

CONWAY PLANNING BOARD

MINUTES

SEPTEMBER 23, 2021

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CONWAY PLANNING BOARD

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A meeting of the Conway Planning Board was held on Thursday, September 23, 2021 beginning at 6:00 pm at the Conway Parks & Recreation Department, Marshall Gymnasium, at 176 Main Street, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, Steven Porter; Vice Chair, Ailie Byers; Secretary, Sarah Frechette; Bill Barbin; Eliza Grant; Erik Corbett; Planning Consultant, Will Haskell of Gorrill-Palmer; Town Engineer, Paul DegliAngeli; and Planning Assistant, Holly Whitelaw. Alternates Steven Hartmann, Ted Phillips and Steven Steiner were in attendance. Peter Malia, Town Counsel of Hastings Law Firm, was in attendance.

MEETING TIME FRAME

Mr. Porter made a motion, seconded by Mr. Corbett, that the meeting would not exceed 9:00 pm. Motion carried with Mr. Barbin voting in the negative.

REVIEW AND ACCEPTANCE OF MINUTES

The minutes of September 9, 2021 should be amended as follows: page 1, under Meeting Time Frame, line 2 "...~~9:00~~ ~~10:00~~ pm. Motion ...". **Ms. Grant made a motion, seconded by Mr. Porter, to approve the Minutes of September 9, 2021 as amended. Motion carried with Ms. Byers abstaining from voting.**

AGENDA OUT-OF-ORDER

Ms. Byers made a motion, seconded by Mr. Porter, to take the agenda out-of-order by hearing Other Business after the Fougere application. Motion carried unanimously.

MICHAEL AND STEPHANIE FOUGERE (FILE #S21-14) – 2-LOT SUBDIVISION REVIEW (PID 210-16)

Kevin Tilton of HEB Engineers appeared before the Board. This is an application to subdivide 13.96-acres into two-lots. Mr. Tilton reviewed the application. **Mr. Colbath made a motion, seconded by Mr. Porter, to accept the application of Michael and Stephanie Fougere for a two-lot subdivision review as complete. Motion carried unanimously.**

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

Ms. Byers made a motion, seconded by Mr. Colbath, to conditionally approve the two-lot subdivision for Michael and Stephanie Fougere conditionally upon Town Engineer approval; State Subdivision approval and indicating approval number on plan; State Driveway permit and indicating permit number on plan; providing percolation/test pit data; indicating underground utilities on plan; submitting four copies of revised plans with original stamps

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and signatures; submitting a Mylar for recording; submitting a \$25 check made payable to the Carroll County Registry of Deeds for the LCHIP fee; a performance guarantee for monuments to be set or set monuments (revising plans to indicate monuments are set); when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on January 27, 2022. Motion carried unanimously.

OTHER BUSINESS

Sally Marr (PID 240-25) – To allow a kennel (File #NA21-02): Shawn Bergeron of Bergeron Technical Services appeared before the Board. This is a request to allow a kennel at 2928 East Conway Road, East Conway.

Mr. Bergeron stated this property was approved for a boundary line adjustment in June and since then they obtained two special exceptions from the Zoning Board. Mr. Bergeron stated they meet all the requirements for not applicable; there are no changes proposed to the site, the intensity of use is not being increased, there is no reduction in greenspace, and there is no increase in floor space.

Mr. DegliAngeli stated we advised the applicant to come before the Board as they were granted a special exception for a kennel and a kennel is a change-of-use from the previous use. Mr. Colbath asked if there is a change-of-use of the property. Mr. Bergeron stated the change-of-use has been approved by the Zoning Board of Adjustment (ZBA). Mr. Bergeron stated at the ZBA meeting we agreed to sound attenuation in the structure and there are no outdoor kennels. Mr. Bergeron stated this is a reduction of use on this property, not an increase.

Mr. Colbath asked for Board comment; Ms. Grant stated she is a veterinarian and animals are incredibly disruptive and she would like to see what the plan is to see if this change-of-use is going to affect the abutters significantly. Ms. Grant stated if there are no outdoor space for the dogs at all then that is meaningful information to her; a building can be sound proofed to a point, but they will have to go outside.

Mr. Bergeron stated that was addressed at the ZBA meeting; they are limited to 8 to 12 indoor kennels. Mr. Bergeron stated the primary use will be a dog training center. Mr. Bergeron stated if a dog is outdoors, it will be with a trainer. Ms. Grant stated she is okay with that, that is different than a regular kennel. Ms. Grant stated it would be another change-of-use if 20 dogs are staying overnight and go outside, run around for hours and bark at each other.

Mr. Bergeron stated one of the primary uses of this property was the sale and rental of recreational vehicles which is significantly more disruptive than what is being proposed. Ms. Byers asked if plans were available showing where the outdoor space is going to be located. Mr. Bergeron submitted plans to the Board.

Mr. Colbath asked for public comment; Gary Cazeault of 2995 East Conway Road stated his concern is his comparison to the snowmobiles, they go home at night, the dogs are still there. Mr. Cazeault stated if they get barking at night, that is our concern; one dog barks and the whole neighborhood chimes in. Mr. Cazeault stated he wants to make sure it is done in a harmonious way and our property values are not diminished by barking dogs 24/7.

