

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 10, 2022

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CONWAY PLANNING BOARD

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A meeting of the Conway Planning Board was held on Thursday, February 10, 2022 beginning at 7:040 pm at the Conway Town Office, 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 Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Paul DegliAngeli, Town Engineer, and alternates Ted Phillips and Steven Hartmann were in attendance.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Ms. Byers, to approve the minutes of January 13, 2022 as written. Motion carried unanimously.

Mr. Porter made a motion, seconded by Mr. Barbin, to approve the minutes of January 27, 2022 as written. Motion carried with Ms. Frechette abstaining from voting.

NORTH CONWAY BANK NKA TD BANKNORTH (FILE #FR22-01) – FULL SITE PLAN REVIEW (PID 246-23)

Nicole Duquette of Greenman-Pedersen, Inc., and Jason Poulin of Bergmeyer appeared before the Board. This is an application to demolish existing structure and infrastructure and construct a 2,873 square foot bank facility with two, drive through teller lanes and an ATM lane with associated infrastructure. **Mr. Colbath made a motion, seconded by Mr. Porter, to accept the application of North Conway Bank/TD Banknorth for a full site plan review as complete. Motion carried unanimously.**

Ms. Duquette reviewed the project with the Board. Ms. Duquette stated they may have to move the layout of the sidewalk; they are working with the NHDOT. Ms. Duquette stated they are proposing two future charging stations for electronic cars. Ms. Duquette reviewed the lighting plan and indicated that light does trespass beyond the property line in the area of the driveway. Ms. Duquette stated they believe for safety reasons the main driveway should be lit. The Board agreed that a waiver would be required for any light that trespasses beyond the property line.

Mr. Poulin reviewed the architectural drawings. Ms. Duquette stated that the NHDOT is looking at requiring some off-site improvements; possibly moving the driveway further east, and a center turn lane.

Mr. Colbath asked for Board comment; Mr. Porter stated this is the hairiest intersection in the Valley, and the driveway is still close to the lights; it is still problematic. Mr. Colbath stated it is a tremendous improvement, and it is providing a safer access.

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Ms. Grant stated what is being proposed is not New England architecture; this design does not meet the regulations. Ms. Grant stated the building has similar vibes to the other buildings in the area, but she personally feels very strongly about that.

The Board had a lengthy discussion regarding the building elevations. The applicant agreed to provide a window on the northwest elevation. Majority of the Board were in favor of the proposed elevations, but agreed that a waiver should be submitted for §110-30.A.

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

Mr. Porter made a motion, seconded by Mr. Colbath, to continue the full site plan review for TD Banknorth until March 24, 2022 with new information to be submitted by March 1, 2022. Motion carried unanimously.

DIODATI REALTY TRUST/MICHAEL DIODOTI (FILE #FR06-07 & #S06-18) – PUBLIC HEARING – NOTICE OF REVOCATION (PID 218-69)

This is a request to revoke a concurrent site plan and unit subdivision approval (File #FR06-07 & #S06-18 approved July 26, 2007) to convert and subdivide existing buildings into seven residential units at 109 Pine Street, North Conway (PID 218-69). This was continued from January 27, 2022. Ms. Grant stepped down at this time.

Mr. Colbath made a motion, seconded by Ms. Frechette, to revoke the Planning Board approval granted July 26, 2007 [File #FR06-07 & #S06-18] to convert and subdivide existing buildings into seven residential units. Motion carried unanimously.

GREP WHM II, LLC (FILE #FR21-15 & #S21-19) – CONCURRENT SITE PLAN AND 3-UNIT SUBDIVISION REVIEW CONTINUED (PID 235-87)

Randy Miron of Bohler Engineering and Chris Meier of Cooper Cargill Chant appeared before the Board. This is an application to demolish the existing restaurant and site features and construct a 5,450 square foot restaurant, a 2,400 square foot bank and a 5,148 square foot retail building with associated infrastructure and create three commercial units. This was continued from December 9, 2021. Ms. Grant rejoined the Board at this time.

