

CONWAY PLANNING BOARD

MINUTES

JANUARY 26, 2006

A meeting of the Conway Planning Board was held on Thursday, January 26, 2006 beginning at 7:00 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Vice Chair, Conrad Briggs; Secretary, Martha Tobin; Sheila Duane; Steven Porter; Russell Henderson; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Duane made a motion, seconded by Mr. Porter, to approve the Minutes of January 12, 2006 as written. Motion unanimously carried.

FAIRWAY NOMINEE TRUST/JOSEPH R. MULLINS, TRUSTEE – FULL SITE PLAN REVIEW (PID 246-25.1) FILE #FR06-02

Maureen McGlone of H.E. Bergeron and Tyler Langlois of the Mullins Company appeared before the Board. This is an application to construct a 12,500 square foot retail building and a 5,000 square foot retail building at the intersection of Common Court and North-South Road, North Conway (PID 246-25.1). Mr. Irving read his letter to the applicant dated January 11, 2006 not recommending the application be accepted as complete.

Mr. Langlois stated over the past few months they have had discussions with the Town and the plan submitted represents what the applicant feels is reasonable. Mr. Langlois stated from their prospective the plan represents what they feel they can do right now. Mr. Langlois stated he would be willing to withdraw application, but would like to review the project under a conceptual review. Mr. Langlois stated that they have development rights, but are being handcuffed to sit back and let the process evolve.

Ms. Duane stated even if you take away the other two developments [Home Depot and Lowe's], any increase in development along this section of road would require upgrades to the North-South Road in order to handle any additional development. Mr. Irving agreed. Mr. Langlois stated that that is the design discussion we would like to get into, but the size of our site cannot accommodate those types of infrastructure upgrades. Mr. Irving stated that infrastructure design comes from the Board of Selectmen and inappropriate to have those types of discussions with this Board. Mr. Irving stated that the application submitted needs to comply with the site plan regulations. Mr. Irving stated the Board should entertain a motion to deny or accept or let the applicant withdraw.

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

Mr. Martin stated they should give the applicant one more opportunity to withdraw before the Board makes a motion. Mr. Langlois withdrew the application and asked for an opportunity for a conceptual review. Mr. Irving stated that the applicant should discuss the road layout with the Board of Selectmen or the Town Engineer first. The Board agreed.

PUBLIC HEARING – PETITIONED ARTICLE - §147.13.5.1

This is a petitioned article to include PID 258-30, 258-31, 258-48, 258-29 and 258-49 within the Center Conway Village Commercial District. Fay Melendy and Sanford Kravette appeared before the Board. The public hearing was opened at 7:11 p.m. Ms. Melendy stated that the properties are currently existing, non-conforming uses and proposing that these lots as a group get re-designated and rezoned as commercial property under the same purview of Center Conway. Mr. Irving stated that the church and school are not non-conforming, but allowed by special exception.

Mr. Kravette stated fifteen years ago it was a request of the Zoning Board of Adjustment that we relinquish that non-conformity since it was an allowed use. Mr. Kravette stated that they are trying to redeem what he didn't understand. Mr. Martin asked if it is an active church. Mr. Kravette stated that there are Sunday services, but it is primarily a school. Mr. Kravette stated that the church uses it only for Sunday services and nothing else.

Mr. Martin stated that he is not going to support this petitioned article as it looks like the start of what happened 35 years ago in North Conway and this time we have time to close the gate before the horse gets out. Ms. Melendy stated that these are unique properties where commercial uses ended up in a residential zone. Ms. Melendy stated that she doesn't think they are asking the Town to go down that slippery slope, but simply get the zoning designation that is with keeping with the use that is going on there.

Mr. Drinkhall stated that he concurs with Mr. Martin. Mr. Martin stated they are unique, but they are surrounded by residential and there wouldn't be as tight of a check and balance as there would be if they remained as it is today. Mr. Briggs stated that he agrees with Mr. Martin and this is quite a distance from Center Conway Village. Mr. Briggs stated that we have much non-conformity and many in residentially zoned areas. Mr. Briggs stated that there are plenty of commercial property in this Town and he doesn't think there needs to be any more.