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Mr. Bergeron stated this is not a kennel that is available to the general public for housing dogs; dogs are there for a specific reason. Mr. Bergeron stated the kennels are indoors, not outdoors, and limited to 8 to 12 dogs. Ms. Byers asked if there would be dogs there overnight, or only during trainings. Mr. Bergeron stated there will be dogs there overnight, but they stay indoors; some facilities will use bark collars.

Mr. Colbath stated he understood it was a change-of-use, but Mr. Bergeron is representing that it is not a change-of-use. Mr. DegliAngeli stated the point Mr. Bergeron is trying to make is that there is no change in all the tests that are listed; the site is not changing, the greenspace is not being reduced. Mr. DegliAngeli stated staff is interpreting that retail or snowmobile purchase or rental to dog training to be a change-of-use. Mr. DegliAngeli stated we wanted the abutters to have the chance to be heard.

Mr. Porter asked if there is a kennel there now. Mr. Bergeron answered in the negative. Mr. Porter stated that is technically by Planning Board standard a change-of-use, and he would like to see a full site plan review. Mr. Bergeron asked where does it state that. Mr. Porter read §110-4.A.(5). Mr. Porter stated he doesn't think what is being proposed is insignificant in the development of that area. Mr. Bergeron stated this is a significant reduction in what has been there in the past.

Mr. Colbath asked when was the site plan review for this property done originally. Mr. Bergeron stated this property was developed previous to zoning and previous to site plan review requirements in the Town of Conway. Mr. DegliAngeli stated we don't have one. Mr. Colbath stated it is our due diligence to make sure it is in Town records and up to standards as well as looking out for the abutters, for safety, and our standards and practices.

Mr. Porter stated now that there is a change of use to the property it does fall under this Board's purview and we have to be responsible. Mr. Bergeron stated the ZBA meeting went on for about two hours and the abutters were well represented and aired their concerns; the applicant actually removed two or three of the proposed uses to appease the abutters and make it more palatable for the neighborhood.

Ms. Grant stated she feels fairly comfortable with what is being described relative to the site, but regarding the Zoning Board versus Planning Board issue, zoning approved the use, but it is our job to make sure that the way the site is laid out is not disruptive to the neighborhood. Ms. Grant stated just because zoning had it out and came to the conclusion that they were okay with this doesn't mean there are not issues this Board might have with how the property is being developed that is relevant to abutters.

Mr. Colbath made a motion, seconded by Mr. Corbett, that the Planning Board determined that based on the provisions of §110-4.A.(5), regarding applicability, that the kennel is not subject to a 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 carried with Mr. Porter and Mr. Colbath voting in the negative.

Michael and Valerie Lynch (PID 278-22 & 23) – Lot Merger: Mr. Colbath made a motion, seconded by Ms. Byers, to grant the lot merger for Michael and Valerie Lynch. Motion carried unanimously.

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Steven and Anita Cheney Revocable Trusts (PID 216-13) – Request for Concurrent Site Plan and Subdivision Review: Mr. Colbath made a motion, seconded by Ms. Byers, to approve the request of Steven and Anita Cheney Revocable Trust for a concurrent site plan and subdivision review. Motion carried unanimously.

**VIEWPOINT NORTH CONWAY, LLC (FILE #FR21-01) – FULL SITE PLAN REVIEW
CONTINUED (PID 202-168)**

Josh McAllister of HEB Engineers and John Ratigan of Donahue, Tucker & Ciandella appeared before the Board. Ms. Grant stepped down at this time. Mr. Colbath appointed Steve Hartmann as a voting member. This is an application to demolish the existing motel and site features and construct a 59,412 ~~105,836~~ square foot, 3-story ~~4-story~~, 98 ~~105~~-room hotel with associated infrastructure. This application was accepted as complete on February 11, 2021.

Mr. Colbath read §110-39. Roy Tilsley of Bernstein Shur stated he is representing Michael Grant who is one of the neighbors and abutters who has submitted the nuisance application. Mr. Tilsley stated the nuisance application is filed under §110-39, which was just read by the Chair, asking this Board to put reasonable restrictions on the site design as the project is currently proposed constitutes a serious nuisance to abutters and the public.

Mr. Tilsley stated they filed that nuisance application in February or March, there was a hearing in March, the applicant had subsequently revised their plans and we filed a supplement nuisance application to address the revised plans; the complainants are not satisfied that the changes made by the applicant eliminate the nuisance which caused the filing of the application in the first place.

Mr. Tilsley stated they reduced the number of hotel rooms from 105 to 98; that is a 7% reduction in the number of rooms. Mr. Tilsley stated a lot of the intensity of a hotel use is dependent on the number of rooms and the number of guests; here is the reduction of seven rooms. Mr. Tilsley stated the overall height of the building, which is an issue, was reduced at the center by 3-feet; from 54-½-feet to 51-½-feet. Mr. Tilsley stated along the sides of the building it has been reduced by approximately 8-feet which brings it to about 47-feet; his clients believe that is an insufficient reduction in height. Mr. Tilsley stated we proposed in the original nuisance application a 35-foot height limit.

