

**CONWAY PLANNING BOARD**

**MINUTES**

**SEPTEMBER 28, 2023**

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**CONWAY PLANNING BOARD**

**MINUTES**

**SEPTEMBER 28, 2023**

A meeting of the Conway Planning Board was held on Thursday, September 28, 2023, beginning at 7:13 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen’s Representative, Steve Porter; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Eliza Grant; Bill Barbin; Mark Hounsell; Town Planner, Ryan O’Connor; and Planning Assistant, Holly Whitelaw. Alternates Debra Haynes and Ted Phillips were in attendance.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Porter made a motion, seconded by Ms. Grant, to approve the minutes of September 14, 2023, as written. Motion carried unanimously.**

**WORK SESSION**

**Moratorium discussion:**

Mr. O’Connor noted that the language of the 2024 moratorium was basically what was reviewed, with changes requested to cite the watershed reports and the zero percent vacancy rate. Legal counsel has reviewed and approved the language as presented. The next step is to hold a public hearing.

**Mr. Porter made a motion, seconded by Mr. Barbin, to post to a public hearing on October 12, 2023. Motion carried unanimously.**

**Outdoor Dining:**

Mr. O’Connor explained outdoor dining is currently administered by the Recreation Department. This ordinance would move this issue to Zoning and separate outdoor dining into public and private property. On public property, a permit would be required. On private property, it would be treated as a small undertaking or a site plan, if the green space reduction met the established level. There are currently no use restrictions for green space and he noted the Board might want to consider establishing them.

He proposed a definition of outdoor dining and listed the requirements, which the Board discussed. They agreed the food truck ordinance needs to be reviewed as well, to ensure there is enough separation between the two issues.

Mr. O’Connor will draft formal language regarding outdoor dining for the Board’s review.

**Review of Wetland and Watershed Protection Overlay District/Watershed Protections:**

Mr. O'Connor presented short-term goals regarding the wetland and watershed protection overlay district that could be implemented this year in the warrant article. These included building setbacks, lot coverage, stormwater controls, protecting buffers, water quality standards, and redevelopment incentives. The Board expressed their approval of these goals. Mr. O'Connor will draft formal language for the Board's review.

**§110-9 – Submission of application materials/§130-8 – Filing and Submission of application:**

Mr. O'Connor and Ms. Whitelaw would like to explore extending the application timeframe for site plan and subdivision regulations from 22 to 30 days.

**Mr. Porter made a motion, seconded by Ms. Byers, to post the proposed amendments to §110-9 & §130-8 to a public hearing on October 12, 2023. Motion carried unanimously.**

**Charitable Gaming definitions:**

Mr. Hounsell, chairman of the charitable gaming subcommittee, expressed the need to move this issue to public hearing quickly.

Mr. O'Connor clarified this is to establish definitions, not to recommend regulations. He presented definitions of a charitable gaming facility, charitable organization, sports betting facility, commercial bingo hall, game of chance, gambling, casino, commercial amusement facility, and charitable fundraising event.

The Board said the definitions are very well written and complimented the subcommittee on their hard work.

**Mr. Porter made a motion, seconded by Mr. Barbin, to post the proposed charitable gaming definitions to a public hearing on October 12, 2023. Motion carried unanimously.**

Ms. Grant asked the Board if they wanted to consider adding uses to the Permitted Use Table that are permitted at the state level but not at the local level. The Board agreed that this will be discussed at a future meeting.

The Board debated including both definitions and the Permitted Use Table on the warrant article. Chair Colbath said this will be discussed at a future meeting.

**Schedule of Fees:**

Mr. O'Connor presented a proposal to amend the schedule of application fees. He proposed increased fees across the board, which hopefully will incentivize developers to reduce the amount of impervious coverage and increase long-term housing development. The increases will also bring the Town into line with other communities experiencing similar growth, to cover staff time to review and process applications.

**Adopted: October 26, 2023 – As Written**  
**CONWAY PLANNING BOARD – SEPTEMBER 28, 2023**

The Board discussed the staffing needs of the Planning Department, and how the moratorium impacts this. They also reviewed the fees applicants pay and the proposed changes. Mr. O'Connor said the rationale behind some of the lower fees is for them to be accessible, such as the zoning permit, minor site plan review, and conceptual review. He noted there might be a better source to capture funding for larger projects, such as through impact fees, instead of requiring excessive application fees.

Mr. Phillips asked why conceptualls are not required in more situations. The Board agreed requiring conceptual reviews for developments over a specific size could be considered.

Mr. Barbin asked why the Board was suggesting changes to the fee schedule the staff had prepared, as he believed it was reasonable and the staff had done a great job.

**Mr. Hounsell made a motion, seconded by Ms. Grant, to recommend the proposed fee schedule to the Board of Selectmen. Motion carried unanimously.**

**Parkway Protection Overlay District:**

Ms. Grant, chair of the Parkway Protection Overlay District subcommittee, presented a proposed definition of a parkway. The subcommittee has framed out an overlay district to protect the parkway, but it has not been finalized.

**Mr. Hounsell made a motion, seconded by Ms. Grant, to post the proposed definition of Parkway to a public hearing on October 12, 2023. Motion carried unanimously.**

**Changes in the Charter:**

Ms. Grant said a member of the Charter Commission suggested having counsel explore adding to the Charter that when there is a unanimous vote by the Planning Board to add a definition, it does not have to be placed on the warrant. The Board agreed that as long as the definition goes to public hearing, this could be a good practice, to avoid placing ordinances and related definitions on the same warrant.

Ms. Grant also noted that there was a suggestion to impose term limits on the Planning Board. Mr. Porter questioned imposing term limits when it is difficult to find people willing to serve on boards. He voiced his opposition to shortening the warrant, stating voters need to be informed and have the opportunity to vote on issues. Mr. Hounsell agreed.

Chair Colbath adjourned the meeting at 8:26 pm.

Respectfully submitted,  
Beth Hanggeli



# TOWN OF CONWAY

23 MAIN STREET + P.O. BOX 2680 + CONWAY, NEW HAMPSHIRE 03818

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## Memo

To: Planning Board  
From: Planning Staff  
Date: September 28, 2023  
Re: Moratorium Extension, Warrant Article Language

Following our discussion at the August 24, 2023 Planning Board workshop meeting, please see the proposed language below for the extension of the building moratorium. The language has been reviewed by legal council for compliance with State Statute.

### Proposed Moratorium Warrant Article Language

**ARTICLE**\_\_\_\_(Non-Monetary) To see if the Town will vote to adopt an ordinance establishing a temporary Town-wide moratorium, to be in effect from April\_\_\_\_, 2024 to April\_\_\_\_, 2025, stopping the issuance of building permits, granting of subdivision approval, and granting of site plan approval for hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures. This ordinance shall not apply to any project or work that (a) has already received all necessary approvals, (b) received conditional approval, (c) that does not require any new or additional planning board or zoning board application or review, and (d) consists of reasonable repair or restoration necessitated by any natural disaster, Act of God, or loss covered by insurance. The full text of the ordinance is as follows:

CHAPTER\_\_\_\_RSA 674:23 MORATORIUM ON HOTELS, MOTELS, RESORT HOTELS, AND CERTAIN COMMERCIAL STRUCTURES

[HISTORY: Adopted by the Town of Conway April\_\_\_\_2024; Effective April\_\_\_\_, 2024 to April\_\_\_\_, 2025]

### §\_\_\_\_STATEMENT OF CIRCUMSTANCES GIVING RISE TO NEED FOR MORATORIUM

Because the Town of Conway continues to face unusual circumstances in regards to development, including traffic congestion, green space impacts, a critical housing shortage (due to a lack of workforce and affordable housing stock), a lack of industrial/commercial workplace industries outside hospitality/tourism, a general shortage of a workforce, resulting in many businesses needing to limit their days/hours of operation, and infrastructure impacts, the Town,

in order to create a better environment for living in, working in, recreating in, and visiting our beautiful community, ordains it necessary to continue for an additional year the 1-year moratorium on the issuance of building permits, the granting of subdivision approval, and the granting of site plan approval for hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures. This ordinance shall not apply to any project or work that (a) has already received all necessary approvals, (b) received conditional approval, (c) that does not require any new or additional planning board or zoning board application or review, and (d) consists of reasonable repair or restoration necessitated by any natural disaster, Act of God, or loss covered by insurance.

§\_\_\_\_ PLANNING BOARD'S WRITTEN FINDINGS UPON WHICH §\_\_\_\_ IS BASED (The relevant Planning Board Minutes of\_\_\_\_, which include more detailed findings, are appended to this ordinance)

By vote, the Town of Conway Planning Board finds the follows:

- A. The growth of commercial development continues to exceed the growth of services. Conway has not had the opportunity to adopt Innovative Land Use Controls due to the development process of the master plan. These regulations will enable controlled growth which requires the infrastructure to support development.
- B. Development continues to place significant pressure on infrastructure, traffic patterns, provision of services, housing, stewardship of greenspace, workforce availability, and natural resources. These impacts have been highlighted by development of the Master Plan. Housing and infrastructure need far exceeds the capacity of the Town, and regulations are not in place to protect vital resources and long-term economic growth. Currently, Conway is experiencing a zero percent rental vacancy rate which continues to drive housing prices above affordable levels. Addressing infrastructure and housing need within our regulations is vital to balance growth with community development.
- C. Large scale developments continue to be regularly reviewed as projects with a Regional Impact. Conway significantly supports commercial development within the Mount Washington Valley; housing, education, and jobs function as a regional resource. The community is at risk without adequate controls in place to ensure infrastructure supports development and limits impacts to the region.
- D. The strain on our natural resources continues to be highlighted through our Master Plan development and contributions of local stewardship organizations. The natural resources of Conway are at risk due to the level of use, increased number of severe storms, and the pace of development. Natural resources are essential to our economy and health and safety of this community. The Town does not have the strength in our regulations to balance large scale development with environmental protections. As stated in the 2022 Kearsarge Brook and Saco River Watershed Protection Plan, areas of Conway are

experiencing as high as twenty-three percent impervious cover. This places a significant risk of not supporting the ecosystem within our watershed.

- E. Creating regulations which anticipate growth and the needs of the community take significant time of staff and the Boards. The proposed moratorium is necessary to allow for development of strong regulation to ensure healthy growth of the community. Courses of action include the finalization of the Master Plan rewrite and a complete review and update of the Zoning Ordinance.

§ \_\_\_\_ TERM OF THE ORDINANCE:

The term of this ordinance shall be one year, from April \_\_\_\_\_, 2024 to April \_\_\_\_, 2025.

§ \_\_\_\_ LIST OF THE TYPES OF CATEGORIES OF DEVELOPMENT TO WHICH THIS ORDINANCE APPLIES:

This ordinance shall apply to hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures.



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## Memo

To: Planning Board  
From: Planning Staff  
Date: September 28, 2023  
Re: Proposed Outdoor Dining Ordinance

The following proposes Zoning Ordinance language and a revised process for permitting Outdoor Dining on public and private property. Currently permits are administered by the Recreation Department and the use or definition of Outdoor Dining is not addressed in our regulations.

The proposal recommends specific guidelines for all Outdoor Dining areas and additional requirements for areas which utilize public property. When a dining area is proposed within private property, the request would be treated as a small undertaking unless the increased floor area met the requirements of a full site plan. Proposals within public property would require an Outdoor Dining permit to be reviewed by the Zoning Officer.

As written, the language would permit Outdoor Dining Areas on existing Greenspace. This would allow for things like picnic tables to be placed on grassed areas. At this time, our Ordinance does not limit the use of these areas. Any Greenspace reduction would be reviewed accordingly.

### Draft Outdoor Dining Regulations

#### **Outdoor Dining Establishment Definition:**

An area on a private property, a public sidewalk, or public way where patrons may consume food and/or beverages provided by a licensed restaurant. Such restaurants may either provide table service in the outdoor dining areas or sell take-out items to be consumed in the outdoor dining areas.

#### **Requirements (Applicable to both Public & Private Property):**

- An Outdoor Dining Establishment application shall be accompanied by a plot plan, drawn to scale and dimensioned to include seating arrangements and immediately adjacent physical features such as fire hydrants, trees, structures, sidewalks, and pedestrian or vehicular travel ways. The plan shall be reviewed by the fire chief to ensure unimpeded pedestrian access. Outdoor Dining areas shall be designed to maintain compliance with requirements of the American Disabilities Act (ADA).



- Establishments serving alcohol shall hold a valid liquor license from the State Liquor Commission prior to occupancy of the space. The license shall explicitly identify the Outdoor Dining area. Any permission granted by the Town of Conway will be subject to requirements of the State Liquor Commission.
- Outdoor dining areas must be maintained. A minimum of one trash receptacle shall be provided and identified on the plot plan. Plantings, barriers and outdoor furniture shall be maintained and suitable for the intended purpose.
- Outdoor dining areas shall be separated from vehicular and pedestrian traffic. The separation must be adequate to ensure public safety; the minimum height of the barrier shall be 36 inches and the maximum height shall be 48 inches. Where no curbing or adequate vehicular separation exists, concrete or similar barriers shall be installed to prevent vehicular passage.
- Outdoor entertainment associated with the dining area must not be considered a nuisance as defined in Site Plan Regulations 110-39 and shall adhere to 97-6.A Noise Restrictions. Outdoor entertainment on public property requires a Special Event Permit.
- Occupancy limits shall be established by the Fire Chief. Applications must indicate that adequate parking can be provided as per Site Plan Regulations §110-21.

#### **Outdoor Dining on Private Property:**

- Outdoor Dining on private property is permitted as an accessory to any approved Restaurant use.
- Applications will be reviewed as a small undertaking unless the proposal reduces parcel greenspace to less than 30%, involves a reduction of greenspace greater than 2,000 square feet, or increases structural floor area by greater than 25% or 1,000 square feet, whichever is more restrictive.
- Dining areas and associated equipment are subject to all applicable setbacks.

#### **Outdoor Dining on Public Property (Permit to be reviewed by the Zoning Officer):**

- Outdoor Dining is allowed by permit from May 1 to November 1 as an accessory to an approved Restaurant use.
- The Outdoor Dining area shall not extend beyond the immediate area of the establishment and is not permitted in public parking spaces or travel way.

- Temporary use of setback areas for Outdoor Dining may be permitted only for dining areas which abut a public Right-of-Way.
- Permits shall be limited to a single establishment.
- A Certificate of Insurance in the amount of \$1,000,000 (One Million) is required to be held for the duration of the permit. The Certificate of Insurance shall explicitly name the Town of Conway as additionally insured.
- A minimum 3' setback is required from all fire hydrants, bicycle parking, public benches, or any public amenity.
- The plan shall be reviewed by the fire chief to ensure unimpeded use of any public way. A minimum six-foot area is required for pedestrian travel outside of the Outdoor Dining area. Nothing shall be placed to limit egress of any structure.
- Any disturbed areas shall be restored to original condition following the expiration of an Outdoor Dining Establishment permit. This includes the removal of all furniture, equipment, and barriers.
- Approvals may be suspended or revoked with reasonable notice due to noncompliance with regulations or public safety concerns.

**Ordinance locations:**

- Outdoor Dining on public property – Streets and Sidewalks Article 6
- Outdoor Dining on private property – Zoning 190
- Permits would require Fire Chief Approval
- The use of a temporary tent on public or private must be approved by permit.



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## MEMO

To: Planning Board  
From: Planning Staff  
Date: September 28, 2023  
Re: Watershed Protections

The summary below outlines potential updates to the Wetland & Watershed Overlay District. The goal in this draft was to summarize recommendations from the Saco & Swift Corridor Management Plan and the Kearsarge Brook & Saco River Watershed-Based Protection Plan that may be applicable in our regulations.

Several updates may be appropriate in the short-term; for example, increased setbacks, stormwater controls, and lot coverage restrictions. Other protections may benefit from additional research prior to adoption. The recommendations are largely a response to the pace which areas within our watershed are being developed. The Saco River corridor direct drainage area currently has approximately 23% impervious coverage. To continue to support aquatic life, the watershed plans highly recommend limiting impervious surfaces to less than 25% within the watershed, with the knowledge that less than 10% is ideal for aquatic health.

The ordinance recommendations outline possible updates for your consideration. Future protections are also identified which may be appropriate with our comprehensive review of the Zoning Ordinance following the Master Plan adoption.

### Ordinance Update Recommendations:

#### - **Current Conditions:**

- Currently our Wetland and Watershed Protection Overlay district boundary is 100' from all year-round waterbodies, wetlands, and poorly drained soils. Within the district the following buffers apply along with additional restrictions and requirements:
  - 75' structure setback (50' for boat storage)
  - 100' setbacks for septic systems
  - 50' vegetative buffer

#### - **Recommended Updates:**

- Increased building setbacks from 75' to 100'

- The benefits to water quality that additional setbacks may offer depend largely on the makeup of the soils, vegetation, slope, and other site aspects. A 100' buffer is seen as a consistent distance to help filter runoff across various terrain and provide optimal habitat conditions.
- The 100' buffer is [cited by the EPA](#) to adequately address filtration and;
- allows for a reduction in impervious surfaces and flood storage capacity.

○ **Limit lot coverage**

- Currently, lot coverage within the Wetland & Watershed Overlay District is only limited by buffer and greenspace requirements. Outside of required buffers, up to 70% of a lot can be developed (30% greenspace requirement).
- Recommend limiting lot coverage to 25% within the Watershed Overlay District
  - Currently within the Shoreline Protection Overlay District, commercial zones are limited to 65% lot coverage and 25% in all other zones.
  - Limiting impervious coverage to 25% is consistent with the requirements to support aquatic life.
  - Lot coverage is currently defined as: Coverage of a lot with structures and impervious surfaces, including but not limited to buildings, driveways and sidewalks.

○ **Expand the overlay district from 100' to 300'**

- The expanded buffer could allow for additional water quality controls to be required. Within the district, stormwater drainage must be treated onsite prior to discharge. This limits nutrient flows and velocity of stormwater from leaving a site.
- Require Low-Impact Development (LID) practices. NHDES Stormwater Regulations offer guidelines for how water should be treated and retained, especially near critical habitats like wetlands and waterways.
  - The Board could require applicants to outline how Low-Impact Development best management practices are being utilized for stormwater, erosion controls, and overall site design.
  - Reference:
    - [NHDES Stormwater Manual Volume 1](#)

- [NHDES Stormwater Manual Volume 2](#)
- **Require culverts which allow for the transport of aquatic life.**
  - Requirements for open-bottom culverts or other types of protected stream and wetland crossings allow for passage of aquatic life and limits nutrient build-up.
  - Culverts are sized to have no restrictions of flow from predevelopment conditions.

#### **Watershed Protection Strategies for Future Consideration:**

- Water Quality Standards
  - Adopt Low-Impact Development requirements for all site plan applications.
- Require watershed protections
  - Identification and removal of invasive species with Site Plan review.
  - Require a functions and values report to identify necessary shoreland & riparian buffer restoration
  - Require applicable applications to include a review by Saco & Swift River Local Advisory Committee
- Redevelopment
  - Incentives for habitat restoration to allow certain densities or site development percentages.
- Review cutting of vegetation within the buffer. Currently the Zoning Officer reviews all request for the cutting of trees within the Overlay.
- Review shoreland arming requirements (and restrictions)
- Include requirements for permeable pavement within our Site Plan Regulations.

#### **Additional Considerations for Watershed Protections**

- Work with the Conservation Commission to prioritize land conservation along the river corridor.
- Include a map within the Master Plan highlighting river restoration areas.
- Review locations and funding opportunities for the clean-up of contaminated areas.
- Review feasibility of culvert replacement on Town property.

Town of Conway, NH  
Thursday, September 21, 2023

## Chapter 190. Zoning

### § 190-28. Wetland and Watershed Protection Overlay (WWPO) District.

The WWPO District is primarily designed to protect the public health, safety and general welfare by protecting valuable wetland and water resources; preventing the harmful filling, draining, sedimentation, or alteration of wetlands and watercourses; protecting unique and unusual natural areas; preventing the development of structures and land uses on naturally occurring wetlands, which could contribute to pollution of surface water and groundwater by sewage; preventing the destruction or significant degradation of wetlands which provide flood and storm control by the hydrologic absorption and storage capacity of the wetland; protecting fish and wildlife habitats by providing breeding, nesting, and feeding grounds for many forms of plant and animal life, including rare, threatened, or endangered species; protect existing and potential water supplies, aquifers and aquifer recharge areas; providing pollution treatment to maintain water quality; preventing expenditures of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands; providing for compatible land uses in and adjacent to wetlands or surface waters which serve to enhance, preserve, and protect wetland areas and water bodies as natural resources. Excavation shall be prohibited in statutory wetlands. Land uses permitted in this district are represented in the Permitted Use Table **included as an attachment to this chapter**.

#### A. District boundaries and map.

##### (1) District boundaries.

##### (a) The WWPO District shall be comprised of all land within 100 feet from the edge of:

- [1] All water bodies, excluding Great Ponds, which are covered under the Shoreline Protection Overlay District; and certain man-made water bodies, such as fire ponds, agricultural/irrigation ponds, sedimentation/detention basins, and sewerage lagoons;
- [2] All year-round watercourses;
- [3] All wetland areas of three or more contiguous acres, excluding constructed or legally altered wetlands that are not part of a wetland mitigation plan, and vegetated swales and roadside ditches;
- [4] All wetland areas as shown on the Town of Conway 1997 Wetlands Composite Map abutting a water body or year-round watercourse, regardless of the wetland acreage involved;
- [5] All perennial watercourses and hydric areas depicted as having poorly or very poorly drained soils according to the Soils Survey of Carroll County, New Hampshire (approved in 1973, and issued in 1977); and
- [6] All wetland areas, except wet woodlands (designated as WW-1 and WW-2), identified and delineated in a report entitled "The Wetlands of Conway, New Hampshire - An Inventory and Evaluation," United States Department of Agricultural Extension Service Wetlands Project, Report No. 1, dated 1979.

- (b) Disputed or incorrectly delineated wetlands. When there is a dispute over the delineation of a mapped wetland, or in cases where an unmapped wetland is delineated, it may be resolved with a plan certified by a wetland or soil scientist licensed by the State of New Hampshire that delineates the wetlands in accordance with the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, New England Interstate Water Pollution Control Commission, 1998.
  - (2) District map. The WWPO District Map is included as an attachment to this chapter.
- B. Shoreline and wetland setbacks.
  - (1) Each structure shall have a seventy-five-foot minimum setback from the edge of the water or edge of wetland, whichever is farther landward. Boat storage sheds, however, may be set back a minimum of 50 feet from the edge of the water or edge of wetland. In the Residential/Agricultural District, storage sheds shall be set back a minimum of 50 feet from the edge of water or edge of the wetland. Only one storage shed is allowed per lot within the buffer.
  - (2) Special provisions.
    - (a) No septic tank or leach field may be constructed or enlarged closer than 100 feet to any wetland.
- C. Shoreline and wetland buffer. There shall be a fifty-foot-wide vegetated buffer along the edge of the water or edge of wetland, whichever is farther landward. This buffer serves as a natural filter to protect the waters and wetlands from contaminated surface runoff, provides habitat for terrestrial wildlife, protects aesthetic qualities of the water and wetland environment and helps prevent erosion of the shoreline. The following restrictions shall apply to the buffer:
  - (1) One access path across the buffer, up to 10 feet in width (measured parallel to the shoreline), is allowed for each 150 feet of water frontage. Such paths shall be designed to prevent erosion and runoff into the water or wetland. Path installation may occur only after receipt of a zoning permit from the Zoning Officer.
  - (2) Municipal trails on government lands and municipal trails across other lands (for which the Town of Conway has accepted trail easements) may be located within shoreline and wetland buffers, provided that they are designed and maintained to prevent erosion and runoff into the water or wetland.
  - (3) No vegetation less than four inches in diameter, measured at 4 1/2 feet above ground level, shall be cut, trimmed, pruned or removed, except to provide for permitted access paths.
  - (4) For vegetation four inches or more in diameter, measured 4 1/2 feet above ground level (hereafter referred to as "trees"), no more than 10% of the basal area of trees may be removed from the buffer (not including the area of permitted access paths) in any five-year period. Before any cutting may occur, the Zoning Officer shall be provided with a plat indicating the size and location of all trees in the buffer, which indicates the total basal area before and after the proposed cutting and which indicates all measures to be taken to prevent destruction of the buffer and protect the water quality. Cutting may occur only after receipt of a zoning permit from the Zoning Officer.
  - (5) No cutting or trimming of living tree limbs shall be permitted.
  - (6) Dead trees and dead limbs may be cut down only after receipt of a zoning permit from the Zoning Officer.
  - (7) For beaches permitted herein, where some clearing of land within the buffer is required, in no case shall such clearing for a beach extend inland more than 10 feet from the normal high-water elevation, and such clearing shall be no longer than the permitted beach.

- (8) Agricultural and timber harvesting activities and operations shall be permitted uses within the buffer area, provided they conform to best management practices established by the United States Department of Agriculture Natural Resources Conservation Service, Cooperative Extension and/or the New Hampshire Department of Agriculture and RSA Ch. 227-J.

D. Docks. Docks which are completely removed from the water for the winter season shall be permitted as follows:

- (1) Maximum number of docks shall be one per 150 feet of water frontage, but lots with less than 150 feet of water frontage are permitted one dock.
- (2) A dock shall not extend more than 30 feet into the water.
- (3) A dock shall not be wider than 10 feet in width.
- (4) A zoning permit must be obtained prior to the installation of a dock.

E. Private beaches. Beaches which are not owned by a unit of government shall be regulated as follows:

- (1) Existing beaches may be maintained without the use of any machines or motorized equipment below the high-water elevation. Washed sand shall be the only material which may be added to the beach. The amount of washed sand added shall not exceed one cubic yard per three feet of beach length in any five-year period. A zoning permit and all applicable state permits shall be required before any sand is deposited, and it shall be the responsibility of the Zoning Officer to maintain records to monitor beach maintenance.

(2) New beaches may be created only when the following conditions are met:

(a) The lot shall be considered to have an area suitable for a beach if it meets each of the following criteria:

- [1] The slope of land from the high-water elevation to a line 10 feet inland shall not have slopes steeper than 10%.
- [2] The slope of the land from the high-water elevation to a line 20 feet out into the water shall not have slopes steeper than 10%.
- [3] The proposed beach site shall be determined by an independent wildlife biologist to be of minimal importance as fish habitat and/or spawning area (written report from the wildlife biologist shall be provided to the Town).
- [4] The area proposed for a beach above the high-water elevation is not on or within 10 feet of poorly or very poorly drained soils or wetlands.
- [5] All proposed beaches must comply with the requirements set forth in RSA Ch. 482-A and the New Hampshire Code of Administrative Rules, as amended.  
[Amended 4-11-2017 ATM by Art. 2]

(b) A beach shall be no longer than 10% of the length of water frontage, except that no beach shall be required to be less than 15 feet in length.

(c) No more than one cubic yard of sand per three feet of beach length shall be used to create the beach. Compliance with this requirement shall be documented to the Zoning Officer by means of providing all receipts for beach construction. Only washed sand shall be used for beach construction.

(d) Once established, the maintenance requirements listed in Subsection E(1) shall apply.

(e) Erosion control measures shall be provided such that runoff shall not run across the beach, with a design certified by a New Hampshire licensed professional engineer and reviewed by the Carroll County Conservation District.



- (f) A New Hampshire licensed professional engineer shall inspect the site three times: before construction; after grubbing but before sand is added; and when construction is completed. The professional engineer shall certify that all work is completed in accordance with the plans provided to the Town and in accordance with these requirements.
  - (g) All other required permits and approvals are obtained.
- F. Shorefront common areas. Shorefront common areas are those areas used for water recreation and/or access by users living off-site. Such areas shall comply with the following:
  - (1) Shorefront common areas shall not be located on lots smaller than two acres.
  - (2) The lot shall have, at a minimum, 50 feet of water frontage per family or household having rights of use; provided, however, that no more than 500 feet of water frontage shall be required for any one shorefront common area.
  - (3) Parking lots for shorefront common areas shall be set back a minimum of 200 feet from the normal high-water elevation. The parking area shall be screened from view of the water by a strip, at least 25 feet wide, of trees and shrubs.
  - (4) Creation or alteration of shorefront common areas shall be subject to site plan review.<sup>[1]</sup>
    - [1] *Editor's Note: See Ch. 110, Site Plan Review.*
- G. Earth disturbance. Prior to any work activity in which digging will occur or the ground's vegetative cover will be removed or substantially disturbed, sufficient erosion and sedimentation control measures shall be installed in accordance with RSA 485-A:17 and the New Hampshire Code of Administrative Rules, as amended. Such measures, which may include hay bales and silt fences, shall be maintained in proper working order until the ground surface is stabilized and no longer subject to erosion. The control measures shall be installed to protect the water, the wetland and the buffer (in order to preserve the buffer's natural filtering capacity).  
[Amended 4-11-2017 ATM by Art. 2]
- H. Water quality. In order to afford maximum protection to water quality, the application of chemical fertilizer, insecticides or other chemicals shall be prohibited in the district. In addition, drainage shall be controlled and treated as best as is reasonably possible for any construction or activity, or as a result of any land use, such as access paths. Local regulation of pesticide management is preempted by RSA 430:49.
- I. Special exceptions. The following shall be prohibited unless granted a special exception by the Zoning Board of Adjustment. If granted a special exception under this section, a site plan review approval shall be required prior to construction. References to the "shoreline" shall be considered either the shoreline of the water body/watercourse or the edge of wetland, whichever is farther landward. Any special exception shall be granted only after having found that there is no better feasible alternative, in keeping with state and federal standards for the issuance of development permits in 404 jurisdictional wetlands.
  - (1) Protective riprap. Riprap to protect shores from erosion shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
    - (a) All required state and federal permits are obtained; and
    - (b) The shoreline is being eroded by action of the waters and the riprap will protect the shoreline from further erosion without enhancing erosion at another location on the shoreline.
  - (2) Building on undersized lots. Building on pre-existing lots with insufficient acreage shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
    - (a) There is a state-approved septic system or connection to a municipal sewer.

- (b) Any building to be constructed shall be configured and located on the lot to create the maximum shoreline setback practical. If appropriate, rear and sideline setbacks may be reduced by the Zoning Board of Adjustment by up to 50% to facilitate maximum shoreline protection.
  - (c) Clearing of lots may be limited by the Zoning Board of Adjustment as a condition of approval so as to prevent erosion runoff problems.
- (3) Municipal and state facilities. Municipal and state facilities, including beaches and boat launches, shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
- (a) All required state and federal permits are obtained.
  - (b) Sand for a beach shall not be deposited in water which is deeper than 4.5 feet nor farther than 75 feet out from the high-water elevation. For erosion control of the beach area, a barrier shall be constructed between the water and the sand on the beach. The site shall not be normally subject to erosion by action of the water nor by the grade of the shoreline slope.
  - (c) In order to shield the view of parked vehicles from the water and to protect the water from runoff from parking areas, parking shall be located behind a landscaped area of natural or planted vegetation at least 50 feet in depth. Parking areas shall be gravel. Appropriate drainage controls shall be constructed and maintained to protect the Great Pond.
  - (d) Footpaths may be cleared across the vegetated area for access to the beach. They shall be kept at a minimum width which serves pedestrian access to the water.
- (4) Wetland or stream crossing: the construction of a wetland or stream crossing for purposes of streets, roads and other access ways and utility right-of-way easements, including power lines and pipelines. A special exception for these uses may be granted if the following conditions are met:
- (a) The use is essential to the productive use of land not in the district; and
  - (b) The use is so located and constructed as to minimize the detrimental impact upon the wetlands.
- (5) Water storage or impoundment: the construction of a water storage or impoundment.
- (6) Any use not otherwise permitted or otherwise allowed by special exception in a wetland, which may include the erection of a structure, dredging, filling, draining or otherwise altering the surface configuration of a wetland. A special exception may be granted, provided that the following conditions are met:
- (a) The proposed use will not conflict with the purpose and intent of the district. To support this claim, the applicant shall provide proper written evidence, which shall be accompanied by the findings of a review by the United States Natural Resources Conservation Service; and
  - (b) The use is permitted in the underlying zoning district.



# TOWN OF CONWAY

23 MAIN STREET + P.O. BOX 2680 + CONWAY, NEW HAMPSHIRE 03818

(603) 447-3811  
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## Memo

To: Planning Board  
From: Planning Staff  
Date: September 28, 2023  
Re: Expanded Application Timeframes

In an effort to allow for additional time to review applications, an amendment is being proposed to Site Plan and Subdivision Regulations to extend our submittal deadlines. Currently, applications are required to be submitted 22 days prior to a Planning Board meeting, the recommendation is to extend this timeframe to the fullest amount allowable by State Statute, which is 30 days as per RSA 676:4-I.(c)(1).

The goal of the proposed change is to permit additional time for staff and Planning Board review as well as allow for more time for communications with State agencies and consultants. If the Board chooses to move the changes forward, a public hearing would be required.

### § 110-9 Submission of application materials.

All materials to be submitted to the Planning Board for consideration shall be submitted prior to the meeting so that staff, Board members and abutters may have sufficient opportunity to review the application without unnecessarily delaying the proceeding of the meeting. The following shall apply:

- A. Application acceptance. In accordance with RSA 676:4, I(b), all materials required to constitute a complete application shall be submitted to the Town at least **30** ~~22~~ days prior to the meeting at which it will be considered for application acceptance.
- B. Other public hearings. New materials shall be submitted to the Town at least **30** ~~22~~ days prior to a meeting when a new public notice is required.
- C. Continued meetings. When consideration of an application is continued and new information is required, the Board shall specify the deadline for filing this new information. In no case shall it be less than 10 days prior to the meeting. The deadline shall be stated in the motion to continue.

**§ 130-8 Filing and submission of application.**

- A. The completed application shall be filed with the Secretary or the Chairman of the Board at least ~~30~~ 22 days prior to a scheduled public meeting of the Board. When consideration of an application is continued and new information is required, the Board shall specify the deadline for filing this new information. In no case shall it be fewer than 10 days prior to the meeting. The deadline shall be stated in the motion to continue.
- B. The completed application shall be formally submitted for acceptance by the Board only at a regularly scheduled public meeting after due notification to the applicant, abutters and the general public of the date the completed application will be submitted and received by the Board.
- C. An incomplete application filed by the applicant will not be formally accepted by the Board nor will notices of a public meeting be mailed, posted or published as provided under § 130-11.
- D. Applications may be disapproved by the Board without public hearing on grounds of failure of the applicant to supply information required by these regulations, including:
- (1) Abutters' identification and information required for preliminary layout.
  - (2) Failure to pay costs of notices or other costs and fees required by these regulations.
  - (3) Failure to meet any reasonable deadline established by these regulations.
  - (4) Failure to provide the appropriate plans



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## Memo

To: Planning Board  
From: Planning Staff  
Date: September 28, 2023  
Re: Charitable Gaming Definitions

The Appropriate Casino Land Use Ad Hoc Study Committee (ACLU) has worked to draft language for Charitable Gaming related definitions. The definitions are a first step in addressing Charitable Gaming within our Zoning Ordinance. At this time, the Committee seeks to define activities which may be affected by Charitable Gaming Facilities and is not bringing forward language which would permit the use.

The goal of the definitions is to clearly delineate a Charitable Gaming Facility from other uses and ensure purely charitable events are properly categorized. The definitions align with State Statute as well as expand on our current Ordinance language to clarify any future proposal for a facility conducting a Game of Chance.

### Charitable Gaming Proposed Definitions

**Charitable Gaming Facility:** A facility conducting Games of Chance for the benefit of nonprofit organizations which engage in any game involving gambling or lottery prohibited by RSA 647:1. Facilities are required to be licensed by the State of New Hampshire pursuant to RSA 287-D:7, excluding halls owned by any Charitable Organization or governmental subdivision and shall meet Administrative Rules of Chapter Lot 7200, Games of Chance.

**Charitable Organization:** A bona fide religious, charitable, civic, veterans', or fraternal or church organization, including police and firemen's organizations which shall have been registered with the Secretary of State for at least 2 years. A charitable organization shall not include auxiliary units, committees, or other entities organized under the auspices of a charitable organization eligible for State of New Hampshire licensure, when such auxiliary unit, committee, or other entity is organized for the primary purpose of conducting games of chance.

**Sports Betting Facility:** A facility licensed by the State of New Hampshire which conducts Sports Wagering as authorized by RSA 287-I. Sports Betting facilities include Sports Book Retail locations and Mobile Sports Waging.

**Commercial Bingo Hall:** Any hall owned or leased by an individual, corporation, realty trust, partnership, association, or any other person who rents or leases the hall to a charitable organization

for the operation of bingo or Lucky 7 games, excluding halls owned by any charitable organization or governmental subdivision.

**Game of Chance:** Any game involving gambling as defined by RSA 647:2, II, 17 or any lottery prohibited by RSA 647:1, but shall not include any game involving the use of a slot machine or any other device in the nature of a slot machine, 50/50 raffles as defined in RSA 19 287-A:1, III, or ice-out contests as defined in RSA 287-D:1, VI.

**Gambling:** Games involving a risk of value upon a future contingent event not under one's control or influence, upon an agreement or understanding that something of value will be received in the event of a certain outcome.

**Casino:** A non-charitable facility whose principal use is for the conduct of games of chance and / or gambling.

**Commercial Amusement Facility:** Any commercial use which offers for hire or to the general public access to structures, vehicles, mechanical or electrical contrivances, or other facilities which are intended primarily to provide entertainment, amusement or recreation, and in which the patron is engaged on the premises as an active participant rather than as a spectator. This shall not include volleyball, tennis or basketball courts, baseball, football or soccer fields, other similar sporting fields, or commercial golf facilities as regulated in the underlying district, or any facility conducting Games of Chance, and shall exclude special events as permitted by the Board of Selectmen.

**Charitable Fundraising Event:** An event held by a Charitable Organization for any benevolent, philanthropic, patriotic, educational, humane, scientific, public health, environmental conservation, civic, or other charitable purpose. The basis of any solicitation shall be solely for a charitable purpose and may include Games of Chance.



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## Memo

To: Planning Board  
From: Planning Staff  
Date: September 28, 2023  
Re: Proposed Amendments to Fee Schedule

The proposed amendments to the Schedule of Fees are intended cover the cost of review and processing of Planning Board applications. The current Schedule of Fees was adopted in 2021 and the updates are intended to align with other communities experiencing similar growth. Expanding fees allows for applications to help cover the cost of staff, pay for consulting fees, and potentially fund future on-line application processing.

The proposal includes an increase in most fees, with the more significant changes for commercial developments. The current application cost is ¢.10 per square foot of new commercial floor space, the schedule below would increase this cost to ¢.30 per square foot. There would also be an additional cost of \$30 per 1000 square feet of impervious coverage (excluding building foot prints).

Transient developments like hotels or vacation rentals would be charged at \$80 per new unit in addition to the \$30 per square 1000 square feet of impervious coverage. Any non-transient residential development would submit \$60 per unit without the added cost for impervious surfaces.

Subdivision cost would also increase to \$200 per lot plus the application fee of \$600. Prior subdivision fees have not been sufficient to cover engineer or staff review. There are also several new cost with the anticipation of minor site plan reviews becoming a part of our regulations.

Below highlights how the changes would have been reflected in recent applications:

**Tractor Supply** (19,000 square foot building and approximately 108,000 square feet of impervious coverage):

- Prior application cost: \$2,627.80
- New application cost: \$10,065

**Hilton Garden Inn** (90 transient units plus approximately 43,200 of impervious coverage):

- Prior application cost: \$4,345
- New Application cost: \$9,473

**Lucy Brook Subdivision** (10 Lot Subdivision with a new road)

- Prior application: \$1,000
- New application: \$3,000

### **Proposed Schedule of Fees**

Initial application fees not to exceed \$15,000 for Commercial or Mixed-Use Developments and \$10,000 for non-transient Residential Developments.

Additional engineer review shall be charged at \$250 per submittal.

As per RSA 674:44.V, the applicant has the responsibility to pay the cost of special investigation as required by the Planning Board.

Please note; current application cost are identified in (Red) below:

#### **Site Plan Review**

- Filing Fee: \$600 (\$200)
- Commercial Development
  - New Commercial Floor Space - ¢.30 per square foot (\$.10 per square foot)
  - Motel, Hotel, Transient Unit - \$80 / unit (\$40/Unit)
  - \$30 per 1000 square feet of impervious coverage, excluding building footprints (New)
- New Non-Transient Residential Unit @ \$60 / unit (\$40/Unit)

#### **Minor Site Plan Review (New)**

- Administrative Review: \$100
- Planning Board Review: \$200

#### **Subdivision**

- Filing Fee: \$600 (\$200)
- \$200 per lot being created (\$40/lot)

#### **Unit Subdivision (Condominium Creation/Conversion):**

- Filing Fee \$250 per unit (New)

#### **Boundary Line Adjustment**

- Filing Fee: \$250 (\$100)

#### **Lot Combination**

- Filing Fee: \$100 (\$100)

#### **Conceptional Review**



- Filing Fee: \$200 (New)

### **Design Review**

- Filing Fee: \$400 (New)

### **Zoning Permit**

- Filing Fee: \$50 (\$50)

Existing fees associated with recording and notification are proposed to remain the same.

### **Public Notifications:**

- Newspaper - \$40
- Applicant - \$10/each
- Authorized Agent - \$10/each
- Engineer/Surveyor/Architect - \$10/each
- Abutter - \$10/each

### **Regional Notification:**

- Regional Planning Commission - \$10
- Municipalities - \$10/each

### **Recording Fee:**

- Plan sheet - \$40 each (Mylar)
- 8.5" x 11" - \$20/each (Notice of Decision)

### **L-Chip Fee:**

- \$25 (Separate check made payable to the Carroll County Registry of Deeds)

### **Tax Map Amendment:**

- \$75 for each plan set

### **Scanning Fee:**

- Plan Sheet - \$10 per sheet



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## MEMO

To: Planning Board  
From: Planning Staff, Parkway Committee  
Date: September 28, 2023  
Re: Parkway Protection Overlay District

On behalf of the Ad-Hoc Parkway Committee, please see the language below regarding the creation of the Parkway Protection Overlay District.

The goal is to create an overlay district to preserve the viewshed along the North-South Road. The Committee has asked that the language below be reviewed and considered for a public hearing.

### Parkway Protection Overlay District

#### **Definition:**

- Parkway- A landscaped thoroughfare, most commonly a road with no curb cut and/or crossroad access, that has a protected vegetated buffer along either side for the purpose of maintaining scenic beauty. Vehicles with more than 2 axles are prohibited from driving on parkways.

#### **Purpose:**

- The Parkway Protection Overlay District (PPO) district is primarily designed to preserve scenic parkways, including but not limited to the North South Parkway. Land uses permitted in this district are represented in the Permitted Use Table included as an attachment to this chapter.

#### **District boundaries:**

- District boundaries. The PPO District shall be comprised of a five-hundred foot protective buffer from the center line of the North South Parkway and any other parkway as designed by the Board of Selectmen extending along both sides of the road.
- District map. The PPO District Map is included as an attachment to this chapter. (to be created)

**Restrictions:**

- Within the PPO District, no cutting of trees or land disturbance is permitted within 250 feet of the North-South Road. A Special Exception may be granted for the cutting of trees which are deemed a hazard to life or safety.
- Any development within the PPO District requires all areas within 250 feet from North-South Road Centerline to be deed restricted as open space. No disturbance, development, or alteration of terrain is permitted in this area.
- Previously disturbed areas within 250 feet from North-South Road Centerline must be restored with adequate trees and vegetation to fully screen any proposed development.
- Building or Structure height shall not exceed 35 feet. Building and structure height shall be measured from the lowest point of grade at which the foundation is above the proposed or existing grade, whichever is less.
- No curb-cut or driveway shall be created onto North-South Road within the overlay district.
- Nonconforming uses. A pre-existing use which is nonconforming with respect to the protective PPO District restrictions shall not be entitled to the same rights as are established in § 190-30A. The use shall be eliminated, changed to a conforming use, or changed only in a manner which improves the vegetated buffer.