

CONWAY PLANNING BOARD

MINUTES

MARCH 22, 2007

A meeting of the Conway Planning Board was held on Thursday, March 22, 2007 beginning at 7:02 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Secretary, Steven Porter; Sean McFeeley; Hud Kellogg; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Kellogg made a motion, seconded by Mr. Martin, to continue the approval of the Minutes for March 8, 2007 until the next meeting.** Mr. Martin asked Mr. Kellogg why he wanted to continue the approval of the Minutes. Mr. Kellogg stated that the Minutes needed to be modified to include everything discussed at the meeting. Mr. Martin asked Mr. Kellogg to be more specific relative to the omissions so he could be informed when he votes on the motion. Mr. Kellogg stated that the issue regarding Planning Board responsibilities was omitted. Mr. Martin agreed and stated that the Minutes could be amended at this meeting. **Motion defeated with Mr. Porter, Mr. Martin, Mr. McFeeley and Mr. Drinkhall voting in the negative and Mr. Kellogg voting in the affirmative.**

**Mr. Martin made a motion, seconded by Mr. Drinkhall, to amend the Minutes of March 8, 2007 to include verbiage regarding Planning Board member's responsibilities.** Mr. Irving paraphrased his comments from the last meeting as follows: "Mr. Irving cautioned the Planning Board that once they step away from the table as individuals, being a planning board member grants them no special authority or license. As individuals they have no authority to take action on behalf of the Town. Nor are they protected by the Town from any liability resulting from their actions as individuals. Mr. Irving further cautioned the Members that if they want the board to take action on any item it should be brought up at a board meeting and acted upon as a Board". **Motion carried with Mr. Drinkhall abstaining from voting.**

**Mr. Martin made a motion, seconded by Mr. Porter, to approve the Minutes of March 8, 2007 as amended. Motion carried with Mr. Kellogg voting in the negative and Mr. Drinkhall abstaining from voting.**

**RIVER RUN COMPANY, INC. – FULL SITE PLAN REVIEW (PID 218-53) FILE #FR07-04**

Joe Berry of the River Run Company, Inc. and Burr Phillips of Civil Solutions, LLC appeared before the Board. This is an application to construct three, one-bedroom lodging rooms in one building. **Mr. Porter made a motion, seconded by Mr. Martin, to accept the application of River Run Company, LLC for a Full Site Plan Review as complete. Motion unanimously carried.**

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Mr. Drinkhall read the requirements to grant a waiver. Mr. Drinkhall read the waiver requests for §123-29.A.2 & A.3 and §123-29.D.8. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver requests for §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.**

Mr. Drinkhall asked for Board comment; Mr. Martin stated that it is a nice building. Mr. Drinkhall asked for public comment; there was none.

**Mr. Martin made a motion, seconded by Mr. Porter, to conditionally approve the Full Site Plan Review for River Run Company, LLC conditionally upon NHDOT Driveway Permit and indicating approval number on plan; showing the location of underground E/C/T to proposed building on plan; indicating window percentage on architectural elevations; indicating Residential Agricultural District boundary on plan; adding Residential Agricultural District to Note #4 (Zoning District) on sheet 1; a Mylar; 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 June 28, 2007. Motion unanimously carried.**

**HAROLD WHITAKER AND THOMAS FADDEN – 33 – LOT SUBDIVISION  
REVIEW (PID 243-12) FILE #S07-04**

Doug Burnell of H.E. Bergeron Engineers appeared before the Board. This is an application to subdivide 81.4 acres into 33-lots with associated road and infrastructure. **Mr. Porter made a motion, seconded by Mr. Martin, to accept the application of Harold Whitaker and Thomas Fadden for a Subdivision Review as complete.** Mr. Martin asked if the waivers are not granted can the Board still accept the application. Mr. Irving stated that the plans could be modified while the review is on-going should the waivers be denied. Mr. Irving stated that the Board could not increase the number of lots, the length of the road or create a more intensive use without re-noticing the application. **Motion unanimously carried.**

Mr. Drinkhall read the waiver request for §131-30.E. **Mr. Porter made a motion, seconded by Mr. Martin, to grant the waiver request for §131-30.E.** Mr. Drinkhall asked for Board comment; Mr. Porter stated that he could not endorse this waiver as it compounds problem upon problem with non-conformity. Mr. Porter stated that less lots would be more beneficial for everyone rather than having long slender lots. Mr. Martin stated in an effort to keep consistency he agrees with Mr. Porter. Mr. Martin stated that the ordinance is in place for a reason and the applicant needs to work within the regulations, not bend the regulations. Mr. Drinkhall agreed. Mr. Kellogg agreed. Mr. McFeeley agreed.

