

CONWAY PLANNING BOARD

MINUTES

SEPTEMBER 19, 2002

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SEPTEMBER 19, 2002

A meeting of the Conway Planning Board was held on Thursday, September 19, 2002 beginning at 4:20 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Sheila Duane; Vice Chair, Robert Drinkhall; Martha Tobin; David Robinson; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

MASTER PLAN UPDATE

Darren Mochrie of RKG Associates appeared before the Board. The Board reviewed the changes to Chapter 2, Economic Conditions; Chapter 6, Municipal Services and Infrastructure; and an addendum to the Land Use and Community Design Features.

Mr. Irving submitted a draft copy of the Recreation Chapter to the Board. The Policy Chapter will be discussed at the October 17, 2002 meeting at 4:00 p.m.

STUART TULCHINSKY/DEERWOOD HOLLOW, LLC – HEADLINES (PID 219-232) SMALL UNDERTAKING

Stuart Tulchinsky appeared before the Board. Ms. Duane stated that she walked the site. Mr. Irving submitted a letter from Town Council regarding conditions on a small undertaking. Mr. Irving stated if the Board goes with the plan it will be on good faith. Mr. Tulchinsky stated he would do the work in good faith and then come back to the Board and ask for a small undertaking. Mr. Irving stated that that is contrary to the standard practice.

There was discussion regarding letting him continue with the building permit while going through the site plan process. Ms. Duane asked if Glen Builders still owned the property and put in the asphalt and drainage, would we have had to go through this process. Mr. Irving stated that there may not have been an issue, but we have a legitimate process on the books that we have to follow.

Ms. Duane stated that a minor site plan would be a good way to go so the Planning Board doesn't get into a problem and would accommodate everyone's interest. Mr. Tulchinsky stated that technically this project fulfills all perimeters and should be granted as a small undertaking. Ms. Duane stated that the front parking is not really gravel. Mr. Tulchinsky stated that it has been that way for 25-years. Ms. Duane stated that it is dirt and it doesn't have wheel stops. Ms. Duane stated that they are trying to work with the applicant in the best way without comprising ourselves.

Mr. Robinson stated that there is significant evidence that this would require a minor site plan review. Ms. Tobin stated that she thinks it can be granted under a small

Adopted: October 10, 2002 – As Written
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undertaking. Ms. Duane stated that we have no enforcement control if not under a site plan review. Mr. Irving stated that he is not convinced that the existing on-site infrastructure is sufficient to provide for the proposed use. Mr. Irving stated if the Board is convinced then they can grant it as a small undertaking.

The Board reviewed the requirements of a small undertaking under Article 123-4.A.4. Ms. Duane stated that the only issue might be the parking. Mr. Robinson stated that we always talk about putting parking behind buildings. Ms. Tobin stated that that is not where we are; we are looking at the site as it sits right now. Mr. Robinson stated that the parking in the rear is not delineated and asked how do you know where and how many.

The Board reviewed the window calculations and agreed that they met the requirement. **Ms. Tobin made a motion, seconded by Mr. Drinkhall, that the Board found the proposed change-of-use qualifies as a small undertaking under Article 123-4.A.4.** Ms. Duane stated that she hopes with no conditions that the parking does get done. Ms. Tobin stated that the applicant has done a marvelous job so far at the site. **Motion carried with Mr. Robinson voting in the negative.**

Mr. Tulchinsky stated that he assures the Board that he will follow through with what he is proposing and will continue to improve the property.

Meeting adjourned at 6:25 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary

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MEMORANDUM

TO: Tom Irving

FROM: Peter J. Malia, Jr., Esq. *PJM*

DATE: September 17, 2002

RE: Planning Board's Ability to Impose Conditions on Developments Which Fall Under the "Not Applicable" Category: 123-4.A.

RSA 674:43, IV ("Power to Review Site Plans"), allows the Planning Board to "establish thresholds based on the size of a project or a tract below which Site Plan Review shall not be required." Conway has done this with 123-4.A. The Site Plan Review regulations do not apply to the four separate types of events/developments set forth under that section of the Ordinance.

The question is whether the Planning Board may impose conditions on an event/development which falls under 123-4.A. The answer, in my opinion, is no. Although Planning Boards do possess the authority to impose conditions in the Site Plan Review process (Morin v. City of Somersworth, 131 NH 253 (1988)), if an event or development fits within one of the four categories set forth in 123-4.A, then it is exempt from the Site Plan Review process. Therefore, any conditions imposed would be advisory only and would be mere recommendations to the developer or event sponsor.

Please call me if you have any questions.