

CONWAY PLANNING BOARD

MINUTES

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CONWAY PLANNING BOARD

MINUTES

FEBRUARY 23, 2023

A meeting of the Conway Planning Board was held on Thursday, February 23, 2023 beginning at 6:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Alternate, Ted Phillips; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Jason Dennis, Town Counsel, was in attendance.

APPOINTMENT OF ALTERNATE MEMBER

Mr. Colbath appointed Mr. Phillips as a voting member.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Grant made a motion, seconded by Mr. Hounsell, to approve the Minutes of January 26, 2023 as written. Motion carried unanimously.

The minutes of February 9, 2023 will be reviewed at the March 9, 2023 Planning Board meeting.

THOMAS SMITH/DOUGLAS SMITH/MICHAEL SMITH AND KATHLEEN C. BERGERON REVOCABLE TRUST (FILE #S23-03) – BOUNDARY LINE ADJUSTMENT REVIEW (PID 234-7 & 18)

Ed Bergeron appeared before the Board. This is an application to convey 1.20-acres to PID 234-18 (Bergeron) from PID 234-7 (Smith) at 2018 West Side Road, North Conway. Mr. Bergeron reviewed the application. **Mr. Colbath made a motion, seconded by Mr. Hounsell, to accept the application of Thomas Smith/Douglas Smith/Michael Smith and Kathleen C. Bergeron Revocable Trust for a boundary line adjustment review as complete with the staff report. Motion carried unanimously.**

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none. Mr. Bergeron read a waiver request for §130-23.C., G., J., K., L., M., O., P., Q., R., S., T., U., V., W. & X. **Mr. Hounsell made a motion, seconded by Ms. Grant, to grant the waiver request for §130-23.C., G., J., K., L., M., O., P., Q., R., S., T., U., V., W. & X.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Hounsell made a motion, seconded by Ms. Grant, to conditionally approve the boundary line adjustment for Thomas Smith/Douglas Smith/Michael Smith and Kathleen C. Bergeron Revocable Trust conditionally upon North Conway Fire Chief approval; Conway Police Chief approval; adding waivers granted to the plan; indicate boundaries set on plan; submitting four copies of revised plans with original stamps and signatures; submitting a Mylar for recording; submitting a \$25 check made payable to the Carroll County Registry of Deeds for the LCHIP fee; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on February 22, 2024. Motion carried unanimously.

Adopted: March 9, 2023 – As Written
CONWAY PLANNING BOARD – FEBRUARY 23, 2023

SETTLERS R2, INC. (FILE #FR22-09) – FULL SITE PLAN REVIEW REHEARING (PID 235-89 & 89.002)

This is a rehearing granted to Bellevue Properties, Inc. to change the use of Building G from retail to retail and restaurant/lounge at 39 Common Court, North Conway. There has been a request to continue this rehearing until March 23, 2023. **Ms. Grant made a motion, seconded by Mr. Corbett, to continue the rehearing for Settlers R2, Inc. requested by Bellevue Properties, Inc. until March 23, 2023 at 7:00 pm. Motion carried with Mr. Barbin being present.**

STEVEN B. AND ANITA S. CHENEY REVOCABLE TRUSTS (FILE #FR23-01 & #S23-01) CONCURRENT FULL SITE PLAN AND UNIT SUBDIVISION REVIEW CONTINUED (PID 216-13)

Andrew Fisher of Ammonoosuc Survey Company, Steve Cheney and Chris Meier of Cooper Cargill Chant appeared before the Board. This is an application to construct a 4,200 square foot multi-unit storage building and create a commercial unit subdivision at 77 Old West Side Road, North Conway. This application was accepted as complete on January 26, 2023.

Mr. Fisher submitted photometric plans. Mr. Meier stated the Board has received concerns from abutters that this is a nuisance. Mr. Meier stated the nuisance section of the site plan review regulations requires some sort of unique circumstance that the regulation does not address. Mr. Meier stated most of their concerns are addressed in the site plan review regulations.

Mr. Hartmann joined the meeting at this time. Sue Wilcox read the nuisance complaint [attached] from Abutters: Nancy Stewart, Toni Walker and Dulcie Heiman; Neighbors: Donna McCluskey, Al Hospers, Maria Martin, Chuck and Margi Papini, Sue and Ben Wilcox, and Julia and CJ McCormack. Mr. Hounsell stated he is concerned with the hours of operation. The Board discussed the installation of a gate.

Fidelio Rodriquez of Forest Park read the nuisance complaint [attached] by Complainants of Forest Park Village.