Mr. Irving read a letter from Mark and Linda Habeeb-Rotondo, abutters, dated March 22, 2007. Mr. Irving stated the Town's standard procedure, as well as the State's, is to make sure any road water run off is adequately measured. Mr. Irving stated that some of the abutters concerns are subject to the waiver request and the Board could look to see if the depth the lots could be reduced and create a common land area that could be protected by a home owner association. Mr. Irving stated that this might eliminate the need for a waiver as well as protect the down slope. Mr. Burnell stated that that is a possibility.

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Mr. Burnell stated that this particular section of the ordinance is not in the zoning ordinance, therefore, not hard and fast. Mr. Burnell stated that the applicant inherited a very strange piece of land and there is a reason for the orientation of the lots, the applicant was trying to create the lots for the views. Mr. Burnell stated that we thought this was the best layout for this particular piece of land.

Mr. Drinkhall asked for public comment; Sharon Johnston stated that it is her driveway that is too close to the proposed roadway and she is just learning of the Town's concern this evening. Ms. Johnston stated that she is concerned with the density of the development and with lots 1 and 2. Ms. Johnston stated that lot 1 has wetlands cutting across it and she asked where is the driveway located for lot 1. Mr. Burnell stated that lot 1 does have wetlands in the front and would share a driveway with lot 2 to stay upland of the wetland.

Dick Klement asked if the Board looks at the density to be in character with the Town and what the impact of this dense housing would be on the school system. Mr. Drinkhall stated that that does not fall under our purview. Mr. Klement stated there should be a connection between these subdivisions and the school system.

Mr. Irving stated that the lot density is addressed through zoning and zoning is based on the Master Plan. Mr. Irving stated that the Master Plan for this area of town has not indicated that the density in our zoning is not inappropriate. Mr. Irving stated if the town continues to grow and puts pressures on our infrastructure, the Town would need to keep an eye on it and monitor it, but the school board has not issued any concerns that the Planning Board should entertain a growth control ordinance. Mr. Kellogg asked what the Master Plan indicates as the percentage of seasonal homes. Mr. Irving stated that it is high, approaching half. Mr. Kellogg stated that the Board does not know how many of these lots would be used for seasonal homes, plus the letter writer is a seasonal homeowner as well. **Motion unanimously defeated.**

Mr. Irving asked for clarification of the denial. Mr. Martin stated that it does not fall into the criteria of granting a waiver. Mr. Irving suggested that the Board make findings of fact in regard to the denial of the wavier request for §131-30.E.

**Mr. Porter made a motion, seconded by Mr. Drinkhall, for a finding of fact that granting the waiver shall have the effect of nullifying the intent and purpose of these regulations. Motion unanimously carried.**

**Mr. Porter made a motion, seconded by Mr. Martin, for a finding of fact that strict compliance with the regulations would not cause a hardship to the applicant solely because of unique physical characteristics of the site. Motion unanimous carried.**

**Mr. Porter made a motion, seconded by Mr. Drinkhall, for a finding of fact that the Board determined that granting the waiver would not result in substantial public benefit, and would constitute a nuisance or hazard and be detrimental to other properties in the neighborhood. Motion unanimously carried.**

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Mr. Martin stated that he didn't have a problem with lots 1 and 2, but there are just too many that don't comply. Mr. Irving stated if they were to combine some of the down slope portions of the lots that might help mitigate the layout of the site.

Mr. Drinkhall read the waiver request for §131-30.H. **Mr. Porter made a motion, seconded by Mr. Drinkhall, to grant the waiver for §131-30.H.** Mr. Drinkhall asked for Board comment; Mr. Kellogg asked if acting on this waiver would be premature since the lots were going to have to be redesigned. Mr. Porter stated that this waiver is needed in addition to the other waiver. Mr. Drinkhall asked for public comment; Mr. Burnell stated that these are not all the long lots and it does have a reason.