Mr. Porter made a motion, seconded by Ms. Byers, to accept the application of GREP WHM II, LLC for a concurrent site plan and 3-Unit Subdivision Review as complete. Motion carried unanimously.

Mr. Miron reviewed the project with the Board. Mr. Miron stated they are reducing the number of driveways from two to one, and at request of the NHDOT the driveway is being moved to align with the driveway across the street. Mr. Miron stated they are proposing cross access driveways to both the northern parcel and the southern parcel. Mr. Miron stated the applicant had some discussions with the northern parcel and the driveway was situated based on those discussions.

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Mr. Miron stated they are proposing a recreational easement area in the back; it is essentially a pocket park area. Mr. Miron stated it would be an amenity area for pedestrians, it would be a picnic area with picnic tables and benches to be integrated with Settlers' Green. Mr. Miron stated there were questions relative to parking; essentially the parking demand with all the different uses. Mr. Miron stated those demands stagger.

Mr. Colbath asked for Board comment; Mr. Colbath asked if there would be a connection made to the property to the South. Mr. Miron answered in the affirmative. Mr. Colbath asked if there would be a connection to the north. Mr. Miron stated they are working with the abutter. Mr. Colbath stated the traffic study includes those connections being made. Mr. Miron agreed.

Mr. Meier stated the cross-easement to the northern property is already on record, and was put on record in 2016. Mr. Meier stated it takes affect when we record an easement back to the Settlers' Green owner. Mr. Meier stated it is in control of the applicant, and we are just waiting for the plan to be finalized and approved so we can draft an easement back to Settlers' Green with the location. Mr. Colbath stated without that connection being made the traffic study would have to be updated.

Mr. Porter asked for an explanation of the recreational easement. Mr. Meier stated it is something the owner is doing above and beyond what is necessary under site plan; it came out of negotiations with the abutting property, and that it would be a benefit to both properties. Mr. Meier stated it is something they want to provide; and if it is something the Board is interested in having, it is something the applicant wants to do.

Ms. Byers asked if the proposed restaurant serves breakfast, lunch and dinner. Mr. Miron stated he believes it is lunch and dinner; Friday evening had the highest peak parking demand. Mr. Torres stated staff has concerns with the parking, and our peer reviewer recommended the ITE parking generation for the standard. Mr. Torres asked if that is something they would be willing to modify. Mr. Miron answered in the affirmative and stated the parking demand will be less than what is currently shown on the plan.

Mr. Torres stated it does not seem the actual connection is going to be made physically because that would mean Settlers' Green would have to make connection; these plans show the connecting drive to the property line and then there is greenspace and then their parking lot. Mr. Torres stated if the connection is not actually going to be made, and the traffic study is utilizing that connection for traffic coming and going through your site, then the traffic study would need to be revised because there will be more traffic going through the site entrance on Route 16.

Ms. Byers stated some of items taken for tree credits are shrubs in containers, is that allowed. Mr. Torres stated the regulation requires a caliber of 3-inches, and their schedule appears to indicate that every plant has a 3-inche caliber. Mr. Miron stated they are not supposed to be planted in containers, that is the way that they come. Mr. Torres asked that the language be changed on the plan so that it is not confusing. Mr. Colbath suggested adding some conifers so there would be green trees all year round.

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Mr. Meier stated the easement is part of this property and allows access onto the other property; presumably if you're attaching to a road, we have the right to access over the other property just by virtue of granting the reciprocal easement to the other property. Mr. Meier stated there still needs to be some negotiations to where it is to be located, and the applicant has really bent over backwards to try to work with the abutter on where he wants it and the size of the access. Mr. Meier stated we still need to record the easement and have the abutter accept it, but we do have the right, with this property, to get on to the abutting lot.

Mr. Colbath asked for public comment; Derek Lick of Solloway and Hollis representing Settlers' Green submitted a letter to the Board dated February 10, 2022 [in file]. Mr. Lick stated the primary concern that Settlers has is twofold; the first concern is the connecting drive to Settlers' Green. Mr. Lick stated Settlers has been engaged in discussions with the applicant, the location and the size of the connecting drive has been discussed, but Settlers does remain concerned.