Mr. Tilsley stated a wing of the hotel was removed on the southern side of the property to reduce the footprint. Mr. Tilsley stated that did not eliminate the fact that the parking lot ~~hotel~~ is 10-feet from the residential condominium complex at the rear of the hotel; there were no modifications or adjustments made there. Mr. Tilsley stated the removal of the southern area does very little to address the concerns of the hotel's closeness to residential properties. Mr. Tilsley stated this project is still too big, too much, too close.

Mr. Tilsley stated he would like to remind the Board procedurally how we got here; this issue first arose at the February meeting, and the applicant expressed some frustration, the applicant had felt the project had been designed consistent with the Town regulations. Mr. Tilsley stated Tom Irving [former Planning Director] referred the Board to §110-39 which gives the Board the ability to impose more strict criteria in certain nuisance circumstances.

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Mr. Tilsley stated Mr. Irving also advised the Board of §110-39.A.(6) when there is a commercial use abutting a residential property a 50-foot landscape buffer can be imposed between the commercial and residential property. Mr. Tilsley stated this Board immediately exercised that right and imposed that 50-foot buffer to the condominiums to the rear.

Mr. Tilsley stated at the March 25th meeting where the nuisance application was initially presented, there was discussion from the applicant wanting to address the concerns and it was suggested if the Board would remove the 50-foot buffer without prejudice it might give the applicant some more flexibility to redesign the project and come up with something that made more sense for the neighborhood. Mr. Tilsley stated the Board did that without prejudice; we are going to ask the Board to reimpose the 50-foot buffer.

Mr. Tilsley stated from his client's perspective and from the applicant complainant's perspective the small reduction in size and scope of the hotel does not justify the removal of the 50-foot buffer by this Board. Mr. Tilsley stated they are asking the Board to use a tool that is in the site plan review regulations. Mr. Tilsley referred to §110-2.D. and stated part of those regulations are to protect and preserve natural resources including large trees. Mr. Tilsley stated the Board has the tools to impose those requirements on the applicant without violating the law; they exist, they are in your regulations, we are simply asking the Board to use them.

Mr. Tilsley stated 98 rooms is too big for this area in this neighborhood. Mr. Tilsley stated we talked a lot about the restaurant, bar and parking; they should be providing parking or a waiver for those seats in the restaurant and bar. Mr. Tilsley stated 112 restaurant and bar seats for a 98-room hotel seems like a lot for a private dining room. Mr. Tilsley stated the applicant's position is that the restaurant is an amenity and the regulations don't require the applicant to provide parking for an amenity, and if this were a swimming pool there would not be a calculation of the square footage of that pool requiring additional parking, the same thing should apply to a restaurant.

Mr. Tilsley stated it was never indicated that there was enough parking for the employees of the restaurant; they are hanging their hat on a technicality. Mr. Tilsley stated there likely will be 15 employees for that restaurant when it is busy; it was indicated that the 108-parking spaces being provided is going to be enough for the guests of the hotel and the basic hotel operation staff. Mr. Tilsley stated the 15 people in the restaurant don't have a place to park; 15 employees with no place to park during the busy times of the year in this Valley is a nuisance.

Mr. Tilsley stated people will be parking on Intervale Crossroads, at the Scenic Vista and at the shopping plaza next door; there is no place for those people to park. Mr. Tilsley stated that is a nuisance, and the hotel is simply too big to accommodate the number of rooms with this 112-seat restaurant and bar.

Mr. Tilsley stated at the last hearing there was concern with noise, light pollution and traffic; Intervale Crossroads is a real concern and we heard it cannot change to make it safer for pedestrian traffic. Mr. Tilsley stated there was concern regarding the height of the building, snow storage, the ski corridor, the size and scope of the building and the effect on views. Mr. Tilsley stated it is a fact that it will diminish property values in the area; a large commercial enterprise 10-feet from your door will make property values go down.

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Mr. Tilsley read items #1, #2, #3, #4 and #5 [starting on page 3] of the Nuisance Complaint dated August 26, 2021.

Mr. Tilsley stated we have proposed what we believe to be appropriate mitigations for this project; the group a part of the nuisance complaint have worked hard to come up with solutions rather than blow this project up. Mr. Tilsley stated we have worked hard to try to figure out what the size and scope would be for a hotel that would fit in this mixed-use area. Mr. Tilsley stated they are not trying to prevent this from coming they are trying to prevent a nuisance.

Mr. Tilsley stated we are proposing in order to address the nuisances that this Board remove the restaurant and lounge or reduce the scope of the building so that there is sufficient parking for hotel guests and employees including restaurant staff. Mr. Tilsley stated we are asking this Board to reimpose the 50-foot buffer to residential properties under §110-29.A.(6) with landscaping and high-quality fencing. Mr. Tilsley stated we are asking this Board to impose a height restriction of 40-feet which is up 5-feet since he presented this in March. Mr. Tilsley stated we are asking that the 100-year-old maple tree be preserved. Mr. Tilsley stated the regulations allow the Board to impose these restrictions to eliminate public and private nuisances.