Mr. Porter asked if it would be beneficial for the applicant to address the 3:1 issue before acting on this waiver. Mr. Irving stated the primary reason for this regulation is because there is a reoccurring problem of landowners not measuring their setbacks correctly. Mr. Irving stated that they don't realize that their lot line is on an angle. Mr. Irving stated that he would suggest the applicant try to make the angles more consist with the regulation, but for the Board to also understand that this is an awkward site. Mr. Irving suggested deferring the consideration of the waiver. Mr. Burnell agreed. Mr. Porter stated that the view could not be used as a standard to grant the waiver. Mr. Martin stated that the applicant does not have to bring it tight, but closer. **Mr. Porter withdrew the motion and Mr. Drinkhall withdrew the second.**

**Mr. Martin made a motion, seconded by Mr. Porter, to continue the Subdivision Review for Harold Whitaker and Thomas Fadden until April 26, 2007 to revisit the layout, the angles of the lot lines, and the Johnston property issues. Motion unanimously carried.**

**RICHARD AND DIANA HALSTEAD – BOUNDARY LINE ADJUSTMENT (PID 265-127 & 128.1) FILE #S07-05**

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. This is an application to add 0.78 of an acre to PID 265-128.1 from PID 265-127. **Mr. Porter made a motion, seconded by Mr. McFeeley, to accept the application of Richard and Diana Halstead for a Boundary Line Adjustment Review as complete. Motion unanimously carried.**

Mr. Smith stated that the driveway would be moving to the other side of the fire hydrant and almost across the street from the Lovejoy property. Mr. Smith stated that the driveway would be approximately 10-feet from the fire hydrant and no further than the Lovejoy driveway. Mr. Smith stated that the State is requiring a new driveway permit when the site is developed to establish the use.

Mr. Drinkhall read the waiver request for §131-37.1.A. **Mr. Martin made a motion, seconded by Mr. Porter, to grant the waiver request for §131-37.1.A.** After a brief discussion, Mr. Smith withdrew the waiver request. **Mr. Martin withdrew the motion and Mr. Porter withdrew the second.**

Mr. Drinkhall asked for public comment; there was none. **Mr. Martin made a motion, seconded by Mr. Porter, to conditionally approve the Boundary Line Adjustment for Richard and Diana Halstead conditionally upon NHDOT Driveway Permit and indicate**

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**approval number on plan; NHDES Subdivision Approval and indicating approval number on plan; Conway Village Fire District Water approval; Conway Village Fire Chief Approval; modifying driveway location on the plan; label the new underground utilities extension; modify 15-foot setback line to measure 15-feet and not 25-feet; indicate two street trees in the 150-foot span on PID 265-127; a Mylar; 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 June 28, 2007. Motion unanimously carried.**

**JEANNE FERNANDEZ – 2-LOT SUBDIVISION AND BOUNDARY LINE  
ADJUSTMENT (PID 214-95.01 & 97) FILE #S07-06**

Wes Smith of Thaddeus Thorne Surveys appeared before the Board. This is an application to subdivide 9.51 acres (PID 214-95.01) into two-lots and to add 0.82 of an acre from PID 214-95.01 to PID 214-97 resulting in three-lots, one lot being 2.34 acres (PID 214-97), one lot being 7.60 acres (PID 214-95.01) and a new lot of 1.08 acres. **Mr. Martin made a motion, seconded by Mr. Porter, to accept the application of Jeanne Fernandez for a Subdivision and Boundary Line Adjustment Review as sufficiently complete. Motion unanimously carried.**

Mr. Drinkhall asked for Board comment; there was none. Mr. Drinkhall asked for public comment; there was none. Mr. Irving stated that the applicant has requested a continuance. **Mr. Martin made a motion, seconded by Mr. Porter, to continue the Subdivision and Boundary Line Adjustment Review for Jeanne Fernandez until April 26, 2007. Motion unanimously carried.**

**PASTUREVIEW DEVELOPMENT, LLC – 3-LOT SUBDIVISION REVIEW (PID 283-22.1) FILE #S07-07**

Mia Gannon of Thaddeus Thorne Surveys appeared before the Board. This is an application to subdivide 11.19 acres into three lots with a road right-of-way and infrastructure. **Mr. McFeeley made a motion, seconded by Mr. Porter, to accept the application of Pastureview Development, LLC as sufficiently complete. Motion unanimously carried.**

Mr. Drinkhall read the waiver request for §131-30.H. **Mr. Porter made a motion, seconded by Mr. Martin, to grant a waiver for §131-30.H.** Mr. Drinkhall asked for Board comment; Mr. Porter asked the purpose of making three lots out of one. Ms. Gannon stated that it is an eleven-acre lot. Mr. Porter stated most of it is non-buildable. Ms. Gannon stated that it is poorly drained soil. Ms. Gannon stated that the location for the septic on lot 1 might need to be revisited. Ms. Gannon stated that the ZBA denied a variance for a crossing to a better building site and a radial line would have to go through the proposed building area.

Mr. Irving stated that if this were a unit subdivision rather than a lot subdivision it would eliminate the property lines and the need for the right-of-way. Mr. Irving stated there is a need for a significant amount of easements and homeowner's association any way. Ms. Gannon stated that she mentioned the unit subdivision to the owner and they are not convinced at this time that that is what they want to do.