Ms. Tobin asked the acreage of the Wal-Mart site. Mr. Irving answered eleven acres. Ms. Tobin stated that she would not like to see that type of development in that area since one of the proposed lots is nine acres. Mr. Irving stated that it would be restricted to 3,000 square feet; however, the Master Plan indicates this area as low intensity. Ms. Duane wondered what these properties would gain with this change. Ms. Duane stated that the hotel expanded. Mr. Martin stated that they had to obtain approval from the ZBA to expand.

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

Mr. Irving stated there are provisions to protect the surrounding properties when expanding a use that is more intensive. Mr. Irving stated under current zoning the town has a handle on what can happen on these properties, if the zoning is changed all of the uses permitted in the Center Conway Commercial District would be allowed.

Mr. Kravette stated that we had a theater company ask if they could use the property and even though it is a church that does theater performances, we found out the day before the show was to go on that it had to be canceled even though it is recognized as a 150-seat theater, because theaters are not an allowed use in the residential district. Mr. Irving stated that it was not accessory to the church or the school.

Mr. Porter stated if this area were zoned commercial it would create a bigger nightmare. Mr. Porter stated that these businesses are grandfathered and in the event they don't operate it any more he would prefer to see the property go back to residential. Mr. Porter stated there is already enough commercial area.

Mr. Drinkhall asked for public comment; there was none. The public hearing was closed at 7:30 p.m. **Mr. Martin made a motion, seconded by Ms. Duane, to recommend §147.13.5.1 on the warrant.** Mr. Drinkhall asked for public comment; there was none. **Motion unanimously defeated.**

**THE KENNETT COMPANY – 3-LOT SUBDIVISION CONTINUED (PID 262-71)
FILE #S06-02**

Bayard Kennett, owner, Stephen Sawyer of Sebago Technics and Bill Altenburg appeared before the Board. This is an application to subdivide 684.82 acres into three-lots with one lot containing 30.23 acres, the second lot containing 85.48 acres and the third lot containing 569.11 acres. This application was accepted as complete on January 12, 2006.

Mr. Kennett stated they have addressed the outstanding issues. Mr. Irving stated that he had another discussion with Mrs. Daly and she asked that he forward information to the Board. Mr. Irving stated that her principal concern is the 50-foot strip of land. Mr. Irving stated that the proposed subdivision does not effect that portion of the lot so she may still have a boundary line dispute after the fact.

Mr. Sawyer stated that he spoke with Mrs. Daly and she was concerned with the land between her property and the State property [PID 246-64]. Mr. Sawyer stated that the Town Tax Map shows 35-feet and we are maintaining that it is 50-feet. Mr. Sawyer stated that the Town Tax Maps were a scaled dimension and not a measured dimension. Mr. Sawyer stated they reviewed the deed that the Kennett's had when the land was purchased by the State and if you look back it was clear that the reserved strip of land is 50-feet and clearly the intent of the State to leave 50-feet. Mr. Sawyer stated there is evidence in our research that supports that fact that the land between the Daly property and State property is 50-feet.

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

Mr. Sawyer stated that Mrs. Daly's second concern related to a deed that was not referenced in the deed when she purchased property from the Kennett's. Mr. Sawyer stated that Mrs. Daly went on to say that in her research back to 1767 the center square of Conway was behind her house several feet, however, their research indicates that the center square is actually Route 302 and the center square is in front of her property rather than behind her house.

Mr. Sawyer stated he did have a meeting scheduled with her, but she canceled as she was going to hire her own surveyor. Mr. Sawyer stated that they feel comfortable with the surveyed plan. Mr. Sawyer apologized for showing one of her boundaries incorrectly and it has been corrected.

Ms. Duane stated that the issue might be she's concerned with the access road creating noise to her house and asked what is the plan for that road. Mr. Kennett stated that we don't have a site plan for that property, as they don't intend to develop it, but sell it to someone else. Mr. Kennett stated there is also frontage on Eagle's Way. Ms. Duane asked if the applicant would look at how to minimize her concern of noise. Mr. Kennett stated he would under the Board's purview in Site Plan. Mr. Kennett stated that there looking at other access points to that site. Mr. Drinkhall asked for public comment; there was none.

Mr. Briggs made a motion, seconded by Ms. Duane, to conditionally approve the 3-lot subdivision for the Kennett Company conditionally upon NHDOT Driveway Permit; North Conway Water Precinct approval; Board of Selectmen approval of municipal trail easement and indicate book and page of recorded easement on plan; record new easement to include loading dock on PID 252-11 and indicate book and page of recorded easement on plan; original signatures on all applicable plan sheets; submit Mylar's; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on May 25, 2006. Motion carried with Ms. Tobin abstaining from voting.