In regard to the nuisance complaint received by Abutters: Nancy Stewart, Toni Walker and Dulcie Heiman; Neighbors: Donna McCluskey, Al Hospers, Maria Martin, Chuck and Margi Papini, Sue and Ben Wilcox, and Julia and CJ McCormack the board made the following findings:

Ms. Grant made a motion, seconded by Mr. Colbath, to consider the points under §110-20. Driveways and Vehicular Access to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion defeated unanimously.

Ms. Grant made a motion, seconded by Mr. Hounsell, to consider the points under §110-30. Aesthetic Design to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion defeated unanimously.

Adopted: March 9, 2023 – As Written

CONWAY PLANNING BOARD – FEBRUARY 23, 2023

Mr. Barbin made a motion, seconded by Ms. Grant, to consider the points under §190-13. Signage to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion defeated unanimously.

Ms. Grant made a motion, seconded by Mr. Colbath, to consider the points under §190-13. Character of the Neighborhood to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; Mr. Hounsell asked does the driveway fall under this section. Mr. Torres stated the driveway is covered under site plan review regulations. Ms. Grant asked about the note regarding no fencing. Mr. Colbath stated the fence is covered by site plan review regulations. Motion defeated unanimously.

Ms. Grant made a motion, seconded by Mr. Colbath, to consider the points under §190-13. Hours of Operation to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion carried unanimously.

Mr. Colbath made a motion, seconded by Mr. Phillips, to consider the points under §110-26. Lighting to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked Board comment; there was none. Motion defeated unanimously.

In regard to the nuisance complaint received by Complainants of Forest Park Village the Board made the following findings:

Mr. Colbath made a motion, seconded by Ms. Grant, to consider with 12 units, this project will bring increased levels of traffic and will negatively impact traffic safety and pedestrian safety to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion defeated unanimously.

Mr. Barbin made a motion, seconded by Mr. Colbath, to consider the scale of this project will cause undue noise and light pollution, negatively impacting the peace and privacy of abutters' properties to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion defeated unanimously.

Mr. Colbath made a motion, seconded by Mr. Barbin, to consider the project is not in line with the character of the neighborhood and will impact the visual harmony and enjoyment of the neighborhood to be a serious nuisance that is not covered by the site plan review regulations. Mr. Colbath asked for Board comment; there was none. Motion defeated with Mr. Hounsell, Mr. Corbett, Mr. Phillips, Mr. Barbin and Mr. Colbath voting in the negative and Ms. Grant voting in the affirmative.

Mr. Barbin made a motion, seconded by Mr. Phillips, to consider this project will have adverse effects on residential property values. Mr. Colbath asked for Board comment; Mr. Torres stated the Board was concerned with outdoor storage. It was determined that the Board can address outdoor display of goods under §110-41. Motion defeated unanimously.

Adopted: March 9, 2023 – As Written
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Since Ramona L’Heureux of Sanctuary Associates was not in attendance to present their nuisance complaint [attached], the Board did not address it.

The Board determined that the hours of operation were a nuisance, and discussed mitigation. **Ms. Grant made a motion, seconded by Mr. Corbett, that the applicant shall add a gate to the site driveway to limit access onto the site, that the hours of operation would be 6 am to 10 pm, and the applicant shall shut the lights off on the site at 10 pm to correlate with the set hours of operation. Motion carried unanimously.**

There was a discussion regarding having the lights on a motion sensor or timer; it was agreed that the lights could be on a timer.

Mr. Fisher withdrew the waiver request for §110-36.

Mr. Fisher read a waiver request for §110-30.A.(3). **Mr. Hounsell made a motion, seconded by Mr. Colbath, to grant the waiver for §110-30.A.(3).** Mr. Colbath asked for Board comment; After a brief discussion, Mr. Cheney agreed to add faux windows on the gable ends. **Motion carried unanimously.**

Mr. Fisher read a waiver request for §110-22 parking lots. **Mr. Barbin made a motion, seconded by Mr. Colbath, to grant the waiver for §110-22.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Fisher read a waiver request for §110-21. **Ms. Grant made a motion, seconded by Mr. Barbin, to grant the waiver for §110-21.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Fisher read a waiver request for §110-20.C. **Mr. Colbath made a motion, seconded by Mr. Phillips, to grant the waiver for §110-20.C.** There was a lengthy discussion regarding the location of the driveway, and whether the applicant could access West Side Road instead of Old West Side Road. **Mr. Colbath withdrew his motion, and Mr. Phillips withdrew his second.**

The Board took a straw poll on the waiver request for §110-20.C.; Mr. Corbett, Mr. Phillips and Mr. Colbath were in favor of granting the waiver request, and Ms. Grant, Mr. Barbin and Mr. Hounsell were not in favor of granting the waiver request.

