

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 25, 2016

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CONWAY PLANNING BOARD

MINUTES

FEBRUARY 25, 2016

A meeting of the Conway Planning Board was held on Thursday, February 25, 2016 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; Martha Tobin; Raymond Shakir; 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 February 11, 2016 as written. Motion carried with Ms. Tobin abstaining from voting.

HIGHLAND REALTY, LLC/ATHAIR INION ENTERPRISES REALTY, LLC (FILE #FR16-01) – FULL SITE PLAN REVIEW (PID 246-10)

This is an application to construct an 800 ± square foot drive-up coffee shop with walk-up window and associated infrastructure on Shaw's Way, North Conway (PID 246-10). Stephen Haight of Haight Engineering, LLC appeared before the Board. **Mr. Porter made a motion, seconded by Ms. Tobin, to accept the application of Highland Realty, LLC/Athair Inion Enterprises Realty, LLC for a Full Site Plan Review as complete. Motion unanimously carried.**

Mr. Irving stated this is a very narrow strip of land and the applicant has done an interesting and commendable job with it. Mr. Drinkhall asked for Board comment; Mr. Hartmann asked if there are architectural drawings of the building. Mr. Haight referred to the plan set and stated that the mechanicals are contained within an enclosure. Mr. Shakir asked if there would be signage on Route 16. Mr. Porter stated signage is not an issue for this Board. Mr. Irving stated signage is under the purview of the zoning ordinance; there is no signage shown on the plans.

Mr. Drinkhall asked for public comment; Mildred Eastman, owner of the Portland Glass building, asked about entering and exiting the property. Mr. Haight stated the entrance is located near CVS and the exit is further up Shaw's Way by the entrance to Shaw's. Ms. Eastman asked how close is the building to her property. Mr. Haight stated the building is approximately 50 feet from the property line; and her property is quite a bit higher than this property. Mr. Haight stated there will be trees between the building and the property line. Ms. Eastman stated she wanted to make sure she would be able to plow her snow.

Mr. Irving read §123-43, Waivers and Substitutions. Mr. Irving read a waiver requests for §123-20.F/§131-67.C.8.c./§123-29.4; §123-20.G; §123-29.A.2 & A.3; and §123-29.D.8. **Mr. Porter made a motion, seconded by Mr. Shakir, to grant the waiver request for §123-20.F/§131-67.C.8.c./§123-29.4; §123-20.G; §123-29.A.2 & A.3; 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.**

Ms. Tobin made a motion, seconded by Mr. Porter, to conditionally approve the full site plan for Highlands Realty, LLC/Athair Inion Enterprises Realty, LLC conditionally upon Town Engineer Approval; North Conway Fire Chief Approval; replacing lighting with IDA approved fixtures; 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 August 25, 2016. Motion unanimously carried.

**RUSSELL CANAVARI AND DAVID TOWNSEND (FILE #S16-02) – 5-LOT
SUBDIVISION REVIEW (PID 284-16)**

This is an application to subdivide 20.05 acres into five-lots of 3.09 acres; 3.27 acres; 3.16 acres; 4.05 acres; and 6.48 acres at 1901 Brownfield Road, Center Conway (PID 284-16). Ron Briggs of Briggs Land Surveying appeared before the Board. **Mr. Porter made a motion, seconded by Ms. Tobin, to accept the application of Russell Canavari and David Townsend for a Subdivision Review as complete. Motion unanimously carried.**

Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. Mr. Irving asked if Mr. Briggs had the driveway designs. Mr. Briggs answered in the affirmative and submitted copies to the Board. Mr. Irving stated that the Town Engineer has had an initial review of the designs and does not see a problem with them.

Ms. Tobin made a motion, seconded by Mr. Hartmann, to conditionally approve the subdivision for Russell Canavari and David Townsend conditionally upon Town Engineer Approval; incorporating driveway designs into the plan set; adding a note to the plan that states “A Town of Conway Driveway permit must be obtained prior to the issuance of a building permit”; locating street trees on the property; submitting four copies of revised plans with original signatures of Surveyor and Wetland Scientist; submitting a Mylar; submitting a \$25 check made payable to Carroll County Registry of Deeds for the L-CHIP fee; submitting 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 August 25, 2016. Motion unanimously carried.

**ESTATE OF ARTHUR E. HALE/FRED W. HALE (FILE #S16-04) – 3-LOT
SUBDIVISION REVIEW (PID 262-4)**

This is an application to subdivide 3.16 acres into three-lots of 1.06 acres; 1.05 acres; and 1.05 acres at 476 West Side Road, Conway (PID 262-4). Ron Briggs of Briggs Land Surveying appeared before the Board. **Mr. Porter made a motion, seconded by Mr. Flanagan, to accept the application of the Estate of Arthur E. Hale/Fred W. Hale for a Subdivision Review as complete. Motion unanimously carried.**

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

Mr. Porter made a motion, seconded by Mr. Shakir, to conditionally approve the subdivision for the Estate of Arthur E. Hale/Fred W. Hale conditionally upon Town Engineer Approval; submitting four copies of revised plans with original signatures; submitting a Mylar; submitting a check for \$25 made payable to the Carroll County Registry of Deeds for the LCHIP fee; submitting 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 August 25, 2016. Motion unanimously carried.

BARRY PACKARD (FILE #MR16-01) – MINOR SITE PLAN REVIEW (PID 277-186)

This is an application to amend File #FR13-04 by requesting a waiver to eliminate the requirement of planting three trees along the southerly property line at 50 Hobbs Street, Conway (PID 277-186). Ron Briggs of Briggs Land Surveying and Barry Packard appeared before the Board. **Mr. Porter made a motion, seconded by Mr. Hartmann, to accept the application of Barry Packard for a Minor Site Plan Review as complete. Motion unanimously carried.**

Mr. Drinkhall asked for Board comment; Mr. Hartmann asked why he doesn't want to plant the trees. Mr. Briggs stated there would be a better view of the site for safety reasons. Mr. Packard stated this property borders his house lot. Mr. Hartmann stated it looks like all one lot; and asked if he is trying to keep an open site line. Mr. Packard answered in the affirmative.

Mr. Briggs stated with the type of equipment he has there is a swing radius that is associated with them. Mr. Hartman asked where does the site stand with the tree requirement. Mr. Irving stated if all trees were planted they would have met the requirement. Mr. Packard stated the two lots have over 50 trees; and there are probably 25 trees on the ½ acre lot. Mr. Briggs stated there are 28 trees plus substantial lilac bushes. Mr. Drinkhall asked for public comment; there was none.

Mr. Irving read the waiver requests for §123-20.D/§123-29.A.2, A.3 & A.4; §123-20.E; §123-20.F/§131-67.C.8.a/§123-27; §123-20.F/§131-67.C.8.f; §123-20.G; and §123-29.C. **Mr. Porter made a motion, seconded by Ms. Tobin, to grant the waiver request for §123-20.D/§123-29.A.2, A.3 & A.4; §123-20.E; §123-20.F/§131-67.C.8.a/§123-27; §123-20.F/§131-67.C.8.f; §123-20.G; and §123-29.C.** Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Ms. Tobin made a motion, seconded by Mr. Porter, to approve the minor site plan for Barry Packard. Motion unanimously carried. The plans were signed; one signed copy was given to Mr. Briggs.

OTHER BUSINESS

Reed vs. Town of Gilbert: Mr. Irving reviewed the NHMA information regarding municipal sign ordinances (attached); and stated the Town needs to compile a complete rewrite for signage for the zoning ordinance. Mr. Irving stated we need to protect the aesthetics of the community; they need to be clear and concise; and enforceable. Mr. Irving stated the question is doing this in house or submitting a warrant article to hire a consultant.

Adopted: March 10, 2015 – As Written
CONWAY PLANNING BOARD – FEBRUARY 25, 2016

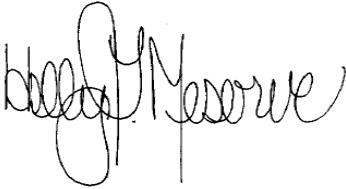
Mr. Porter stated this would be a very viable endeavor; and if we have to seek funding to outsource, we need to be proactive at this time. Mr. Flanagan asked Mr. Irving how much time he would need to put towards this project. Mr. Irving stated he would be spending a lot of time putting together the nuts and bolts; not yet going to include the entire public process. Mr. Irving stated when the Board sees what he puts together they may at that time want to explore it further, but it will give the Board a sound foundation to start from.

Mr. Shakir asked if there would be another sign committee. Mr. Irving answered in the negative and stated not at this time. Mr. Irving stated once the Board receives the information, then you may want to do that, but he would like to give the foundation first. **Ms. Tobin made a motion, seconded by Mr. Porter, to direct Mr. Irving to work on rewriting the sign ordinance. Motion carried with Mr. Flanagan voting in the negative.**

Mr. Hartmann stated he sees no problem with the nuts and bolts, but when it comes down to the fine details would much rather see a consultant look at the overall Town.

Meeting adjourned at 7:55 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



Municipal Sign Ordinances after *Reed v. Town of Gilbert*



Because the Town of Gilbert sign code placed stricter limits on temporary events signs but more freely allowed ideological and political signs—despite the fact that all three sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny.

As a result of *Reed*, a sign code that makes *any* distinctions based on the message of the speech is content based. Only after determining whether a sign code is neutral on its face would a court inquire as to whether the law is neutral in its justification.

Municipalities should review their sign codes carefully, with an eye toward whether the code is truly content neutral. If the sign code contains some potential areas of content bias—for example, if the code contains different regulations for political signs, construction signs, real estate signs, or others—consider amending the code to remove these distinctions.

In cases where a sign code update might take time, local planners and lawyers should coach enforcement staff not to enforce distinctions which might cause problems.

Check to be sure your sign code has all of the “required” elements of a sign code.

- The code should contain a purpose statement that, at the very minimum, references traffic safety and aesthetics as purposes for sign regulation.
- The code should contain a message substitution clause that allows the copy on any sign to be substituted with noncommercial copy.
- The code should contain a severability clause to increase the likelihood that the code will be upheld in litigation, even if certain provisions of the code are not upheld.
- In preparing the purpose statement, it is always best to link regulatory purposes to data, both quantitative and qualitative. For example, linking a regulatory purpose statement to goals of the local master plan, such as community beautification, increases the likelihood that the code will survive a challenge.
- If traffic safety is one of the purposes of the sign code (it should be), consult studies on signage and traffic safety to draw the connection between sign clutter and vehicle accidents.

In conducting the review of the sign code recommended above, planners and lawyers should look to whether the code contains any of the sign categories that most frequently lead to litigation. For example, if the code creates categories for political signs, ideological or religious signs, real estate signs, construction signs, temporary event signs, or even holiday lights, it is likely that the code is at greater risk of legal challenge. As a general rule, the more complicated a sign code is—i.e., the more categories of signs the code has—the higher the risk of a legal challenge.

Sign Code Guidance from the Court (Alito’s Concurrence):

A sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses—well might survive strict scrutiny.

The requirements of your ordinance may distinguish among signs based on any content-neutral criteria. Here are some specific standards the Court might uphold:

- Rules regulating the size of signs.
- Rules regulating the locations in which signs may be freestanding signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.
- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event.

In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

Possible Sign Code Changes:

Increase the overall allotment of temporary signs to accommodate the maximum demand for such signage at any one time, and allow that amount of temporary signs. A regulation that singles out off-premises signs that does not apply to a particular topic, idea, or viewpoint is probably valid because it regulates the locations of commercial signs generally, without imposing special burdens on any particular speaker or class of speakers.

Define government signs and Traffic Control Devices as signs, but specifically authorize them in all districts. Provide a base allotment of signs, and allow additional signs in relation to activities or events. Every property has a designated amount of square feet of signage that they can use for any temporary signs on their property, year round. For example: [x] square feet per parcel, in a residentially-zoned area, with a limit on the size of signs and perhaps with spacing of signs from one another. All properties get additional noncommercial signs at certain times, such as before an election or tied to issuance of special event permit. The key is to tie the additional sign allowance to the use of the property, rather than the content of the sign. Consider the following:

- Allow an extra sign on property that is currently for sale or rent, or within the two weeks following issuance of a new occupational license (real estate or grand opening signs).
- Allow an extra sign of the proper dimensions for a lot that includes a drive-through window, or a gas station, or a theater (drive thru, gas station price, and theater signs).
- Allowing additional sign when special event permit is active for property (special event signs). Key: not requiring that the additional signage be used for the purpose the sign opportunity is designed for, or to communicate only the content related to that opportunity.
- Grant an exemption allowing an extra sign on property that is currently for sale or rent.
- Grant exemptions allowing an extra sign (<10 sq. ft., < 48 inches in height, and <six feet from a curb cut), for a lot that includes a drive-through window.

Every parcel shall be entitled to one sign <36 sq. inches in surface area to be placed in any of the following locations: On the front of every building, residence, or structure; on each side of an authorized United States Postal Service mailbox; on one post which measures no more than 48 inches in height and 4 inches in width.

Provide a content-neutral application process: Citizens can apply, by postcard or perhaps online, for seven-day sign permits, and receive a receipt and a sticker to put on the sign that bears a date seven days after issuance, and the municipality's name. The sticker must be put on the sign so that enforcement officers can determine whether it's expired. Because the expiration date is tied to the date of issuance, there is no risk of content-discrimination. The sticker itself would be considered government speech.