**DYER RECOVABLE TRUST OF 1997 – FULL SITE PLAN REVIEW
CONTINUED (PID 252-8) FILE #FR05-20**

This is an application to convert existing residential unit and residential garage to retail and construct an 864 square foot garage to be used for retail storage. This application was accepted as complete on December 8, 2005. Mr. Irving stated that the applicant has requested a continuance. **Mr. Briggs made a motion, seconded by Ms. Duane, to continue the full site plan review for Dyer Revocable Trust of 1997 until February 9, 2006. Motion unanimously carried.**

**JEANNE AND ANTHONY FRANCHI/PHILIP MCDONNELL/PATRICIA
FRANCHI – MEADOW GREEN REALTY TRUST II – 30-UNIT SUBDIVISION
CONTINUED (PID 219-303) FILE #S05-11**

This is an application for a 30-unit subdivision. This application was accepted as substantially complete on April 28, 2005. Mr. Irving stated that the applicant has

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

requested a continuance. **Ms. Briggs made a motion, seconded by Mr. Martin, to continue the subdivision review for Jeanne and Anthony Franchi/Philip McDonnell/Patricia Franchi – Meadow Green Realty Trust II until February 23, 2006. Motion unanimously carried.**

**KGI MOUNTAIN VALLEY MALL, LLC – FULL SITE PLAN REVIEW
CONTINUED (PID 246-38) FILE #FR05-10**

Randy Cooper of Cooper, Deans & Cargill; Andy Rocket of KGI Mountain Valley Mall, LLC; Kevin Letch of KGI Mountain Valley Mall, LLC; Todd Morey of Lowe's and Maureen McGlone of H.E. Bergeron Engineers appeared before the Board. This is an application for the redevelopment of the Mountain Valley Mall property resulting in three (five) buildings on the site for a total of 272,030 (272,000) square feet of commercial area at 32 Mountain Valley Boulevard and was accepted as sufficiently complete on May 12, 2005.

Mr. Cooper stated that there was a revision to the site plan to add more parking, the second restaurant pad has been removed and turned to greenspace and the Lowe's building has been reduced by the 22,000 square feet. Mr. Cooper stated that 1,371 parking spaces are being provided.

Mr. Drinkhall read the requirements to grant a waiver. Mr. Drinkhall read the waiver request for Articles 123-20.G.; 123-20.F./131-67.C.8.b. & 123-29.A.4; and 123-24 & 123-42.D. **Ms. Duane made a motion, seconded by Mr. Porter, to grant the waiver request for Articles 123-20.G; 123-20.F./131-67.C.8.b. & 123-29.A.; and 123-24 & 123-42.D.** Mr. Drinkhall asked for public comment; there was none. **Motion unanimously carried.**

Mr. Cooper read the waiver request for §123-28. Mr. Martin stated he did the design and it is impossible to put the three circuits underground as it is the main feed to the strip, Settler's Green and a dedicated circuit to the sewer treatment plant. Mr. Martin stated that the layout is the most discreet. Mr. Martin stated this is not just their service and their benefit, it has an impact on other areas.

Mr. Henderson stated this is a negative impact, but there has been significant effort with the design. Dot Seybold asked if it was impossible to put it underground for just too expensive. Mr. Martin stated that it is impractical, as they don't have the equipment in place to do it. **Mr. Henderson made a motion, seconded by Ms. Duane, to grant the waiver request for §123-28.** Mr. Drinkhall asked for public comment; there was none. **Motion carried with Mr. Martin and Mr. Briggs abstaining from voting.**

Mr. Cooper read the waiver request for §123-20.C. Mr. Henderson stated it appears they are adding an additional connector to Mountain Valley Boulevard. Ms. McGlone stated it is a private road not a Town road. Mr. Irving stated that the Town Engineer and he did review this situation and closing one of the accesses would mean delivery trucks and regular vehicles would have to share an access. Mr. Irving stated that neither he nor the

Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006

Town Engineer have an objection to this layout as it helps separate the delivery truck traffic from the regular traffic and adequate access to the loading area.

Mr. Henderson asked if they explored other options. Ms. McGlone answered in the affirmative and stated that they determined they needed to separate the two types of traffic. **Mr. Briggs made a motion, seconded by Mr. Porter, to grant the waiver request for §123-20.C.** Mr. Drinkhall asked for public comment; there was none. **Motion carried with Mr. Henderson voting in the negative and Ms. Tobin abstaining from voting.**

Mr. Cooper read the waiver request for §123-41. Mr. Martin stated that we haven't waived it in the past few months and doesn't see how we can here. Mr. Drinkhall agreed. Mr. Porter agreed. Mr. Drinkhall asked for public comment; there was none. **Mr. Martin made a motion, seconded by Ms. Duane, to grant the waiver request for §123-41. Motion unanimously defeated.** Mr. Morey asked if 1,000 square feet for outdoor display would include the trailers. Mr. Irving stated anything for sale displayed outdoors would be considered outdoor display.

Mr. Cooper read the waiver request for §123-29.D. Ms. Duane stated that the Town ordinances in regard to parking and landscaping argue with each other. Mr. Henderson stated that he recognizes that this is a challenging site. Mr. Henderson stated there are three tree count areas, but he does not see three areas on the plan. Ms. McGlone stated that the note was accidentally removed and should be put back on the plan.

Mr. Henderson asked what is the number of trees required. Mr. Irving answered 1,444 trees are required. Mr. Henderson asked how many existing trees qualify for credit. Mr. Irving answered 328. Mr. Henderson stated that the note indicates a higher number and is misleading. Mr. Henderson stated the site is deficient 681 trees and that is approximately half of the requirement. Mr. Cooper stated because of parking demands of others and disturbed area is parking and not building, the tree count increased. Mr. Cooper stated that the new trees being planted are higher than where we were before on a previously approved plan.

Ms. Duane made a motion, seconded by Mr. Martin to grant the waiver request for §123-29.D. Mr. Drinkhall asked for public comment; there was none. **Motion defeated with Mr. Henderson, Ms. Tobin, Mr. Briggs and Mr. Drinkhall voting in the negative.**

Ms. Duane referred to the Fram Real Estate [PID 235-33] site plan and stated that the Board waived the amount of trees since they would eventually compete with each other. Mr. Drinkhall stated that it would be difficult to get any more on the site. Mr. Irving stated the only way to get more trees without them competing with each other would be to reduce the amount of pavement. Ms. McGlone stated that the site meets the parking regulations. Mr. Porter stated if this was a new site he could understand not granting a waiver, but this is not a new site and the parking cannot be reduced.

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

Ms. Seybold stated the applicant has stated in the past that if they had to meet the parking requirements it would be a deal breaker; wasn't a proper argument then and not a proper argument now. **Mr. Drinkhall made a motion, seconded by Ms. Duane, to reconsider the vote in regard to §123-29.D. Motion carried with Mr. Briggs and Mr. Henderson voting in the negative and Ms. Tobin abstaining from voting.**

Ms. Duane stated that the Fram Real Estate property couldn't plant all the trees required so the Board look at shrubbery instead and the plan was nice. Mr. Cooper stated there is no doubt with letters from Hannaford regarding parking, and Derek Lick and Dot Seybold being connected to the whole thing, we are stuck between tenants. Mr. Drinkhall stated that he does feel what is proposed is a tremendous improvement. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver request for §123-29.D. Motion carried with Mr. Henderson and Mr. Briggs voting in the negative and Ms. Tobin abstaining from voting.**

Mr. Briggs asked if there would be mechanicals. Mr. Morey stated that there are mechanicals and they would be shielded from view. Ms. Duane asked if they would be visible from the North-South Road. Mr. Morey answered in the negative. Mr. Irving suggested adding a note to the plan that roof top mechanicals shall conform to the requirement of §123-30.A.1. Mr. Cooper agreed.

Mr. Henderson stated the rear elevation façade should be extended. Mr. Morey stated the reason for a peak around the corner is for the natural continuation, but they were not trying to screen the rear elevation. Mr. Morey stated at that time they decided to put the money available into the front elevation and they don't have anything else. Mr. Porter stated he doesn't like the financial argument.

