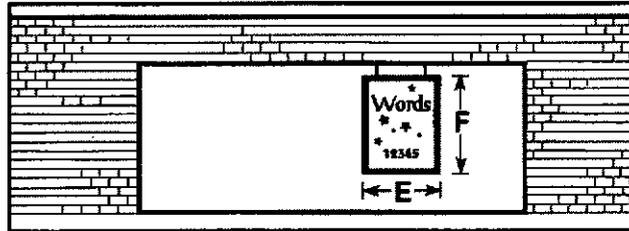
a maximum sign area of 20% or 50 square feet, whichever is less, is allowed for each window area

Sign Area: where there is no defined background, such as individual letters applied to the glass, draw a rectangle around the outermost points



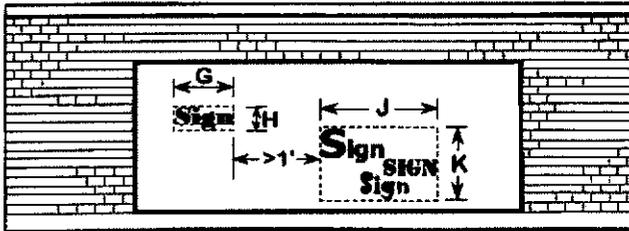
'C' x 'D' = sign area

Sign Area: where a background exists, such as a panel hung or mounted within four (4) feet of the window



'E' x 'F' = sign area

Multiple Signs: signs less than one foot apart are measured as one sign. Draw a rectangle around the outermost points



('G' x 'H') + ('J' x 'K') = sign area

TITLE XX

TRANSPORTATION

CHAPTER 236

HIGHWAY REGULATION, PROTECTION AND CONTROL REGULATIONS

Excavations and Driveways

Section 236:13

236:13 Driveways and Other Accesses to the Public Way. –

I. It shall be unlawful to construct, or alter in any way that substantially affects the size or grade of, any driveway, entrance, exit, or approach within the limits of the right-of-way of any class I or class III highway or the state-maintained portion of a class II highway that does not conform to the terms and specifications of a written permit issued by the commissioner of transportation.

II. Pursuant to this section, a written construction permit application must be obtained from and filed with the department of transportation by any abutter affected by the provisions of paragraph I. Before any construction or alteration work is commenced, said permit application shall have been reviewed, and a construction permit issued by said department. Said permit shall:

(a) Describe the location of the driveway, entrance, exit, or approach. The location shall be selected to most adequately protect the safety of the traveling public.

(b) Describe any drainage structures, traffic control devices, and channelization islands to be installed by the abutter.

(c) Establish grades that adequately protect and promote highway drainage and permit a safe and controlled approach to the highway in all seasons of the year.

(d) Include any other terms and specifications necessary for the safety of the traveling public.

III. For access to a proposed commercial or industrial enterprise, or to a subdivision, all of which for the purposes of this section shall be considered a single parcel of land, even though acquired by more than one conveyance or held nominally by more than one owner:

(a) Said permit application shall be accompanied by engineering drawings showing information as set forth in paragraph II.

(b) Unless all season safe sight distance of 400 feet in both directions along the highway can be obtained, the commissioner shall not permit more than one access to a single parcel of land, and this access shall be at that location which the commissioner determines to be safest. The commissioner shall not give final approval for use of any additional access until it has been proven to him that the 400-foot all season safe sight distance has been provided.

(c) For the purposes of this section, all season safe sight distance is defined as a line which encounters no visual obstruction between 2 points, each at a height of 3 feet 9 inches above the pavement, and so located as to represent the critical line of sight between the operator of a vehicle using the access and the operator of a vehicle approaching from either direction.

IV. No construction permit shall allow:

(a) A driveway, entrance, exit, or approach to be constructed more than 50 feet in width, except that a driveway, entrance, exit, or approach may be flared beyond a width of 50 feet at its junction with the highway to accommodate the turning radius of vehicles expected to use the particular driveway, entrance,

exit or approach.

(b) More than 2 driveways, entrances, exits or approaches from any one highway to any one parcel of land unless the frontage along that highway exceeds 500 feet.

V. The same powers concerning highways under their jurisdiction as are conferred upon the commissioner of transportation by paragraphs I, II, III, and IV shall be conferred upon the planning board or governing body in cities and towns in which the planning board or governing body has been granted the power to regulate the grading and improvement of streets within a subdivision as provided in RSA 674:35, and they shall adopt such regulations as are necessary to carry out the provisions of this section. Such regulations may delegate administrative duties, including actual issuance of permits, to a highway agent, board of selectmen, or other qualified official or body. Such regulations, or any permit issued under them, may contain provisions governing the breach, removal, and reconstruction of stone walls or fences within, or at the boundary of, the public right of way, and any landowner or landowner's agent altering a boundary in accordance with such provisions shall be deemed to be acting under a mutual agreement with the city or town pursuant to RSA 472:6, II(a).

VI. The commissioner of transportation or planning board shall retain continuing jurisdiction over the adequacy and safety of every existing driveway, entrance, exit, and approach to a highway, whether or not such access was constructed or installed pursuant to a permit under this section, and, unless the access is a public highway, the owners of property to which the access is appurtenant shall have continuing responsibility for the adequacy of the access and any grades, culverts, or other structures pertaining to such access, whether or not located within the public right of way. If any such access is or becomes a potential threat to the integrity of the highway or its surface, ditches, embankments, bridges, or other structures, or a hazard to the safety of the traveling public, by reason of siltation, flooding, erosion, frost action, vegetative growth, improper grade, or the failure of any culvert, traffic control device, drainage structure, or any other feature, the commissioner of transportation or planning board or their designee may issue an order to the landowner or other party responsible for such access to repair or remove such hazardous condition and to obtain any and all permits required therefor. The order shall describe the hazard, prescribe what corrective action or alteration in the location or configuration of such access shall be required, and set a reasonable time within which the action shall be completed. Such an order shall be sent by certified mail, and shall be enforceable to the same extent as a permit issued under this section. If the order is not complied with within the time prescribed, the commissioner or planning board or their designee may cause to be taken whatever action is necessary to protect the highway and the traveling public, and the owner or other responsible party shall be civilly liable to the state or municipality for its costs in taking such action.

Source. 1939, 109:1. RL 107:4. 1945, 188:1, part 19:12. 1950, 5:1, part 9:1, par. 2. RSA 249:17. 1969, 254:1. 1971, 302:1. 1981, 87:1. 1985, 103:4; 402:6, I(a)(7), (b)(7). 1997, 52:1, 2, eff. July 18, 1997. 2014, 125:1, eff. Aug. 15, 2014.