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Mr. Drinkhall asked for public comment; Rodney King stated that his major concern is still the location of the road as it is going to impact his property. Mr. King stated that he is also concerned with the drainage. Mr. King stated if the road were not constructed to Town specifications it would impact his property. Mr. King stated that the road should be adequately built to serve the use and not impact his property. Ms. Gannon stated that the letter from the Center Conway Fire Chief has required improvements to the road that requires engineering. Mr. Irving stated that cross sections are being required, but it won't necessarily be built to town specifications. Mr. King stated that it should be constructed so not to have an impact on abutters.

Dick Klement stated that the applicant came before the Board for one house [under a previous subdivision application] and he was okay with that, but now that they want three lots and at first they tried for four lots. Mr. Klement stated that this is another example of overbuilding and asked where do you draw the line. Mr. Porter stated that he has a problem with the proposed lots as the applicant is trying to get premium dollar. Mr. Porter stated that the applicant is trying to create non-conforming lots with the waivers that are proposed. Ms. Gannon stated that the proposal meets the lot size requirement. Mr. Porter stated that the applicant is asking for waivers, as it cannot conform. Mr. Porter stated that it is a manipulation of the rules. Ms. Gannon reviewed the waivers that are being requested and stated that they are common waivers.

Mr. Martin stated that the shape of lot 3 bothers him. Mr. Kellogg stated that he agrees with Mr. Porter and Mr. Martin on this issue. Mr. McFeeley agreed. **Mr. Porter withdrew his motion and Mr. Martin withdrew his second.**

**Mr. Martin made a motion, seconded by Mr. Porter, for the finding of fact that granting the waiver would be injurious to other parties.** Mr. Kellogg stated that it is overdevelopment of the lot. After a brief discussion, **Mr. Martin withdrew his motion and Mr. Porter withdrew his second.**

**Mr. Porter made a motion, seconded by Mr. Drinkhall, for a finding of fact that granting the waiver shall have the effect of nullifying the intent and purpose of these regulations. Motion unanimously carried.**

**Mr. Martin made a motion, seconded by Mr. Porter, for a finding of fact that strict compliance with the regulations would not cause a hardship to the applicant solely because of unique physical characteristics of the site. Motion unanimously carried.**

**Mr. Porter made a motion, seconded by Mr. McFeeley, for a finding of fact that, in the Board's opinion, the alternative standard would not better accomplish the intent of these regulations for this specific case. Motion unanimously carried.**

**Mr. Porter made a motion, seconded by Mr. Drinkhall, for a finding of fact that the Board determined that granting the waiver would not result in substantial public benefit, and would constitute a nuisance or hazard and be detrimental to other properties in the neighborhood. Motion unanimously carried**

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**Mr. Porter made a motion, seconded by Mr. Martin, to grant the waiver for §131-30.H. Motion unanimously defeated based on the findings of fact.**

Mr. Martin asked Ms. Gannon if she would like the Board to not act on the waivers until the next hearing. Ms. Gannon asked that the Board act on the other waivers this evening. After a brief discussion, the Board did not want to act on a waiver until they knew the location of the revised boundary line.

**Mr. Porter made a motion, seconded by Mr. Martin, to continue the Subdivision Review for Pastureview Development, LLC until May 24, 2007. Motion unanimously carried.**

**JOHN NELSON, JR – SUBDIVISION REVIEW CONTINUED (PID 258-68) FILE #S06-16**

This is an application to subdivide 340± acres into 40-lots. This application was accepted as complete on June 22, 2006. Mr. Irving stated that the applicant has requested a continuance. **Mr. Porter made a motion, seconded by Mr. Martin, to continue the Subdivision Review for John Nelson, Jr. until April 26, 2007. Motion unanimously carried.**

**OTHER BUSINESS**

**Joseph and Lisa Querci (PID 218-101) – Extension of Conditional Approval (File #FR05-16 & S05-17): Mr. Porter made a motion, seconded by Mr. Martin, to extend the conditional approval for Joseph and Lisa Querci until June 28, 2007. Motion unanimously carried.**

**Jessica Drawe (PID 265-128) – Combination of nonconforming lots: Mr. Irving informed the Board of a decision by the Zoning Officer to combine three non-conforming lots. Mr. Irving stated that the decision could be appealed to the Zoning Board of Adjustment.**

Meeting adjourned at 9:40 pm.

Respectfully Submitted,

Holly L. Meserve  
Planning Assistant