Ms. Duane stated that the applicant proposed a higher berm along the North-South Road for more trees and provide a shield. Ms. Duane stated that you get more with trees than from anything else they could put on the building. Ms. Duane stated that the landscaping along the North-South Road is fairly thick. Mr. Cooper stated that the berm was extended along the entire building. Mr. Henderson stated that even with the berm and the landscaping you are going to see the roofline and need to lessen the impact.

Mr. Henderson made a motion, seconded by Mr. Martin, that the façade of the left elevation be upgraded to incorporate the dormers consistent to the front elevation. Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. **Motion defeated with Mr. Henderson voting in the affirmative.**

Mr. Drinkhall read the waiver request for §123-30. **Mr. Martin made a motion, seconded by Ms. Duane, to grant the waiver request for §123-30 with the condition that the architectural drawings replace the painted smooth faced CMUs with cast in color split faced CMUs.** Mr. Drinkhall asked for public comment; there was none. **Motion carried with Mr. Henderson voting in the negative.**

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

Mr. Henderson asked if the trailer at Hannaford that does not have wheels would remain. Mr. Cooper stated that they would tell Hannaford it would need to be removed. Mr. Irving asked the material of the garden center. Mr. Morey answered it is a solid semi-opaque material. The Board agreed that the screening adjacent to the Lowes storage trailers is to be consistent with the fencing/screening around the Lowe's garden center and that the materials stored in the garden center should not exceed the heights of the perimeter fence.

Mr. Irving asked about the letter from Cleveland, Waters and Bass. Mr. Cooper submitted an analysis relating to parking. Mr. Irving asked if he thinks they would be appealing again. Mr. Cooper stated that he has no idea.

Ms. Duane made a motion, seconded by Mr. Porter, to conditionally approve the Full Site Plan for KGI Mountain Valley Mall, LLC conditionally upon revising tree count table and tree count areas; removing signage from plans; revising outdoor display areas; revising curbing along Mountain Valley Boulevard; revising photometric plan; revising architectural drawing (Lowes) to replace painted smooth faced CMUs with cast in color split faced CMUs; adding stockade fence along Mountain Valley Boulevard adjacent to Hannaford's loading area; revising screening adjacent to Lowes storage trailers to be consistent with fencing/screening around Lowes garden center; adding note that roof top mechanicals shall conform to the requirements of §123-30.A.1.; revising waivers granted table; revising note/legend regarding stockade fence at southwest corner of property; adding note that height of materials stored in garden center shall not exceed the heights of the perimeter screening; address any outstanding items listed in facsimile dated January 16, 2006; Town Engineer approval of off-site improvements; submitting revised NHDES Site Specific Permit and indicate approval number on plans; submitting NHDES Dredge and Fill permit and indicate approval number on plans; submitting water and sewer precinct approval; submitting fire chief approval; submitting supplemental fees; NHDOT Driveway Permit and indicate approval number on plans as applicable; submit Mylar's for Carroll County Registry of Deeds; a performance guarantee for all on-site improvements; when the conditions have been met, the plans are to be signed in-session; and this conditional approval will expire on May 11, 2006. Motion carried with Mr. Henderson voting in the negative.

OTHER BUSINESS

Chapter 88 – Building Permit Fees – Set Public Hearing Date: Ms. Duane made a motion, seconded by Ms. Tobin, to hold a public hearing for amendments to Chapter 88 on February 9, 2006. Motion carried with Mr. Martin abstaining from voting.

Larry Smolinsky (PID 277-287) – Extension of Conditional Approval (File #FR02-08): Mr. Irving stated that the wastewater discharge permit has expired. Mr. Irving read a letter from Conway Village Fire District Superintendent, Thomas Steele, rescinding

**Adopted: February 9, 2006 – As written
CONWAY PLANNING BOARD – JANUARY 26, 2006**

their approval. Mr. Irving stated that he is precluded from recommending extending the conditional approval. **Ms. Duane made a motion, seconded by Mr. Martin, to extend the conditional approval for Larry Smolinsky f/k/a T. Paul and Loretta L. Matsubara. Motion unanimously defeated.**

Ms. Duane made a motion, seconded by Ms. Tobin, to deny the application of Larry Smolinsky f/k/a T. Paul and Loretta L. Matsubara without prejudice. Motion unanimously carried.

Capital Improvements Program: Mr. Irving stated that that he and Mr. Drinkhall have been invited to meet with the Board of Selectmen to discuss the CIP. The Board agreed.

Meeting adjourned at 10:00 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary