

CONWAY PLANNING BOARD

MINUTES

JULY 13, 2023

PAGES

- 1 Review and Acceptance of Minutes
 - June 8, 2023 – Adopted as Written

- 1 Settlers R2, Inc. (File #FR23-06 & #S23-07) – Concurrent Full Site Plan and Unit Subdivision Review Continued (PID 235-89)
 - Conditionally Approved

- 3 The Residences at Saco River, LLC (File #FR23-07 & #S23-08) – Concurrent Full Site Plan and 2-Unit Subdivision Review (PID 246-23)
 - Conditionally Approved

- 5 Other Business
 - James DeMonico – Appeal request concerning Jan G. Filip, V/ 603 Eats (PID 218-102)
 - Charitable Gaming operations zoning amendment discussion
 - Selectmen’s Report
 - Issues for Consideration
 - Media Questions

CONWAY PLANNING BOARD

MINUTES

JULY 13, 2023

A meeting of the Conway Planning Board was held on Thursday, July 13, 2023, beginning at 7:08 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, John Colbath; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Deputy Town Manager/Town Engineer, Paul DegliAngeli; Town Planner, Ryan O'Connor; and Planning Assistant, Holly Whitelaw. Alternates Ted Phillips and Debra Haynes were in attendance.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Grant made a motion, seconded by Mr. Corbett, to approve the minutes of June 8, 2023, as written. Motion carried, with Ms. Byers abstaining from voting.

SETTLERS R2, INC. (FILE #FR23-06 & #S23-07) – CONCURRENT FULL SITE PLAN AND UNIT SUBDIVISION REVIEW CONTINUED (PID 235-89)

Mark Lucy of Horizons Engineering and Derek Lick of Orr & Reno appeared before the Board. Roger Williams of OVP Management was in attendance. This is an application to change the permitted use of Building O from 2,323 SF of personal service and 2,323 SF of business service establishment to 3,705 square feet of dining space and create a commercial unit subdivision at 39 Common Court, North Conway.

Mr. Barbin recused himself from the meeting. Chair Colbath appointed Mr. Phillips as a voting member.

This is a continuation to address outstanding issues from the earlier meeting. Mr. Lucy reviewed the revised artist's rendering of the proposed building. The Board discussed the design, which has been altered to meet the Board's prior requests. Mr. Lick explained the mechanicals will not be visible, per the Board's request. A waiver request will be needed for the flat roof.

Mr. Lucy reviewed the parking substitution request, saying they used §110-21.A.(2)(a), the ULI parking requirements for shopping centers. Mr. Lick noted that Merlino's is an abutter and has not raised any concerns regarding parking.

Chair Colbath asked for Board comment; there was none.

Mr. John Colbath made a motion, seconded by Ms. Grant, to accept the parking substitution request. Motion carried unanimously.

Chair Colbath asked for public comment.

**Adopted: August 10, 2023 – As Written
CONWAY PLANNING BOARD – JULY 13, 2023**

Roy Tilsley of Bernstein, Shur, Sawyer, & Nelson, on behalf of the North Conway Grand Hotel, which is an abutter, addressed the number and location of parking spaces allowed by the standard. The hotel is concerned that their parking spaces will be used by customers of this business, as they are closer than the proposed parking spaces. He believes the proposal violates regulations in terms of the number of spaces and the distance of the spaces on the offsite lot, and will be injurious to the hotel's private property rights. He also asked that the drive-thru stacking be conditional to this user or type of user, to avoid issues with other potential users in the future.

Mr. Lucy reviewed the location and number of parking spaces established by easement for this lot, which meet §110-21.D.(1).

Mr. Lick noted that 15 parking spaces are required within 400 feet of the building and they have provided this. He suggested a waiver request to waive the parking requirements and find that the parking they have provided is sufficient. The Board agreed this waiver would be appropriate.

Mr. Tilsley said in order to grant any waiver, the Board must find that the waiver will not be injurious to other parties. He believes this waiver will drive vehicles onto the hotel's property and violate their private property rights. He suggested waiting until Market Basket is operational before granting any waivers, as this is speculative.

The Board discussed existing parking issues in this area and questioned whether the hotel parking lots are ever full. Mr. Lick noted a parking study was done pre-COVID, which found that 90% of the time, the hotel does not utilize all of their parking spaces.

Bill Barbin, Conway resident, said this is an overdevelopment of the commercial district, which is already a very dense spot. He believes the hotel citing property rights gives the Board the ability to slow down the commercial development.

Mr. Hounsell noted the Board should be mindful of the concerns regarding property rights in order to have the time necessary to assess the impact of this project. Mr. Lick said this building has already been approved at a larger footprint. He also noted that Market Basket has submitted a letter of support for this project.

Mr. DegliAngeli noted the Town has been using alternate standards and shared parking for a while and he has no problem with the shared parking analysis.

Mr. Tilsley noted if the Board is considering waiving regulations, it would be appropriate to wait until Market Basket is operational to know more about the parking situation.

Mr. Lick noted the waiver request would be for ten less spaces than are required.

The Board discussed the existing easements.

Ms. Byers moved to take a five-minute break, seconded by Ms. Grant. Motion carried unanimously.

**Adopted: August 10, 2023 – As Written
CONWAY PLANNING BOARD – JULY 13, 2023**

Mr. Lick read a waiver request for §110-30.C.(1)(a). **Mr. John Colbath made a motion, seconded by Ms. Byers, to grant the waiver for §110-30.C.(1)(a).** Chair Colbath asked for Board comment; there was none. **Motion carried, with Mr. Hounsell voting in the negative.**

Mr. Lick read a waiver request for §110-21.A. **Ms. Byers made a motion, seconded by Mr. Corbett, to grant the waiver for §110-21.A.** Chair Colbath asked for Board comment; there was none. **Motion carried, with Mr. Hounsell voting in the negative.**

Chair Colbath closed public comment.

Ms. Grant made a motion, seconded by Mr. John Colbath, to conditionally approved the Concurrent Site Plan and Unit Subdivision for Settler’s R2, Inc. conditionally upon Town Engineer approval; indicating two stop signs to be installed at drive-thru exit; adding pedestrian caution signs at new crosswalk; updating waivers granted table as necessary; submitting four copies of revised plan sets with original stamps and signatures; \$200 for Inspections Fees; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements [if necessary]; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on July 11, 2024. Motion carried unanimously.

**THE RESIDENCES AT SACO RIVER, LLC (FILE #FR23-07 & #S23-08) –
CONCURRENT FULL SITE PLAN AND 2-UNIT SUBDIVISION REVIEW (PID 246-23)**

Mr. Barbin rejoined the Board at this time.

Mark Lucy of Horizons Engineering and Derek Lick of Orr & Reno appeared before the Board. This is an application to construct 228 residential dwelling units, 15 townhouses, a 5,675 square foot clubhouse with associated infrastructure and create a 2-unit subdivision at 1552 White Mountain Highway, North Conway.

Mr. Lucy presented the plans for this project. The Board discussed potential waivers and decided none were needed. They discussed pending items, including addressing light pollution issues.

Regarding the parking substitution request, Mr. Lucy noted that they are using the alternative standard for parking and reviewed the plans.

Ms. Grant made a motion, seconded by Ms. Byers, to accept the parking substitution request. Motion carried unanimously.

Chair Colbath asked for Board comment. Mr. Hounsell noted the Saco River is overused and expressed concern that the townhouse residents would create a beach area, which would impact the river. He believes the zoning regulations should be adjusted to protect the river from overuse. Mr. Lucy replied that any work done within the protected shoreland will need to be permitted at the Town and state level.

Ms. Grant asked regarding protecting the buffer to the river. Mr. Lucy noted anyone accessing the river from this property would be trespassing. He reviewed the existing restrictions that apply to

**Adopted: August 10, 2023 – As Written
CONWAY PLANNING BOARD – JULY 13, 2023**

the buffer. If there are plans to provide river access in the future for the townhomes, a permit would be required. Mr. Lick confirmed there will be HOAs.

Mr. DegliAngeli reviewed the boring logs and the drainage on the property.

Chair Colbath asked for public comment.

Chris Meier of Cooper Cargill Chant, representing the owner of the abutting retail plaza, reviewed his letter dated June 29, 2023 [in file] describing the loading operations that occur at this building. He expressed concern regarding locating residential units within 100 feet of loading docks and trash compactors. He cited the nuisance provision in the bylaws and wanted to add public health and safety as a consideration. He requested an acoustic buffer as well as installing noise buffering windows and soundproofing in the walls of specific units as a condition of approval. They do not want to share a driveway with this project, although he understands this will be dealt with in the DOT permitting process.

Mr. Lick noted the business needs to follow the Town noise ordinance. The project was designed to mitigate noise issues. He shared landscaping plans with the Board and explained their intent was to preserve as much green space as possible. The two properties is steep, and a fence would be difficult to install. The apartments are designed to be soundproof. They do not want to be indemnifying the Northway Plaza for whatever they do with respect to noise.

Mr. Meier suggested adding plan notes regarding the residences being in a highway commercial zone and that they are aware of the existing commercial uses on the abutting property. Mr. Lick did not believe this was necessary.

Chair Colbath noted the noise issue could become burdensome for the Town. Mr. Lick reiterated the existing Town noise ordinance should protect the business and the Town. The Board discussed their skepticism that the planned vegetation will serve as an acoustic buffer and what constitutes a nuisance complaint. Mr. Roger Williams noted the townhouses are designed to prevent issues with sound. Mr. Meier stated the applicant is grandfathered from the noise ordinance due to being established 50 years before the ordinance was established.

Mr. Bill Angelli of 41 Pine View Lane, representing the Mount Washington Valley Cooperative, expressed concern regarding the residents of the townhouses exiting onto Sawmill Lane. Mr. Hounsell agreed that there is excessive traffic on Sawmill Lane. Mr. Lucy said the project needed an additional point of egress/access to accommodate the density. The Fire Chief has approved a gate on this access with a lockbox for emergency access only and they would be willing to install this.

Ms. Marge McIntyre, a resident of the Mount Washington Cooperative, said the residents are not happy about the additional amount of traffic coming from the development onto Sawmill Lane. She said Sawmill Lane is not a Town road; it is privately owned.

Mr. Ray Plouffe, operation director of the Mount Washington Valley Cooperative, concurred regarding the amount of traffic on Sawmill Lane, including 50-60 sewage trucks. He welcomes the suggested compromise of a locked gate only accessible for emergency purposes.

**Adopted: August 10, 2023 – As Written
CONWAY PLANNING BOARD – JULY 13, 2023**

Mr. Lucy clarified Sawmill Lane is not a platted road; it is a privately-owned property valued at 0 dollars, so is not taxed and has one owner, North Conway Properties. The applicant is willing to gate the access point, but this will restrict campers who have missed the campground road from returning to the campground via this access. The Board said this is not something they can consider.

Chair Colbath closed public comment.

Ms. Byers made a motion, seconded by Mr. Barbin, to conditionally approve the concurrent site plan and unit subdivision for The Residences on the Saco, LLC conditionally upon Town Engineer approval; NHDOT Driveway permit and indicate permit number on plan; Alteration of Terrain permit and indicate permit number on plan; NHDES Shoreline Protection permit and indicate permit number on plan; submitting a lighting plan showing compliance with §110-26., Lighting; indicating a gate at the property line of Sawmill Lane [PID 235-3]; adding a plan note that indicates that the applicant is aware of the existing commercial use on the abutting property; submitting two road names to be approved by the Town; indicating street signs [four locations] on plan pursuant to §130-45.; revising waivers/substitution granted table as necessary on plans; indicating Zoning Board of Adjustment approvals File #23-19 & File #22-27 on plans; providing a copy of recorded deed restriction per ZBA approval #22-27 and indicating book and page on plan; submitting four copies [three to remain with the Town] of revised plans with original stamps and signatures; \$200 for Inspection Fees; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements [if necessary]; when the conditions have been met the plans can be signed out-of-session; and this conditional approval will expire on July 11, 2024.

Mr. John Colbath suggested one of the roads should be named after Mr. Robert Porter, a long-term North Conway Water Precinct commissioner and local resident, as a tribute.

Motion carried unanimously.

OTHER BUSINESS

James DeMonico – Appeal request concerning Jan G. Filip, V/603 Street Eats: James DeMonico, owner of Hooligans Food & Drink, appeared before the Board. This is a request to appeal the decision to allow food trucks (File #NA23-03 & #NA23-07) at 36 Kearsarge Road, North Conway (PID 218-102).

Ms. Whitelaw noted that the appeal window is closed and only a staff decision can be appealed to the Board. Any Board decision has to be appealed to the Courts. Mr. DeMonico was placed on the agenda, so he can express his concerns.

Mr. DeMonico noted three food trucks are abutting his business and capturing market share, which is hurting him financially. His business has not recovered from the problems experienced during COVID. He noted that most towns that embrace food trucks create a park, so they are not directly competing with existing businesses.

**Adopted: August 10, 2023 – As Written
CONWAY PLANNING BOARD – JULY 13, 2023**

Chair Colbath said the Town has no formal ordinances for food trucks and there is no location in town that would not impact local businesses. If more concerns are brought to the Board by North Conway business owners, it could weigh against any decisions the Board would make next year. He noted that the Town might need a notification process for non-applicables.

Mr. DeMonico asked why there was no site plan review for these permits. Ms. Grant clarified that only permitted structures undergo site plan review.

Mr. John Colbath said the Town is currently working on the Master Plan, which hopefully will include revising the zoning ordinances. He encouraged business owners to share their concerns.

Mr. Hounsell suggested the Board establish subcommittees to start writing new zoning regulations. Chair Colbath noted the Board writes Warrant Articles each year that often include zoning articles and a list exists of ones that are needed.

The Board thanked Mr. DeMonico for bringing this issue to their attention and they will keep these issues in mind as they make decisions in the future.

Charitable Gaming operations zoning amendment discussion:

Mr. Hounsell reviewed the current situation with charitable gaming, where individuals provide a venue to hold these events. Charitable organizations reap a percentage of the proceeds but the operator takes a larger percentage. These are akin to casinos. He said that keno has been defeated numerous times, but the Board has not been given an opportunity to consider charitable gaming. He believes the Board needs to create a zoning amendment as soon as possible that states any legal casino would be in I-2 and limit the square footage to a specific size.

Ms. Grant said for something to be allowed in Town without a variance, it must be listed and defined on the table of permitted uses and allowed in that district. She concurs with Mr. Hounsell that this issue needs to be addressed and recommended that the Board review the permitted uses.

Chair Colbath appointed Mr. Hounsell, Ms. Grant, and Mr. Corbett to a subcommittee to adjust the usage table or the wording of the zoning where this would be permitted.

Selectmen's Report:

Mr. DegliAngeli outlined the pending public hearings regarding building permit fees and inspecting new construction for single-family dwellings. Staff is proposing the Town embark on a licensing and inspection program for all rental properties to ensure compliance with life/safety and building codes. Mr. Hounsell expressed concern over older rentals and hotels that do not meet today's life/safety regulations and commended the Town for focusing on this. Mr. DegliAngeli noted that even when buildings were built to standards, work has been done since that compromised the firewalls.

Mr. John Colbath reported a group of abutters to the Conway Humane Society took the ZBA to court over a decision and the ZBA prevailed.

Issues for Consideration:

Chair Colbath announced the Board is returning to two meetings a month, with the second meeting being a work session.

Media Questions:

Ms. Whitelaw responded to questions from Mr. Eastman about obtaining copies of correspondence regarding the Master Plan. He welcomed new Town Planner Ryan O'Connor.

Mr. Barbin moved to adjourn the meeting, seconded by Mr. John Colbath. Motion carried unanimously.

Meeting was adjourned at 10:35 pm.

Respectfully Submitted,
Beth Haggeli