After a brief recess, Mr. Meier requested a continuance to discuss the possibility of an access off West Side Road with the NHDOT. **Mr. Colbath made a motion, seconded by Ms. Grant, to continue the Concurrent Full Site Plan and Unit Subdivision Review for Steven and Anita Cheney Revocable Trusts until March 23, 2023 at 7:00 pm. Motion carried unanimously.**

OTHER BUSINESS

MVV, LLC/Mountainvale Village (File #NA23-01): Shawn Fogg appeared before the Board. This is a request to install 4,000 square feet of storage space for community resident usage only on Blake Hill Road, Center Conway.

Adopted: March 9, 2023 – As Written
CONWAY PLANNING BOARD – FEBRUARY 23, 2023

Mr. Colbath asked for Board comment; there was none. Mr. Colbath asked for public comment; there was none. **Mr. Colbath made a motion, seconded by Ms. Grant, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that the installation of 4,000 square feet of storage space for community resident usage 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 unanimously.**

Selectmen's Report: There was no report.

Issues for Consideration: Ms. Grant asked the Board to increase the percentage of greenspace required from 25% to 30%. **Ms. Grant made a motion, seconded by Mr. Phillips, to hold a public hearing on April 13, 2023 to increase the percentage of greenspace required from 25% to 30% of the total lot area under §110-29.B. Motion carried unanimously.**

Media Questions: There was none.

Meeting adjourned at 8:52 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant

RECEIVED

FEB 09 2023

2/9/23

TOWN OF CONWAY

Town of Conway Planning Board:
Attn: Mr. Colbath
Re: Cheney Storage Units

In regard to the application for a Commercial Storage Facility project at 77 Old Westside Road, we (Abutters: Nancy Stuart, Toni Walker, Dulcie Heiman. Neighbors: Donna McCluskey, Al Hospers, Maria Martin, Chuck and Margi Papini, Sue and Ben Wilcox, Julia and CJ McCormack) are submitting a list of nuisances to invoke article 110-39.

Abutters: Nancy Stuart, Toni Walker, Dulcie Heiman.
Neighbors: Donna McCluskey, Al Hospers, Maria Martin, Chuck and Margi Papini, Sue and Ben Wilcox, Julia and CJ McCormack.

Our concerns are listed below. In addition to the listed concerns, we would like additional information regarding the exact hardship presented to the ZBA, the traffic study mentioned, the possible devaluation of neighborhood property and the precedent this development may set for other properties for sale in our neighborhood. *We request a traffic study during peak summer season on the intersection of Westside Road, Cathedral Rd., and Old Westside Rd.*

110-20 Driveways and Vehicular Access:
#C-"A lot shall have no more than one driveway onto each road that it fronts....."
We do not want any more driveways onto the already busy section of Old Westside Road. An access on Westside Road may possible, *and suggested.*

110-30 Aesthetic Design:

C-#1- *Monotony of design or warehouse-style structures shall be avoided. Variation in detail, form and siting shall be used to provide visual interest.* We would like the ends of the building to look more residential by breaking up the solid walls and adding architectural elements, possibly using shingles over the gable ends (similar to detail on the condominiums).

190-13 Signage:

F-#4 *In addition to the above signage provisions, every lot shall be entitled to one sign...*

We do not want this subdivision to add any additional signs or advertising to the neighborhood. The property already has one large sign for the condominiums.

190-13 Character of Neighborhood:

We would like to make sure that commercial/industrial fencing is not installed at any point (current and future owners).

This is a busy walking area and a heavily accessed intersection during the summer and holiday peaks. This corner could use a defined path from Old Westside road

along Westside road down to the fire pond, especially with added traffic from storage unit.

190-13 Hours of Operation:

Access during set hours as to not disturb neighbors at night.

Install a suitable entry gate to prohibit unauthorized access.

110-26 Lighting:

Lighting of sites shall be designed to prevent off-site disturbance...

All lights should be operated on a motion detection system as to preserve the Dark Sky.

Thank you for your consideration of our concerns in this matter.

NUISANCE COMPLAINT RE: PROPOSED STORAGE FACILITY BY STEVEN AND ANITA CHENEY REVOCABLE TRUSTS at 77 Old West Side Road, North Conway, NH

February 8, 2023

NOTE: This complaint is pursuant to Section 110-39 of the Town of Conway Site Plan Review Regulations. The below listed homeowners/taxpayers have developed this document jointly.