Mr. Lick stated they are worried about the amount of use or the overdevelopment of the lot and traffic coming into their property in a way that is unsafe for pedestrians and for those parking in their parking area. Mr. Lick stated there was discussion regarding moving some crosswalks, Settlers engineers looked at it and still had some concerns, so Settlers does as well.

Mr. Lick stated there is also an issue with respect to parking; based on wherever it is placed, Settlers Streetside is going to lose parking on that side of its property if the connecting drive is put in place, and Settlers used a very specific calculation when it received its approval. Mr. Lick stated it has been in prior litigation with other abutters for not having enough parking, so they are very sensitive to losing any parking.

Mr. Lick stated Settlers would ask that there not be a connecting drive between its parcel and this particular parcel, and instead the connecting drive be to the south to this property owners abutting property.

Mr. Lick stated Settlers second concern is landscaping, mainly trees. Mr. Lick stated Settlers was surprised with the clear cutting which cleared out a lot of mature vegetation, and they have been in discussions on how to bring back some screening. Mr. Lick stated frankly, the parties just could not come to agreement on just how much leeway Settlers has to allow for additional screening of its property to replace the screening that was naturally there with the trees.

Mr. Lick stated his letter in respect to trees is based on an older plan, and understand there is a different number of trees on the plans before the Board tonight. Mr. Lick stated his client wants to make sure there is adequate screening, and they would object to any waiver in respect to trees or plantings required under the code.

The Board reviewed the proposed landscaping, a buffer between the two properties and snow storage areas. Mr. Porter asked about snow removal. Mr. Miron stated once snow starts to impede operations it would have to be trucked off-site. Mr. Colbath stated there are snow storage areas indicated on landscaping; the applicant should take another look at snow storage. Ms. Grant stated developing this lot to this degree, having both connecting drives is non-negotiable. Mr. Torres stated staff has also recommended that the street trees be moved closer to the edge of pavement.

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Mr. Miron reviewed the architectural drawings for the three buildings. Mr. Colbath asked the location of the mechanicals. Mr. Miron stated they are screened on the top of the roof of the restaurant building. Mr. Torres asked that they put the mechanicals on the elevations, and they should be screened.

There was discussion regarding housing, and the Board asked the applicant to consider providing workforce housing.

Ms. Grant stated she would like to see more architectural detail for the restaurant building. Ms. Byers stated she would like to see some more faux windows to break the building up. The Board asked for the location of the mechanicals for the retail building.

Mr. Meier stated the Settlers' Green property, he believes when Settlers' Green owned the parcel that is being developed, granted an access easement onto the Settlers' Green property. Mr. Lick stated it is his understanding that there is no easement granted between the Friendly's property and the Settlers' Green property. Mr. Meier stated that is correct. Mr. Lick stated to the extent that there was any expectation of a potential connecting drive, think that is a condition of what is going in at the time. Mr. Lick stated any consideration that was given when Settlers' Streetside was developed, at the time there was a single 4,000 square foot building housing Friendly's, now we have four or five times that size of development going on next door.

Mr. Lick stated his clients concern is given how busy that site is going to be what kind of potential traffic it can generate, essentially, we don't have a connecting drive but an alternative means of access which could drive unexpected traffic through their development.

Mr. Colbath asked if Settlers' Green did grant a connection when it was just Friendly's. Mr. Lick answered in the negative and stated what it shows on the Settlers' Streetside plan is a potential connecting drive at the far back end of the property and it does not go quite up to the property line; there would need to be a connection, and there would need to be an easement. Mr. Lick stated there was a plan in place that showed a potential connection, again if the easements and rights could be granted and if reciprocal rights could be agreed upon, but his client does not want to do it, and he will not be granting an easement with the way it is currently set up given the sheer volume of traffic that is expected on this site.

Chris Needham, owner of the property, stated back in 2016 that easement was granted; it is currently on that back site where the dumpster is shown. Mr. Needham stated in his discussions with Rob, the owner of Settlers' Streetside, he asked him to move it, and he has moved it. Mr. Needham stated his concern is the loss of parking spots, but he is going to gain them back where the dumpster is currently located.

Mr. Needham stated his attorney is saying it is an easement that is ready to go, all we have to do is counter sign it; this should be a condition of approval. Mr. Colbath stated he believes that connection should be made, but it needs to be dealt with outside of this meeting.

Ms. Byers made a motion, seconded by Ms. Grant, to continue the full site plan review for GREP WHM II, LLC until March 24, 2022 with new information to be submitted by March 1, 2022. Motion carried unanimously.

**NELSON-BERGMAN GROUP, INC. (FILE #S21-15) – 27-LOT SUBDIVISION REVIEW
CONTINUED (PID 258-68)**

Steve Harding of Sebago Technics appeared before the Board. This is an application to subdivide ±280 acres into 27-lots. This was continued from December 9, 2021. Mr. Harding gave an overview of the project. **Mr. Porter made a motion, seconded by Mr. Barbin, to not accept the application as complete due to the long list of zoning violations over the past 17 years. Motion carried unanimously.**

Mr. Colbath asked if Mr. Harding is aware of these violations. Mr. Harding answered in the affirmative and stated they had a conversation with staff back in December, and he talked to the owner about it. Mr. Harding stated we are aware that there have been issues there, it is a situation that code enforcement should be addressing with the owner.

Mr. Porter stated this is not something that has transpired over the last year or two, this is something that has been long term with the applicant. Mr. Porter stated the Planning Board has never been dealt with a situation like this where with all these violations you are asking us to approve a project that the client has made little or no attempt to rectify. Mr. Porter stated the items on the list should have been rectified long before it made it to this point.

Mr. Porter stated he does not think the Board should approve something, even with conditions, because it is obvious that the applicant has made little or no attempt to fix the problems in the past. Mr. Colbath stated it is continuously the same infraction and asked why he doesn't make it right. Mr. Harding stated he is unable to speak for his client, he doesn't know the history.

Mr. Harding asked if the Board would be willing to go through the subdivision even if the Board could not approve it tonight to possibly identify any other issues. Mr. Porter stated he is not interested in going through this until there is a conscientious effort to resolve these issues going back to 2007. Mr. Harding stated issues from 2007 are probably not there now, but he does not know specifically, he has not seen any written violations, but he has Mr. Torres' list; he has talked to the owner about it and the owner is going to address them.

Mr. DegliAngeli stated staff went out today and we can say unequivocally that they have not been addressed. Mr. DegliAngeli stated we went to the pit area that will be in phase II as well as the unpermitted pit area in phase IV, which is also currently a stump dump. Mr. DegliAngeli stated the Town has ascertained for years that the client is an excavation contractor and has been illegally using those pits as his yard for his business which is not allowed in the residential agricultural district many years after phase I was built.

Mr. DegliAngeli stated there are pictures that were taken today that show heavy equipment used by excavation contractors sitting in that yard under 2-feet of snow because that is where it got parked; it is not allowed. Mr. DegliAngeli stated next to some of that equipment are fueling drums that requires containment, and they are not contained. Mr. DegliAngeli stated these violations have not been addressed.

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Mr. Colbath asked for public comment; Shawn Bergeron of Bergeron Technical Services representing Saco River Run Homeowner's Association submitted and read a letter [no date] to the Board [in file].

OTHER BUSINESS

Site Plan Review amendment discussion: Ms. Grant made a motion, seconded by Mr. Porter, to post the amendments to §110-2, Purpose to a public hearing on February 24, 2022. Motion carried unanimously.

2022 Meeting Schedule: The Board agreed to work sessions on the first meeting of the month starting at 6:00 pm, with regular business starting at 7:00 pm; and that the second meeting of the month would start at 6:00 pm for regular business.

Miah and Sherry Nielsen (PID 235-81) – Request for a Concurrent Site Plan and Subdivision Review: Mr. Porter made a motion, seconded by Ms. Byers, to accept a Concurrent Site Plan and Subdivision Review application from Miah and Sherry Nielsen. Motion carried unanimously. SP AB unanimous.

Meeting adjourned at 10:00 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant