

**CONWAY PLANNING BOARD**

**MINUTES**

**MAY 23, 2019**

A meeting of the Conway Planning Board was held on Thursday, May 23, 2019 beginning at 7:00 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Hartmann; Selectmen's Representative, Steven Porter; Vice Chair, Benjamin Colbath; Secretary, Sarah Frechette; Steven Steiner; Bill Barbin; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Peter Malia, Town Counsel, was in attendance.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Steiner made a motion, seconded Mr. Barbin, to approve the Work Session Minutes of May 9, 2019 as written. Motion carried with Ms. Frechette and Mr. Colbath abstaining from voting.**

**Mr. Colbath made a motion, seconded by Mr. Steiner, to approve the regular Minutes of May 9, 2019 as written. Motion carried with Ms. Frechette abstaining from voting.**

**THE ROCK DEVELOPMENT, LLC/BARNES DEVELOPMENT, LLC/1675 WMH, LLC/SETTLERS' R2, INC/13 GREEN STREET PROPERTIES, LLC/ TOWN OF CONWAY (FILE #FR18-05 & #S18-09) – PUBLIC HEARING**

This is a public hearing pursuant to the Order of the Carroll County Superior Court (Docket No. 212-2018-CV-00189) to reconsider a substitution request in accordance with §110-43.B. relative to parking at Barnes Road, 110 Barnes Road, 1675 White Mountain Highway, 25 Settlers Green Drive, McMillan Lane and 24 McMillan Lane, North Conway (PID 235-78.01, 82, 85, 89, 90 & 92).

Mark Lucy of White Mountain Survey and Engineering and Derek Lick of Sulloway & Hollis representing the applicant appeared before the Board. Dot Seybold of OVP Management; and Roy Tilsley of Bernstein, Shur, Sawyer & Nelson representing Bellevue Properties, owner and operator of the North Conway Grand Hotel, were in attendance.

Mr. Malia stated Judge Ignatius of Carroll County Superior Court affirmed the Board's decision granting the subdivision and site plan review approval to the applicant in this case, but towards the end of her decision she took a deep dive into the Urban Land Institute's parking requirements for shopping centers. Mr. Malia stated she came up with a question regarding the parking and asked the Board to think about her question, discuss her question and provide her with an answer.

**Adopted: June 13, 2019 – As Written  
CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Malia stated the Judge questioned whether there was sufficient evidence for the Board to find that Settlers' was required to provide only 801 parking spaces. Mr. Malia stated the Judge is asking that question because, first, she noted in her decision that Mr. Lucy said that under the ULI standard Settlers' was not required to provide any additional parking spaces for food services.

Mr. Malia stated the Judge then noted that the ULI standard being relied on by Mr. Lucy provides for retail centers having between 200,000 and 600,000 square feet of gross leasable area are not required to provide extra parking spaces for food services.

Mr. Malia stated so far so good until the Judge noted that the project, once completed, will only have 191,421 square feet of gross leasable area. Mr. Malia stated it seemed to the Judge that the project fell below that 200,000 square foot threshold that the applicant was relying on to not provide extra parking spaces for food services.

Mr. Malia stated the Judge took a look at the ULI parking standard for projects that are between 100,000 and 200,000 square feet, like this one, because it only has 191,421 square feet and she discovered that under ULI in that particular category an additional six parking spaces are required for every 1,000 square feet of food service. Mr. Malia stated the Judge then took a deeper dive into the project and discovered that there were 8,013 square feet of food service area which would require an additional 48 parking spaces.

Mr. Malia stated the Judge could not tell from the record if the Board had considered that and, if so, why the Board decided that the project was appropriate for the particular ULI standard that the Board applied.

Mr. Malia stated the Judge stated that the parties have not specifically addressed this apparent discrepancy and stated that this discrepancy merits further consideration by the Board, so she created a condition precedent to final approval which is that the applicant demonstrate to the Board's satisfaction that it will provide a sufficient amount of parking for this project considering the Merlino's Steak House easement and the ULI parking requirements for shopping centers.

Mr. Malia stated that is why we are here tonight, for the applicant to demonstrate to the Board that they are providing a sufficient amount of parking. Mr. Malia stated the Judge did not require the applicant to submit a new application, nor did she set forth how this hearing should happen; she left it up to the Board to determine what process is required for what she called a limited evaluation.

Mr. Malia stated he and Mr. Irving decided it would be appropriate to schedule for a public hearing and Mr. Irving established the deadline for the applicant and Bellevue's attorney to submit written submissions to the Board, which they have done. Mr. Malia stated that is basically the Judge's question, that is why we are here tonight; and at this point he would suggest handing it over to the applicant to demonstrate to the Board that they have utilized the correct parking standard and that they have provided enough parking.

**Adopted: June 13, 2019 – As Written**  
**CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Lick stated the dictate from the Judge was to demonstrate to the Board's satisfaction that the applicants will be able to provide sufficient parking spaces to satisfy both the easement favoring Merlino's Steak House and the Urban Land Institute's parking requirements for shopping centers. Mr. Lick stated as Mr. Malia indicated the Judge really did a deep dive into the particulars for parking standards, and what this in many ways comes down to is which version of the parking standard is the Board going to look to.

Mr. Lick stated we are asking the Board to do two things tonight; first, we ask that the Board allow for a substitution using the Urban Land Institute's most recent shopping center standard as opposed to the 1982 version that is in the Town's ordinance. Mr. Lick stated the ordinance specifically references ULI shopping centers 1982.

Mr. Lick stated it just so happens that the Urban Land Institute has updated those standards, and it makes a difference because the old version requires what the Judge mentioned was referenced previously in the old version and that is for shopping centers less than 200,000 square feet six additional parking spaces are required per 1,000 square feet of food service.

Mr. Lick stated when the Urban Land Institute went back to the drawing board and took a look at the initial study from 1982 and updated it in 1999, they decided that that did not make sense any more based on the empirical data that occurred from the 1982 to 1999 reassessment. Mr. Lick stated they changed their standard and said so long as your shopping center is less than 400,000 square feet and the restaurant space is less than 10% of that you don't need the extra parking.

Mr. Lick stated what we are asking the Board to do in the first instance is to allow for the more recent version of the Town's standard and recognize it as being appropriate to be utilized. Mr. Lick stated with that update it makes it abundantly clear that no additional parking is required. Mr. Lick stated that is our first request, to allow for the use of the updated version that is allowed in the ordinance.

Mr. Lick stated the second thing we would like the Board to do, which is really taking the belt and suspenders approach, because the Judge is likely to review this decision again, is to make an alternative finding to say that the substitution is appropriate and that the Board prefers the most recent standard. Mr. Lick stated in addition to that, in regard to the alternative, even if the Board did not find the newer standard as a good substitute, the Board never the less believes this situation justifies a waiver of that old 1982 standard.

Mr. Lick stated articulated in his letter are the reasons why, but essentially when you look at the waiver requirements to ensure that the public interest isn't detrimentally effected, that the general safety and welfare is not effected, we believe that following the old standard and allowing for a waiver when it comes to the restaurant side of things, basically those 48 spaces, that the waiver in fact does not have any effect on public safety and all the requirements that is referenced in the Town's requirements to grant a waiver.

**Adopted: June 13, 2019 – As Written  
CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Lick stated in addition there are two other things the Board could think about, one is if the Board looks at the old standard and is going to use that and 200,000 square feet is needed, then this project is really close. Mr. Lick stated if Merlino's is factored in, which is part of the parking calculation, it is 196,000 square feet, so it is only 4,000 square feet off, which is very small, and justifies the waiver.

Mr. Lick stated second, he thinks there is a counter balancing mechanism for the Board, as we understand from being before the Board previously, the Board does want to ensure there is plenty of parking, but the Board does not want more parking than is necessary; improving a lot of impervious space takes the greenspace and other uses when you don't need it.

Mr. Lick stated we would like to see the Board reach a nice balance and find that a waiver is, in fact, appropriate; even if the old standard is looked at, given that it is close to the square feet required under the old standard and in fact under these circumstances, it meets the waiver requirements.

Mr. Lick stated as mentioned at the prior hearings the experience has been that the Settlers' Green area has plenty of parking and has had it in the past in respect to restaurant use; the only additional restaurant use is 1,400 square feet of space in Market Basket, that is it. Mr. Lick stated we are talking right on the fringe, and it justifies a waiver. Mr. Lick stated those are the two things they are suggesting.

Mr. Lucy stated on May 30, 1985, 34 years ago, the design team first brought this project to the Planning Board; he was at that meeting. Mr. Lucy stated he has a good idea of what this project is, how it works, how it should work and how it hasn't worked well when it hasn't worked well. Mr. Lucy stated February 12, 1988 is the day the retail center had its grand opening. Mr. Lucy stated the retail center at the time were buildings A, B, C and D.

Mr. Lucy stated 1982 is the first edition of the ULI requirements for shopping centers; 17 years later in 1999 ULI updated it to refine that 1982 standard based on its experience in the intervening 17 years. Mr. Lucy stated over time he has considered the second edition as more accurate than the first edition, and if asked, he believes the Town's Planning Director would say the same. Mr. Lucy stated we are professionals, we have made a career of planning, and whenever we are presented with regulations or a standard and we find that it has been updated or revised we'll tend to fall back on that, we will tend to use that.

Mr. Lucy stated it is his understanding that the Town of Conway uses the 1982 edition, which is no longer published, because that is the one on Mr. Irving's book shelf. Mr. Lucy stated checking with OVP management today he has learned in the 31 years of operation there has not been a single patron compliant about lack of parking or inadequate parking or parking that was too distant from where they were going. Mr. Lucy stated in 31 years how many hundreds of thousands of vehicles have come and gone; in 31 years every single one of them had been able to find a parking spot.

**Adopted: June 13, 2019 – As Written**  
**CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Lucy stated granted, though it is not encouraged, during the busy days of the year some patrons will park along the uncurbed private portion of Common Court; we have all seen it, we have all been there. Mr. Lucy stated although OVP management has said they have not received a complaint he cannot speak for the hotel and it is not his place to ask the hotel if they have ever received a complaint from one of their guests that they were not able to find parking. Mr. Lucy stated it is certainly within the Board's prerogative and authority to ask that question.

Mr. Lucy stated he thinks the Board has done a good job; of course, he would think that as the Board sided with him, but more importantly this Board has the experience of living here, and the experience of potentially gone to and through Settlers' Green for the past three decades. Mr. Lucy stated the Board is allowed to use their own experience when determining if an alternative standard for parking, for instance, can be applied. Mr. Lucy stated the Board members ran for this position because you wanted to be here, you want to be a planner, he wants the Board to exercise their right to be land planners, and this is an opportunity for the Board to do that.

Mr. Hartmann asked for Board comment; Mr. Porter stated he is probably the longest tenured Planning Board member sitting here, and one thing he has learned over the years is you can take a black and white piece of paper and apply it and when you're driving down the road you can look at something and say we goofed.

Mr. Porter stated that is one thing sitting on this Board over the years that he has learned, that just because it is written in the books doesn't mean you necessarily have to follow it but sometimes you have to use common sense and use the alternate standards. Mr. Porter stated we as a Board, since he has sat here, have used on a routine basis an alternative standard because we can realize that using our standards as we apply it is not to the benefit of this valley.

Mr. Porter stated this Board applied those standards to Shaw's Supermarket, which is pretty close to the standards that the Town has in the books, and the Mountain Valley Mall and if you drive there today 9 times out of 10 the parking lot is empty; there is way too much asphalt. Mr. Porter stated the North Conway Grand back parking lot is majorly underutilized on a regular basis other than when they do car shows. Mr. Porter stated over the years we have applied the alternate standards to promote more greenspace, so when given the opportunity he leans towards that because it is more beneficial for both the economic and the aesthetics of this valley.

Mr. Colbath stated he agrees with Mr. Porter, there are other lots with too much parking, including the back lot there; it doesn't even look like there is sufficient tree cover on the back lots of the North Conway Grand to help shade that asphalt.

Mr. Irving stated the Board might want Mr. Lucy to go through the actual numbers to demonstrate the Urban Land Institute standards they are asking to apply now. Mr. Lucy stated the 1999 version is the version we are asking the Board to consider using. Mr. Lucy referred to Appendix A from the second edition, 1999. Mr. Lucy stated this project that is under review falls within the lowest category, zero to 400,000 square feet of gross leasable area. Mr. Lucy stated this proposal, if the market was there, could have up to 10% of it as restaurant space and still conform with the four spaces per 1,000 square feet gross leasable area.

**Adopted: June 13, 2019 – As Written**  
**CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Lucy stated the project as it stands would fall in the 4.2% or 4.5% depending on how the total retail or total gross leasable area is calculated. Mr. Lucy stated we fall well within what we demonstrated to the Board a year ago at four spaces per 1,000 square feet gross leasable area. Mr. Lucy stated the ULI parking standards cited in the Town's regulations has what the Judge pointed out if there is less than 200,000 square feet in your center than you need to provide 6 parking spaces per every 1,000 square feet of dining area. Mr. Lucy stated it does say that, and he missed it. Mr. Lucy stated he has been with this project since the outset, 34 years, and he hasn't always been right.

Mr. Lucy stated he does not believe they are here this evening to pick on anyone's ability to do math, he believes what they are here for this evening is to consider what we have on the ground and what is being proposed. Mr. Lucy referred to sheet 5, sheet 1 and the cover sheet of the 35-sheet plan set and stated this is where all the data is laid out for the three parcels a part of this project. Mr. Lucy stated the aggregate of the three parcels we provide the four spaces per 1,000 square feet.

Mr. Lucy stated we comply with a deeded parking easement benefit of Merlino's; and he believes that easement is in the record. Mr. Lucy stated it is an unidentified number of spaces in an unidentified location on this parcel, which was formally L.L. Bean. Mr. Lucy stated we have allotted 33 spaces towards Merlino's and provided four spaces per 1,000 for three buildings that were highlighted in color on the plan. Mr. Lucy stated he is not sure what more they can do as responsible land planners, he does not personally want to sacrifice greenspace for paving parking spaces.

Mr. Lucy stated Home Depot has a lot of parking, the Town's rules required that much parking, but it does not need that much parking. Mr. Lucy stated he suggests when the time presents itself that the Town again look at their parking standards, and be dependent upon the type of business rather than just retail, but the different types of retail; an autobody part shop does not need four or five spaces per 1,000. Mr. Lucy stated if you go to an autobody part shop you are going in picking up what you want and you are out of there within a few minutes.

Mr. Lucy stated as to an argument that you need to count the seating in a large supermarket's café and deli, which is common now a days, as a land planner the deli or the cafes are an ancillary use to the shopping center. Mr. Lucy stated he would never ask his wife to go to dinner at Market Basket; he is representing to this Board that the majority of the people eating in the café are there to grocery shop, they have already parked.

Mr. Hartmann asked for Board comment; Bill Barbin asked if this 1999 standard has been applied to other projects in Town. Mr. Irving answered in the affirmative. Mr. Porter stated with our experience over the years we have routinely used the 1999 standard more often than not because we have learned that the impact to the valley if you apply the standards of 1982 and if you look at the realty of the situation, the Home Depot and the Lowe's and Hannaford sites, even K-Mart, there is a lot of ample parking. Mr. Porter stated if it is downgraded to implement more greenspace it is a better aesthetically appealing place for people to shop and space is not wasted.

**Adopted: June 13, 2019 – As Written  
CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Porter stated when he looks at these big projects, he thinks how can we dim the impact of these sites and he believes this group has done that with their presentation of an alternative parking standard. Mr. Porter stated you want to have all the parking in the world for everyone, but realistically in this valley you might see three times out of the year that they need that space, but that is a rare occasion, and you still see ample parking within the Settlers' Green site other than a freak holiday or a freak rainy day weekend over the fourth of July, which you cannot calculate.

Mr. Porter stated take a look in the southern part of the State where they don't use these calculations, is that what we want up here in the Mount Washington Valley; we're trying to promote skiing and hiking and we have asphalt all over the place.

Mr. Lick stated just so the record is clear the Judge's order mentions Merlino's, and Mr. Lucy has mentioned over this proposal it is four spaces per 1,000 square feet plus 33 parking spaces for Merlino's. Mr. Lick stated he would like Mr. Lucy to explain the use and where the 33 parking spaces came from because under the easement for Merlino's there is no specific number, so we asked him to calculate.

Mr. Lucy stated Merlino's has 26 or 27 paved parking spaces and a number of undocumented spaces, but we are only dealing with those parking spaces that Merlino's has. Mr. Lucy stated when he and Roger Williams, the former Project Manager for OVP Management, were in the early throws of Phase I of the StreetSide expansion we recognized the deeded right to park, but we needed to know how many they needed.

Mr. Lucy stated Mr. Williams reviewed the occupancy permit for Merlino's, he went into Merlino's to count the number of seats and we determined they needed 60 parking spaces. Mr. Lucy stated Merlino's already had 27 parking spaces, some being on this property, but we don't care about that, they exist, that is how we came up with the number of 33 spaces set aside for Merlino's under the deeded easement agreement.

Mr. Lick stated just to clarify he asked Mr. Lucy how he came up with the sixty being needed, what was he looking at to reach that number. Mr. Lucy answered the Town code, 1 parking space per 3 dining seats and 1 parking space per 2 lounge seats. Mr. Lucy stated by his and Mr. William's calculation 33 parking spaces is what was needed based upon Town code, the occupancy permit and an actual seat count.

Mr. Hartmann asked for further comments from the Board; there was none. Mr. Hartmann asked for public comment; Mr. Tilsley stated we have a much different view of where we are at procedurally then what the Board has just heard.

Mr. Tilsley stated the discussions tonight would have been appropriate a year ago when this project was still in the approval phase. Mr. Tilsley stated some of this would have been appropriate discussions if the Board were amending the site plan review regulations, but we have the regulations we have and we are here because we have been to Court and the Court has sent us back.

**Adopted: June 13, 2019 – As Written  
CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Tilsley stated we have heard different things on what the Court has said. Mr. Tilsley stated let me read to the Board what the Court has said so it is as clear as it can be. Mr. Tilsley stated “The Court modifies the Board’s November 8, 2018 conditional approval to include the following conditions precedent to final approval; the applicant shall demonstrate to the Board’s satisfaction that it will provide sufficient parking spaces to satisfy both the easement favoring Merlino’s Steak House and the Urban Land Institute’s parking requirements for shopping centers.”. Mr. Tilsley stated that is the only task the Board has tonight.

Mr. Tilsley stated this is not a case of what is on the ground or what is proposed or what is reasonable or unreasonable; the only task is whether they have met that condition precedent. Mr. Tilsley stated all the Court had when the case was tried is what the Board had when it was approved, the 1982 ULI standard. Mr. Tilsley stated the applicant requested the substitution and asked to be allowed to use the ULI standard, he argued against it, the Board agreed with the applicant and allowed them to use the 1982 standard.

Mr. Tilsley stated when the Court talks about meeting the Urban Land Institute’s parking requirements for shopping centers it means the 1982 standard, that is all the Court knows about. Mr. Tilsley stated the Court referenced in its decision those numbers; the numbers for the record, just so it is clear what the court order says, is the easement favoring Merlino’s needs to be satisfied, we agree with the applicant that that is 33 spaces, and satisfy the Urban Land Institute’s parking requirements for shopping centers as calculated by the Judge with the additional space for food service, and that is 816 spaces. Mr. Tilsley stated there are 849 spaces required for them to meet that condition.

Mr. Tilsley stated what they have is 801 spaces, so they are short 48 spaces over what the Court has required. Mr. Tilsley stated the Court has not remanded this to this Board on a general basis to talk about parking in the general manner and to create more of a record, it has given the Board a condition precedent of do they have enough spaces for Merlino’s, which is 33 and the ULI’s parking requirements 1982, which is all the Court had; the Court did not specifically state 1982 or 1999, but the Court does not know there is a 1999 version. Mr. Tilsley stated the entire record of this case is the 1982 version which is what they requested that the Board use, the court did the math and said 849 spaces.

Mr. Tilsley stated we expected to see a plan with those spaces and we haven’t. Mr. Tilsley stated the simple fact is they don’t meet that condition precedent as we sit here today, and this Board cannot finally approve the plan under the Court order. Mr. Tilsley stated neither the Town nor the intervenor has gone back to the Judge and said 849 is not the correct calculation, neither one of them has gone back and said we should use a different version of ULI; that order stands. Mr. Tilsley stated if they don’t meet it, they cannot get final approval; that is what we are here for today.

Mr. Tilsley stated the policy discussions is not something that is before the Board today, it is a matter of where we sit with the Court case; the only issue is the number of spaces and the Court says the number is 849. Mr. Tilsley stated they haven’t asked the Court to change it, and they don’t meet it.



**Adopted: June 13, 2019 – As Written**  
**CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Tilsley stated at the end of the day the Board's task is limited and they just don't have enough spaces to meet it. Mr. Tilsley stated how we all feel if we should have more spaces or less spaces doesn't matter, the Court has given the Board a very specific task. Mr. Tilsley stated in terms of the substitution request, he thinks it is too late for either a waiver or a substitution request; you can't waive your way out of a negative Court order, you can't substitute your way out of a negative Court order.

Mr. Tilsley stated the applicant asked the Board to use the 1982 standard, the 1982 ULI standard is what is in the Town's site plan review regulations. Mr. Tilsley stated the Board may have used the 1999 standard several times, but when someone reads those regulations it states 1982. Mr. Tilsley stated those regulations were amended in 2011 so it is not as if the Board hasn't gotten around to it. Mr. Tilsley stated in 2011 this Board did not update that to the 1999 standard, it was left at the 1982. Mr. Tilsley stated what it says is what they asked you to do; there are three standards listed for parking and the 1999 ULI standard is not one of the possibilities available for substitution.

Mr. Tilsley stated all the Board has in terms of the 1999 ULI study is three of the 80 pages. Mr. Tilsley stated if this Board were to allow a substitution, and felt you could even though it is not listed, he is not sure how the Board determines that the 1999 study is a better study when you only have three pages. Mr. Tilsley stated on one of the three pages the Board does have it talks about the small sample size in that study. Mr. Tilsley stated this Board made a determination that the 1982 ULI study was one of the available substitutes, it hasn't been changed, they asked for it, the Board granted it to them and now after the Court says you can't meet it, they want to change and do something else, it is too late for that; a substitution is inappropriate.

Mr. Tilsley stated similarly he does not think a waiver is appropriate at this point; at the beginning of the case it might have been appropriate, at least discussions regarding more greenspace or less greenspace may have been appropriate, but you cannot waive your way out of a negative court order after the Board has already dealt with this application and approved it. Mr. Tilsley stated the Court did not remand it for parking on a general basis.

Mr. Tilsley stated when you look at waivers or substitutions and then have further discussion regarding too much pavement in town, he understands it, but the Town's ordinance, the site plan review regulations, has parking minimums. Mr. Tilsley stated there are towns with parking maximums because they are concerned about pavement, but this Town does not have that, so you are getting should we waive this, should we substitute the intent of the ordinance; the intent of the ordinance favors having enough parking over these other concerns. Mr. Tilsley stated the Town has minimums, not maximums.

Mr. Tilsley stated they need to meet those minimums the Court has said they need to meet and they don't do it. Mr. Tilsley stated the argument that they are really close to 200,000 square feet, that is a waiver request and they could have made it a year ago and dealt with it then; it is simply too late now, you can't waive your way out of a Court order. Mr. Tilsley stated the last substantiate point he would like to make is we have heard from the applicant, and throughout this process, that we all know there is enough parking at Settlers; he doesn't think anyone is saying there isn't enough parking today, but what is being proposed is a much different use.

**Adopted: June 13, 2019 – As Written**  
**CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Tilsley stated it is a large, 69,000 square foot grocery store, it is a lot different than the type of smaller walkable shops that is currently at Settlers'; he doesn't think the Board can look at a grocery store the same, it is a different type of flow. Mr. Tilsley stated he won't disagree if someone is eating at the café they are probably shopping, but if they spend 15 to 20 minutes eating their car is in that space 15 to 20 minutes longer. Mr. Tilsley stated it is a different flow, and his only point is you really cannot rely on prior history to expect the same flow from the grocery store.

Mr. Tilsley stated, unfortunately for the applicant, they put themselves in a box, they asked to use the 1982 ULI standard, this Board approved it and they don't meet it. Mr. Tilsley stated the Court order is clear unless they can provide the 849 parking spaces; they haven't met the requirements for final approval.

Nanci Neenan stated she is very disappointed in how the Town and this Board has not given any consideration to her situation with this development. Ms. Neenan stated she has received nothing in writing regarding a road agreement or what they are going to do to prevent traffic from going up her road and turning around in her driveway; none of that has been addressed. Ms. Neenan stated she does not think the Town has been very fair and should have given more consideration as to the needs of the abutters.

Ms. Neenan stated every time she comes to these meetings and starts to talk about it, she gets cut off rather quickly and abruptly and asked what does she want. Ms. Neenan stated she shouldn't have to say what she wants, someone should have come to her and said this is what we are going to do, we know this is going to impact you for the rest of the time you are at that property and here is what we are offering to make it a little easier for you; she shouldn't have to say what she wants.

Ms. Neenan stated when she does finally say what she wants it is presented as though she is being greedy and unrealistic, but she is not; as of today, she still doesn't have anything in writing as to what is going to be done to prevent all that traffic.

Ms. Neenan stated she has no idea who is going to plow the road, those issues should have been addressed as well. Ms. Neenan stated as far as parking goes, she can say that in the winter time a lot of those parking spaces are full of snow, the parking spaces at Home Depot are always full of snow so they are not necessarily wasted space, they hold snow.

Mr. Malia stated in response to Mr. Tilsley's comments he disagrees with Mr. Tilsley on where we are at procedurally; the Judge's decision does not limit the Board's review to the 1982 version, it simply requires the applicant to demonstrate to the Board that they satisfy the ULI's parking requirements for shopping centers, and we have heard tonight that the 1999 standard has been used in Conway before, this would not be the first time.

Mr. Malia stated it is also important to point out that the Town's site plan review regulations, §110-43.B, allows for alternative standards other than those set forth in §110-21.A.(2). Mr. Malia stated in §110-21.A.(2) there is a list of specific standards, but §110-43.B allows for other alternative standards not specifically set forth in §110-21, such as the 1999 standard.

**Adopted: June 13, 2019 – As Written  
CONWAY PLANNING BOARD – MAY 23, 2019**

Mr. Malia stated if the Board agrees with the applicant's argument, in his opinion, the Board could accept the substitution of the 1999 ULI, and if the Board wants the belt and suspenders approach proposed by Attorney Lick the Board could also grant the waiver from the 1982 standard. Mr. Malia stated that is his opinion, that is his interpretation of the Judge's decision, and he supposes it will be appealed and we will be back in Carroll County Superior Court and will find out if the Judge agrees with what the Board did tonight.

Mr. Hartmann asked for any further public comment; there was none. Mr. Hartmann closed the public hearing at 7:48 pm.

Mr. Steiner asked if there were 801 parking spaces. Mr. Lucy stated there are 834 parking spaces with 801 of them dedicated to Settlers' StreetSide. Mr. Steiner stated he has been here for eleven years, he has seen Wal-Mart, and there are more than enough parking spaces there.

Mr. Porter stated he just wants to reiterate what the Town Attorney said that in contrast to what was presented by the hotel's Attorney we have routinely used the 1999 standard and we used it for this application too; he has no issues using it, we have used it in the past, we have never been found at fault for using it, in fact it makes more sense than not using it, it made perfect sense to apply it to this particular site, too.

Mr. Porter stated he has questions with what was brought up by the hotel's Attorney where we are held to the 1982 standard as he disagrees with that. Mr. Porter stated we show a history of routinely using the alternate parking standard for big projects and he would still use it to this day; it's too bad it has gotten to be a legal issue.

Ms. Frechette asked if the hotel has had any formal complaints regarding parking. Mr. Tilsley stated he does not work at the hotel so he cannot answer yes for no. Mr. Lucy stated he had a mathematical error for Mr. Steiner question, there are 801 spaces provided, which 33 of those are dedicated to Merlino's, leaving 768 for Settlers' StreetSide.

Mr. Lucy stated there is also a waiver request in the record; in the staff review of mid-August 2018 it was pointed out that the applicants submitted a substitution request and a waiver request and we were asked which one we wanted to pursue.

Mr. Irving stated he has nothing further to add other than to make a clarification of what Mr. Malia had said that the substitutions listed in §110-21.A.(2) are not an exhaustive or exclusive list; §110-43, Waivers and Substitutions, leaves it open to many alternative standards that can be used. Mr. Irving stated with that being said §110-43. opens the door to using current versions of the standards that are there already; so that is why it is not necessary that it be called out specifically, the substitution request is pursuant to §110-43.

Mr. Irving stated there is a waiver request before the Board as well; he has no issue at the staff level for the Board considering either the substitution or the waiver or both.

**Mr. Porter made a motion, seconded by Mr. Barbin, to make a finding of fact that in situations where there are large scale mixed use developments, such as this case, the application of the parking space provisions stipulated in §110-21.A.(1) result in surplus parking spaces in excess of that typically necessary to accommodate the development. Motion carried unanimously.**

**Mr. Porter made a motion, seconded by Mr. Steiner, to make a finding of fact that the current version of the Urban Land Institute “Parking Requirements for Shopping Centers” Second Edition (1999) is a suitable standard pursuant to §110-43.B. Motion carried unanimously.**

**Mr. Porter made a motion, seconded by Mr. Steiner, to make a finding of fact that the current version of the Urban Land Institute “Parking Requirements for Shopping Centers” Second Edition (1999) is a suitable standard to meet parking demand typically generated by developments of this type and scale. Motion carried unanimously.**

**Mr. Porter made a motion, seconded by Mr. Steiner, to make a finding of fact that the applicant has demonstrated that the use of current version of the Urban Land Institute “Parking Requirements for Shopping Centers” Second Edition (1999) is, in the Board's opinion, an alternative standard that would better accomplish the intent of this chapter for this case. Motion carried unanimously.**

**Mr. Barbin made a motion, seconded by Mr. Steiner, to make a finding of fact that the applicant has demonstrated that the current phase plus the floor area of Merlino’s is 196,174 square feet, that this is 98% of the 200,000 square foot threshold for using the Parking Requirements for Shopping Centers; Summary Recommendations and Research Study Report. Urban Land Institute. Washington, 1982. And that given the proximity to the existing phases of the OVP development the proposed parking is sufficient even relative to the 1982 Edition. Motion carried unanimously.**

**Mr. Porter made a motion, seconded by Mr. Steiner, to approve the substitution requested relative to either and both editions of the Urban Land Institute’s Parking Requirements for Shopping Centers; Summary Recommendations and Research Study Report. Motion carried unanimously.**

Mr. Irving asked if the Board would like to consider the waiver request. The Board agreed. Mr. Irving read the standards for granting a waiver under §110-43, Waivers and Substitutions, part A. Mr. Lucy read the waiver request for §110-21, Parking. **Mr. Steiner made a motion, seconded by Mr. Colbath, to grant the waiver request for §110-21, Parking. Motion carried unanimously.**

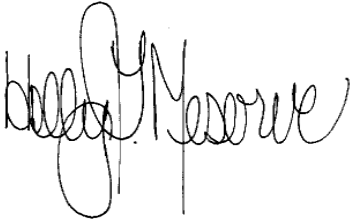
Mr. Irving asked Mr. Malia if the Board has satisfied everything that needed to be accomplished this evening. Mr. Malia stated he believes so.

**OTHER BUSINESS**

**Whitesides Realty, Inc. (PID 230-4) – Request for Concurrent Site Plan and Subdivision Review:** Mr. Barbin made a motion, seconded by Mr. Colbath, to accept a submission from Whitesides Realty, Inc. of a concurrent site plan and subdivision review application. Motion carried with Mr. Porter not voting.

Meeting adjourned at 8:06 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve  
Planning Assistant