Mr. Tilsley referred to *Robie v. Lillis*, 112 NH 492, a private nuisance may be defined as an activity which results in an unreasonable interference with the use and enjoyment of another person's property; that is what is happening to this neighborhood. Mr. Tilsley stated a public nuisance is also existing; an unreasonable interference with a right common with the general public behavior which unreasonably interferes with the health, safety, peace, comfort or convenience of the general community.

Mr. Tilsley stated sometimes a nuisance can be the right thing in the wrong place if it interferes with the rights of others. Mr. Tilsley stated this proposal might be the right thing under the regulations, but it constitutes a nuisance because it is in the wrong place given its size, proximity to residential properties and intensity of use. Mr. Tilsley stated this is the Board's opportunity to give the applicant design standards; they have proposed design standards that we believe will eliminate the nuisance.

Mr. Tilsley stated there is ample evidence that this project as proposed will constitute a nuisance to the public and a private nuisance to this neighborhood; the Board has the ability to make that decision and to provide the design standards to eliminate the nuisance and allow this project to proceed so it fits within the size and scope of this long-established mixed-use neighborhood.

Mr. Colbath asked for Board questions; there was none. Mr. McAllister stated the first line of the nuisance states "In unique circumstances where these regulations do not address specific site design matters which, if not regulated, would constitute a serious nuisance to abutters or the public...". Mr. McAllister stated many of the items outlined in the complaint are items that are addressed in the site plan regulations. Mr. McAllister stated they feel some things like building height, which does have a specific part in the ordinance, doesn't qualify for this section because it is a specific design matter outlined in the regulations.

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Mr. McAllister stated in regard to the nuisances and mitigations, he heard that the 98 rooms cause increased traffic, pedestrian safety concerns and traffic concerns. Mr. McAllister stated they have addressed that previously; the site plan regulations have a particular portion that allows the Town Engineer or the Board to require a study to be done and we have completed that. Mr. McAllister stated we feel that is addressed in the regulations and not a unique circumstance that has not been addressed.

Mr. McAllister stated the parking conversation is one they took to heart and wanted to address; he worked with his client on a letter that outlines the total staffing and it should be noted that not all employees that work at a hotel are working at the same time. Mr. McAllister read a letter from Paritosh Patel regarding the anticipated staffing needs [in file]. Mr. McAllister stated the reduction in rooms from 98 to 95 is not a footprint change, it is a reallocation of bedroom space; the footprint itself will not change.

Mr. McAllister stated noise and lighting and building height are outlined in our ordinances; he does not believe property values has been the purview of the Planning Board, it is traditionally addressed at the Zoning Board level. Mr. McAllister stated in regard to the mitigation strategies that are proposed, removing the restaurant and lounge, and reducing the overall impact of the scope of the project, he just addressed the parking demands to show there is enough parking for both guests and staff.

Mr. McAllister stated the 50-foot buffer can be discussed, the 40-foot building height is not something they are addressing, and anything on this site is going to impact the 100-foot maple tree in the front as that root system likely extends throughout the property.

Mr. Ratigan stated the abutters attorney in regard to the tree is basically suggesting that the Town engage in inverse condemnation; seeking to preserve a certain piece of property that you don't have any rights towards is changing the development of the project which would be a multi-million-dollar impact. Mr. Ratigan stated that is a taking that is protected under the Federal and State Constitutions and there is no basis for that.

Mr. Ratigan stated the nuisance dock case has no modern applicability in the State of New Hampshire; unless a variance is needed there is absolutely no basis to suggest that impact on property values or impact on view is protected under NH law. Mr. Ratigan stated an easement is needed under NH law to protect a view.

Mr. Ratigan stated he strongly agrees that the nuisance language in §110-39 is predicated upon there being no regulation of the issue. Mr. Ratigan stated the applicant has submitted a plan that meets the requirements of the zoning ordinance and of the site plan regulations; there is no evidence based upon the evidence presented that can demonstrate the site plan regulations and the zoning ordinance are not met. Mr. Ratigan stated before the Board is an application that the Board has all the evidence it needs to approve and he requests that the Board do so.

Mr. Ratigan stated he addressed the 50-foot buffer request in his letter of March 25th and presented a substantial amount of prior site plans that have been reviewed and approved by this Board where the Board relied upon its existing regulations and not the nuisance regulation to address issues. Mr. Ratigan stated this applicant should be treated the same way you treat other applicants in addressing buffer issues.

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Mr. Colbath asked for Board questions; Ms. Frechette stated it surprises her that before 9:00 am the only staff will be restaurant related, guest services will not be there until 9:00 am, and only hotel security overnight.

Mr. Colbath asked what did they use to come up with the staff numbers for the restaurant and the hotel. Mr. McAllister stated the individuals who are proposing this hotel operate several hotels, they do this for a living; they would not be proposing a hotel of this scale without having experience. Mr. Hartmann stated he owned a hotel for quite a few years, and he does not agree with the parking calculations. Mr. McAllister stated they are providing 10 parking spaces for employees exceeding the Town requirement; providing 13 parking spaces beyond the individual parking space per room.