Complainants

- Charles and Krystyna McInally, Forest Park Village | Unit 1
- Charles and Sharon Amore, Forest Park Village | Unit 3
- Lon Hohberger and Linda Allen, Forest Park | Unit 5
- Lorig Basmajian, Forest Park Village | Units 6 and 7
- Miroslav and Maria Tashev, Forest Park Village | Units 8 and 9
- Rand and Rose McAfoose, Forest Park Village | Unit 10
- Conleth Berry and Dr. Laura O'Dwyer, Forest Park Village | Unit 11
- Jeff Eckhouse, Forest Park Village | Unit 12
- Laurie Valente, Forest Park Village | Unit 14
- Francesco and Tracy Corvi, Forest Park Village | Unit 15
- Fidelio and Maryellen Rodrigues, Forest Park Village | Unit 16
- Judith Duplisea, Forest Park Village | Unit 17
- George and Nancy Brown, Forest Park Village | Unit 19

Contents:

- I) Background Information
- II) Legal Justification
- III) Explanation of Nuisance Complaint
- IV) Mitigation Recommendations

I) Background Information

The 12 unit storage facility proposed by Steven and Anita Cheney Revocable Trusts is substantially oversized for the Old West Side Road area and is out of character with the neighborhood. We feel strongly that the plans fail to sufficiently address the major issues, including the location of the entrance to the building, inevitable noise and light pollution, storage of hazardous materials, traffic and safety concerns, potential future use of the building, and impact to the character of the surrounding area that will result from this storage facility.

We, the neighbors named in this complaint, are united in the belief that it will create a significant public and private nuisance as defined in the next section and outlined below.

II) Legal Justification

The Town of Conway's Site Plan Review Regulations set forth a procedure whereby the Planning Board can place reasonable restrictions on a project when the regulations do not address specific site design matters that would create a nuisance. Specifically, Section 110-39 provides that, "[i]n 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,

the Planning Board may, solely at its option, place reasonable restrictions on the site design to prevent or reduce the nuisance.”

The Town’s Site Plan Review Regulations do not define the term “nuisance.” However, the New Hampshire Supreme Court’s definition of the term is instructive. A “private nuisance may be defined as an **activity which results in an unreasonable interference with the use and enjoyment of another’s property.**” Robie v. Lillis, 112 N.H. 492, 495 (1972). “A public nuisance, on the other hand, is an unreasonable interference with a right common to the general public.” *Id.* “It is behavior which unreasonably **interferes with the health, safety, peace, comfort or convenience of the general community.**” *Id.* “Conduct which unreasonably interferes with the rights of others may be both a public and a private nuisance” and “both actions involve an analysis of similar considerations.” *Id.*

Given the size of this building, the noise and light pollution that will impact nearby residences, traffic and safety concerns, and impact to the character of the surrounding area, the Town Regulations are not adequate to prevent a nuisance. Even if the project complies with the design standards of the Regulations, the nuisance described herein will exist, nonetheless.

For the reasons set forth, we submit that the proposed Storage Facility will create a nuisance to abutters, residents and the general public of the Old West Side Road area within the meaning of the Town’s Site Plan Review Regulations and applicable New Hampshire law.

We ask that the Board assess each individual nuisance presented and impose restrictions on the site design. For the Board’s review, following the explanation of the complaint we have presented “Mitigation Recommendations” in Section IV below.

III) Explanation of Nuisance Complaint Pursuant to Section 110-39 of the Town of Conway Site Plan Review Regulations:

The proposal will create a nuisance to abutters and residents of the area across a range of concerns, including:

1. With 12 storage units this project will bring increased level of traffic and will negatively impact traffic safety and pedestrian safety.
2. The scale of this project will cause undue noise and light pollution, negatively impacting the peace and privacy of abutter properties.
3. The project is not in line with the character of the neighborhood and will impact the visual harmony and enjoyment of the neighborhood.
4. This project will have adverse effects on residential property values.

Detailed Explanation of Nuisance Complaint:

1. *With 12 units, this project will bring increased levels of traffic and will negatively impact traffic safety and pedestrian safety.*

- The storage facility will bring a significantly increased volume of people and automobiles to the area.
- The developer states that the units will be used for “private storage” “not intended for commercial use” used primarily for the enjoyment of his tenants.
- The proposed entrance on Old West Side Road potentially impacts abutters at Forest Park Village.
- People will be entering and exiting at all hours.

2. *The scale of this project will cause undue noise and light pollution, negatively impacting the peace and privacy of abutters’ properties.*

- The facility abuts neighbors’ homes and they will experience a significant increase in noise, light, and air pollution as a result.
 - Headlights from cars that enter and exit the facility will impact the abutters.
- The lights in and around the facility will increase ambient light in the area.
- “Renters” arriving by car will increase air and noise pollution from the comings and goings at any time of day or night.
 - The ambient noise of people speaking in the parking lot, car stereos, car alarms, beeps that accompany people locking and unlocking their cars, the bay doors opening and closing and conversations in the parking lot will be significant.

3. *The project is not in line with the character of the neighborhood and will impact the visual harmony and enjoyment of the neighborhood.*

- The size and scale of the proposed facility represents a significant change in the tenor of the surrounding homes and condominiums.

4. *This project will have adverse effects on residential property values.*

It is worth noting that the Conway Site Plan Regulations already specifically protect abutter’s property values in two separate places in the Municipal Code (110-2, 110-30), however, we are proposing specific nuisance mitigations related to this complaint, so it remains listed here.

- Property values will be adversely impacted due to proximity of a storage facility of this size. This is particularly acute for the Forest Park Village owners whose views, privacy, and enjoyment of property will be most heavily impacted.
- Abutters’ ability to sell units likely to be adversely impacted, especially during the construction period.

IV) Mitigation Recommendations:

Old West Side Road is a gateway for residents, members of the community and visitors to popular scenic sites and National Park attractions such as Cathedral Ledge and Echo Lake. As such, the residents of this community and members of the Planning Board should place commensurate scrutiny on any development that would negatively affect the characteristics, that could impact the enjoyment of the area.

We ask for the following mitigations to be imposed upon the developer, for each nuisance we have laid out and that restrictive covenants be recorded on the deed.

- 1. *With 12 units this project will bring increased levels of traffic and will negatively impact traffic safety and pedestrian safety.***
 - a. The developer states the primary “market” for the units will be his tenants, as such we request that 5 of the units be set aside for only those tenants, which will minimize additional traffic entering and exiting the facility.
 - b. Relocate the entrance to the facility to West Side Road in order to eliminate additional traffic on Old West Side Road.
 - c. Restrict hours of operation to minimize entering/exiting late at night in order to avoid suspicious activity.
 - d. Post No Loitering Police Take Notice signage to provide recourse for abutters if people congregate there.

- 2. *The scale of this project will cause undue noise and light pollution, negatively impacting the peace and privacy of abutters’ properties.***
 - a. Ensure the lights don’t shine on neighboring property. Use motion sensors so they are not on all night.
 - b. Ensure that the lights are contained on the premises and are not shedding on abutting property.
 - c. Restrict hours of operation.

- 3. *The project is not in line with the character of the neighborhood and will impact the visual harmony and enjoyment of the neighborhood.***
 - a. Minimize the visual impact of a commercial building in this residential area by ensuring it is constructed in line with a residential building.
 - b. Eliminate the need for painted lines in the parking lot.
 - c. Restrict signage.
 - d. Require that all property belonging to the renter of a storage unit must be contained inside the unit.
 - e. Prevent people from working/repairing their vehicles/boats on site.
 - f. Preserve as many trees as possible. After the project has been completed, plant mature trees with the same size and species to replace trees that had to be removed during construction.

4. *This project will have adverse effects on residential property values.*

- a. The developer has stated that the primary use will be for storage of cars and boats and does not intend to rent to “commercial businesses”. Restrict the use for only storing cars and boats.
- b. Ensure that people are not allowed to store hazardous materials including gasoline, antifreeze and oil.
- c. Allow only electric service (no water or sewer) to restrict usage.
- d. The developer has stated he does not intend to change the primary use of the building. Prevent the change of this commercial entity in the future.

2/9/23

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FEB 09 2023

Town of Conway Planning Board: Attn: Mr. Colbath
Re: Cheney Commercial Storage Facility project at 77 Old Westside
Road

TOWN OF CONWAY

To whom it may concern:

I am writing on behalf of the Sanctuary Association. We are a homeowners association consisting of about 50 properties. The entrances to our association are off Cathedral Ledge Road.

The intersection of Cathedral Ledge Road, West Side Road and Old Westside Road is already dangerous. I am aware at least one accident there and several near misses.

Adding a commercial property would further negatively affect traffic in this area and would be a nuisance and hazard for our association.

We oppose this development as it would impact our neighborhood for safety, as well as property value and would change the original intend use as a quiet residential area, abutting a state park.

Please register our concerns and keep us informed of any changes or variances they are requesting.

Also let me know of any appeal process to the zoning change that allowed a commercial property in a residential neighborhood.

Thank you,

Ramona L'Heureux
Trustee of Board of Directors
Sanctuary Association
603-609-5858
mona4321@ymail.com