Mr. Tilsley stated the introduction of the letter about staffing requirements is new evidence; one of the complainants on the nuisance application is James Wrigley and he has experience in the hotel and restaurant industry. Mr. Wrigley stated he runs two hotels, the Highlands Center and Pinkham Notch Joe Dodge Lodge. Mr. Wrigley stated looking at these numbers they are very low; a standard rate for housekeepers is one room attendant for 16-rooms. Mr. Wrigley stated there would be 5 or 6 housekeepers for these rooms and they indicate 3. Mr. Wrigley stated running a restaurant with what they have indicated is unrealistic; there would need to be 5 or 6 servers for that many people, never mind the folks in the back of the house.

Mr. Tilsley stated it was said that the Board should treat this application like any other application; pretty sure this is the first nuisance application the Board has had and they are entitled to have it heard.

Mr. Barbin made a motion, seconded by Ms. Byers, that this application qualifies as a nuisance pursuant to §110-39 of the Town's site plan review regulations because 98 units, which is a 6.1 times increase in capacity of the existing structure, this project will bring increased levels of traffic and will negatively impact traffic safety and pedestrian safety.

Mr. Colbath asked for Board comment; Ms. Byers stated she did watch the whole video from last time, and is fully caught up from when she was not here. Ms. Byers stated she doesn't have any problems with the data or the traffic study, or how it was conducted; she is concerned with adding even one car to a failing intersection. Ms. Byers stated she understands with the traffic study and NHDOT standards that this application has nothing to do with it being a failed intersection. Ms. Byers stated from a safety standpoint adding one person or one car into an intersection like that is not a great idea.

Ms. Byers stated it is not the fault of the developer; the state is choosing not to take mitigative action, the private landowners across street on Intervale Crossroads are not willing to give up land, so there is not an easy way to remediate the situation. Ms. Byers stated this appears to be the only hotel along the Route 16 corridor that would have a curb cut with an entrance and egress onto a major residential road; a road that leads basically to just neighborhoods and homes, no commercial activity which makes it a unique circumstance. Ms. Byers stated the Green Granite is somewhat similar, with some residential, but mostly has commercial off of it.

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Ms. Byers stated she does not feel that the snow storage was adequately addressed. Mr. Colbath stated the last thing he wants to do is have more traffic at this failing intersection and then have the State say well you overdeveloped this intersection. Mr. Colbath stated we know that there are these issues, we know the traffic counts for the hotel, but not for the hotel plus a restaurant. Mr. Colbath stated this is a unique circumstance because of these specific issues; it is not like any other development in Town.

Mr. Barbin made a motion, seconded by Ms. Byers, to amend the motion to 95 rooms. Ms. Frechette stated she is concerned with pedestrian safety across Intervale Crossroads and to the Scenic Vista and it is not something that should be taken lightly. Mr. Hartmann stated he agrees with the concerns expressed by Ms. Frechette and Ms. Byers regarding the failing intersection. Mr. Hartmann stated he also has a problem with parking for employees. Mr. Hartmann stated he has been in the hotel business and restaurant business for most of his life and he cannot see those numbers working. **Motions carried unanimously.**

Ms. Frechette read page 3, item #1 [modifying to 95 units], under Detailed Explanation of Nuisance Complaint dated August 26, 2021. **Mr. Porter made a motion, seconded by Mr. Corbett, to incorporate as findings of fact for nuisance complaint #1. Motion carried unanimously.**

Ms. Byers made a motion, seconded by Mr. Porter, that this application qualifies as a nuisance pursuant to §110-39 of the Town’s Site Plan Review Regulations because the scale of this project will cause undue noise and light pollution, negatively impacting the peace and privacy of abutter properties.

Mr. Colbath asked for Board comment; Ms. Byers stated in regard to light pollution, she agrees with the plans submitted by HEB; she thinks the light pollution from the light structures on the site meet the standards and will not have any overflow to any outside land; however, she believes the abutters concerns have to do with cars and lights from the hotel rooms. Ms. Byers stated on February 25th the Board imposed a 50-foot buffer and then rescinded without prejudice on March 25th allowing HEB to modify the project without limitations to address the concerns brought up in the nuisance complaint.

Ms. Byers stated a 50-foot buffer does not seem to have been taken into account in the new plans by not even one-foot, it is just the minimum 10-foot on the southerly and easterly sides. Ms. Byers stated it is frustrating that there was no thought taken into accommodating the concerns of the neighbors.

Ms. Byers stated in regard to height and previous discussions regarding what the Town allows and what the Town doesn’t allow, the Town of Conway has in the past imposed height limits before for viewsheds and other reasons; most notably the North Conway Community Center to protect the mountain view, which is west of Town, of the Moats. Ms. Byers stated it is not unprecedented by us in the past. Ms. Byers stated the building was dropped by three-feet on the top and by 8-feet on the gable, but, in her mind, it was a nominal change from the original plans. **Motion carried with Mr. Colbath voting in the negative.**

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Ms. Frechette read page 4, item #2, under Detailed Explanation of Nuisance Complaint dated August 26, 2021. **Ms. Frechette made a motion, seconded by Mr. Colbath, to incorporate as findings of fact for nuisance complaint #2. Motion carried unanimously.**

Mr. Colbath made a motion, seconded by Ms. Byers, that this application qualifies as a nuisance pursuant to §110-39 of the Town’s Site Plan Review Regulations because the project is not in line with the character of the neighborhood and will impact the visual harmony and enjoyment of the neighborhood.

Mr. Colbath asked for Board comment; Ms. Byers stated the building height and center structure drop was not that significant; it is appreciative, but it is still going to be a massive structure in reference to the area and things that are around it. Ms. Byers stated she is fully aware of the fact that the Master Plan has no control in terms of ordinances, however, when the Master Plan was created and referenced the gateway spaces it was a big enough issue to actually state in the Master Plan.

Ms. Byers stated although the ordinances have not been updated, it is still something the Town felt strongly about to put into the Master Plan. Ms. Byers stated she has to take that into account when looking at how this would be perceived coming into and leaving the Valley. **Motion carried unanimously.**

Ms. Frechette read page 4, item #3, under Detailed Explanation of Nuisance Complaint dated August 26, 2021. **Ms. Frechette made a motion, seconded by Mr. Colbath, to incorporate as findings of fact for nuisance complaint #2. Motion carried unanimously.**

Mr. Colbath made a motion, seconded by Mr. Porter, that this application qualifies as a nuisance pursuant to §110-39 of the Town’s Site Plan Review Regulations because the building height will obstruct the mountain views of neighboring properties, this includes residential properties as well as the scenic vista, which will impact the enjoyment for both property owners and visitors to the area. Mr. Colbath asked for Board comment; Mr. Hartmann stated we were asked by the applicant to back off on the 50-foot buffer, which the Board did without prejudice. Mr. Hartmann stated he believes the applicant could have done better than knocking 3-feet off the building height.

Mr. Porter stated the building does meet the requirement in a commercial area. Mr. Porter stated North Conway Community Center was referenced earlier, but in that particular area there was a warrant article to reduce the building height to 45-feet; that is why the community center is substantially lower in height. Mr. Porter stated the argument that it is going to interfere with the neighbor’s view, we don’t have the purview to make that determination.

Ms. Byers stated these individuals did buy residential land that was next to commercial land, and it is hard to formalize what takes away or gives to your enjoyment. Ms. Byers stated if you have had a view for a long period of time, and talking specifically about viewsheds, and it goes away that stinks, but to formalize it in a way for us is hard and is very subjective. Ms. Byers stated it was a low motel, but it is a commercially zoned area so you don’t know what is going to go in there.

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Mr. Colbath stated he feels the building height nuisance is more pursuant to item 3 regarding the Master Plan, and without any view easements it is tough to justify that. **Motion defeated unanimously.**

Mr. Colbath made a motion, seconded by Mr. Barbin, that this application qualifies as a nuisance pursuant to §110-39 of the Town’s Site Plan Review Regulations because this project will have an adverse effect on residential property values. Mr. Colbath asked for Board comment; Ms. Byers stated this again is subjective, it is hard to know what the market is going to be. Ms. Byers stated in terms of residential property values, even four years ago we wouldn’t have imagined what the property values are today because of a pandemic that no one was planning on.

Ms. Byers stated for the Planning Board to try to impose thoughts that are based on a market that is in constant flux for a variety of reasons is very hard and potentially outside the Board’s purview. Mr. Barbin stated he agrees that this is outside the purview of the Planning Board, however, it will affect values. Mr. Barbin stated the property’s closest to the commercial development will be devalued, the condominiums on the other side of the driveway will be devalued; property in that area will be devalued because of this. Mr. Barbin stated he works in the business and he knows that is how he would approach value for these properties.

Mr. Colbath read §110-2, Purpose. **Motion defeated with Mr. Corbett, Ms. Byers, Mr. Porter, Mr. Hartmann and Ms. Frechette voting in the negative and Mr. Barbin and Mr. Colbath voting in the affirmative.** The Board took a brief recess.

Mr. Colbath stated that §110-39 requires the Board to weigh the significance of the nuisance against the effect which the corrective measure would have on the applicant.

Mr. Porter read page 6, items #1 [modifying to 95 units] under Mitigation Recommendations of the Nuisance Complaint dated August 26, 2021.

Ms. Byers stated she would like to require the developer to provide plans and drawings to address safe pedestrian crossing across Route 16 from the hotel to the Scenic Vista and remediate at the applicant’s expense the existing failed grade intersection to a passing grade intersection as defined by NHDOT in an effort to ensure public safety.

Mr. Porter read mitigation recommendation 1.a. on page 6 of the updated Nuisance Complaint. Mr. McAllister stated he has concerns with requiring them to design improvements on NHDOT infrastructure that they don’t want improvements on; he doesn’t think the Board has the purview to require a design on a road that the owner does not want designed upon. Mr. McAllister stated the Board could make it a condition, but NHDOT could say no which they already have.

Mr. Porter stated he doesn’t believe the Board can dictate what goes on a State Road; that is beyond the Town and the Planning Board’s purview. Mr. Colbath stated there is no safe way to traverse this intersection. Mr. McAllister stated the owner of the road does not want the crossings. Mr. Barbin stated we have gone around on this before, and the only conclusion he has been able to come up with is to control pedestrians on the property. Mr. Barbin stated an attractive nuisance is being created; across the street from the hotel is a beautiful Scenic Vista and they are going to be drawn to get across the street.

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Mr. Barbin stated short of being able to get across the street, we need to look at this site to increase safety; the safety implication that he sees is a fence along the property line along the roads. Mr. Barbin stated that is something the Board can impose upon the developer to increase the safety of that site and mitigate the hazard being created for the pedestrians/hotel guests.

Mr. Colbath stated he struggles that no one will step up to do something about this intersection; and he hoped the State would be more probusiness to work with the developer to help bring this intersection up to code so that we are not creating a dangerous situation. Ms. Frechette asked if we can ask for a plan to be provided for reasonable safe pedestrian crossing across Route 16 and Intervale Crossroads whether or not it receives approval at the DOT level; it would still be something created by the developer that would be proposed in good earnest that this is a plan that would solve the problem.

Mr. McAllister stated something more productive would be for the applicant, the Town of Conway and NHDOT to have a scoping meeting to discuss and see what is possible. Mr. McAllister stated the results of that would be what can come out of it. Mr. Colbath stated if the applicant was to propose some safe pedestrian crossings and if NHDOT says no then this Board did their due diligence. Mr. McAllister stated it is reasonable to request a meeting with the NHDOT.

Ms. Byers stated she would take back what she said for c. and propose a mitigation measure to be for the applicant, the Town and the NHDOT to have a scoping meeting with a design set of plans for public crossings.

Mr. Hartmann stated this is a failed intersection which, unfortunately, the applicant is trying to develop on. Mr. Hartmann stated he has a hard time as a Planning Board member approving any type of development on a failed intersection. Mr. Hartmann stated we need to have some ground to stand on; we need a way to get this to the table and for the State to take us seriously.

Mr. DegliAngeli asked if the Board is going to direct the applicant to include the restaurant and bar that is not currently included in the traffic study; and if so, now there is a reason for a new scoping meeting. Mr. DegliAngeli stated in the scoping meeting we will get direction from NHDOT on what to do. Mr. DegliAngeli stated if they find there is reason to mitigate the traffic, additional lanes, a traffic light, they could then consider pedestrian crossings because the traffic will be controlled and it will be stopped.

Mr. McAllister stated we did request a scoping meeting; a scoping meeting defines what the traffic impact study is. Mr. McAllister stated NHDOT indicated with just a hotel with a restaurant for hotel-users only they didn't need it; however, if we do have to include the restaurant traffic NHDOT would need to reconsider.

Ms. Frechette made a motion, seconded by Mr. Hartmann, that the developer needs to remove “Restaurant” from the plan, and if there is, in fact, a restaurant and/or lounge, then the site needs to contain enough parking for those functions, as laid out in the Municipal Code or request a waiver. Motion carried unanimously.

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Ms. Byers made a motion, seconded by Mr. Hartmann, if possible, the applicant, Town of Conway, and NHDOT will have a scoping meeting to discuss what can be done to address the failed intersection and pedestrian safety issue in relation to the Intervale Crossroads and Scenic Vista based on the proposed project, and provide a plan to the Planning Board. Motion carried unanimously.

Ms. Frechette read mitigation recommendation 2 on page 6 of the updated Nuisance Complaint. **Ms. Frechette made a motion, seconded by Mr. Hartmann, to reimpose the 50-foot buffer on the southern and eastern borders where the project abuts residences. The southern and eastern borders should include both landscaping and appropriate high-quality fencing that create privacy and reduce noise and light pollution. A suggested buffer is a 7'-8' earthen berm, a physical privacy fence at least 6' in height, and a heavy landscape planting using both bushes and trees that is at least 10' wide and 20'-25' high (tree height from base ground level of the berm).**

Mr. Colbath asked for Board comment; there was none. Mr. McAllister stated previously the Board imposed the increased buffer on the rear property line and asked if the Board is now imposing it on the rear and eastern property lines. Mr. Colbath stated it was the southerly and easterly property lines. Mr. McAllister stated there were no complaints from the southerly abutters, and there is a ski trail; there is good distance in that area.

Mr. Tilsley stated the buffer under §110-29.D. is for residential properties, so they would like to have the 50-foot buffer for all residential properties that abut the project. Ms. Byers asked if the Board were to impose the landscaping buffer on the southerly side would that interfere with the what has been worked out with the trail association. Mr. McAllister answered in the negative. Mr. Ratigan stated we can probably work in the 50-foot buffer on the rear, but if it starts to be extended, it will probably be a condition that we will not be able to work with and accept. The Board took a brief recess.

Mr. McAllister stated we have approximately 35-feet from the edge of pavement to the property line, so we can make that a 35-foot buffer. Mr. McAllister stated there would be plenty of room for the ski trail and still maintain access in the location of the driveway on that side. Mr. Colbath asked about the easterly buffer. Mr. McAllister stated if the 50-foot buffer is added to that side it removes access to Intervale Crossroads so the issue is secondary egress for fire safety.

Mr. McAllister stated they would be willing to entertain a 35-foot buffer on the back side with a 15-foot driveway with a "Do Not Enter" sign for the exit of fire trucks only. Mr. McAllister stated that would give 35-feet on both sides which would allow them to meet the Fire Chief's requirement of getting a truck in and out.

Mr. Corbett stated there would be one entrance and exit for the public. Mr. McAllister stated it would be two-way traffic on Route 16 with an access onto Intervale Crossroads for emergency purposes. Mr. Colbath asked Mr. Tilsley if that meets his client's needs. Mr. Tilsley stated the consensus says it does. Mr. Tilsley stated there would be no parking in the 35-feet in the back, it would just be for emergencies. Mr. McAllister stated that is correct.

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Ms. Frechette made a motion to amend, seconded by Mr. Hartmann, to impose a 35-foot buffer on the southern and eastern borders where the project abuts residences. The southern and eastern borders should include both landscaping and appropriate high-quality fencing that create privacy and reduce noise and light pollution. A suggested buffer is a 7'-8' earthen berm, a physical privacy fence at least 6' in height, and a heavy landscape planting using both bushes and trees that is at least 10' wide and 20'-25' high (tree height from base ground level of the berm). Motion carried unanimously.

Mr. Colbath read mitigation recommendation 3 on page 7 of the updated Nuisance Complaint dated August 26, 2021. Ms. Frechette read mitigation recommendation 3.a. and 3.b. on page 7 of the updated Nuisance Complaint dated August 26, 2021.

Ms. Frechette made a motion, seconded by Mr. Hartmann, that the structure height shall not exceed 40-feet, consistent with surrounding buildings. Mr. Ratigan stated if either of these are adopted, they dramatically change the size and location of the project, and will also have an enormous investment impact upon his client; if adopted, we will be appealing the Board's decision.

Mr. McAllister stated we are working with a structure height that needs to exceed 40-feet to meet the cost-benefit analysis for his clients. Mr. McAllister stated anything that happens on this site, the tree is going to be impacted. Mr. Colbath asked if there is a height that is less than 51-feet, but is more than 40-feet that is amenable to the applicant. Mr. McAllister asked are we discussing structure height or building height.

Ms. Byers stated we have structure height which is a maximum of 55-feet, and building height at a maximum of 45-feet. Ms. Byers asked in this particular building can Mr. McAllister explain the difference between the two. Mr. McAllister stated structure height is the tippy top of the structure, it is the highest point on the structure. Mr. McAllister stated building height is an average point; it is the mean in the middle of that roof if it is a peaked roof. Mr. McAllister stated it is essentially the top of a flat roof; where the ceiling of the top floor is.

Ms. Byers stated it couldn't be built if the top had to be 40-feet. Mr. McAllister stated it essentially eliminates two full stories of what is allowed in the Town of Conway. Mr. McAllister stated eliminating two full stories makes this less palatable; 55-feet to 45-feet may work, but he really can't speak to what would or what wouldn't work here.

Mr. Colbath asked Mr. Tilsley if 45-feet would suit his client. Mr. Tilsley stated we think 40-feet is the right number. Mr. Tilsley stated this is not just about the view, but how big it is for the neighborhood. **Motion carried with Ms. Frechette, Mr. Corbett, Mr. Porter and Mr. Colbath voting in the affirmative and Mr. Barbin, Ms. Byers and Mr. Hartmann voting in the negative.**

There was not a motion for item 3.b.

Mr. Colbath stated the next thing for the Board to address is the letter from Roy Tilsley of Bernstein Shur dated September 7, 2021.

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Mr. Colbath made a motion, seconded by Ms. Byers, to extend the meeting until 9:30 pm to handle the letter from Roy Tilsley. Motion carried unanimously.

Mr. Colbath asked for Board comment; Ms. Byers stated a letter was submitted with a shift breakdown and the number of people needed to operate the facility, and she finds those numbers to not be very accurate. Ms. Byers stated the biggest problem she has is the counts for staffing of a restaurant/lounge; she thinks 1,600 square feet with 92-restaurant seats and 20 lounge seats having a maximum of 10 employees at any given time is low. Ms. Byers stated we are assuming there is going to be one car per room; people tend to meet here for various reasons and she thinks they are going to be radically short on parking at times.

Mr. Porter stated he is concerned with snow storage; with a lot of the commercial sites, we mandate that it be removed within 48 to 72 hours and he would like to see that here. Mr. Porter stated this way no parking spaces are being used and it protects the neighborhood and trees. Ms. Frechette agreed with Mr. Porter and stated it could destroy landscaping. Mr. McAllister read the snow storage note that is added to all plans and is on this plan.

Mr. Colbath stated he thinks there is a lot of validity in §110-40, Public Health and Safety, that has already been reviewed.

The applicant was asked how much time they needed to make the changes to the plan necessitated by the mitigation requirements approved by the Planning Board. Mr. McAllister asked for a date in January. After some discussion about dates, **Mr. Colbath made a motion, seconded by Mr. Corbett, to continue View Point North Conway, LLC until January 13, 2022. Motion carried unanimously.** New information should be submitted by December 21, 2021.

Meeting adjourned at 9:22 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant