

CONWAY PLANNING BOARD

MINUTES

AUGUST 26, 2021

PAGES

- 1 Viewpoint North Conway, LLC (File #FR21-01) – Full Site Plan Review Continued (PID 202-168)
- Continued until September 9, 2021
- 1 Review and Acceptance of Minutes
- August 12, 2021 – Adopted as Written
- 1 Agenda Out-of-Order
- 1 Other Business
- The Rock Development, LLC/Barnes Development, LLC/1675 WMH, LLC/Settlers’ R2, Inc./13 Green Street, LLC/Town of Conway (PID 235-78.01, 82, 85, 89 & 92) – Request to extend conditional approval (File #FR18-05 & #S18-09)
- 2 Fairway Nominee Trust/New England Retail Properties (File #FR21-05) – Full Site Plan Review Continued (PID 246-56)
- Conditionally Approved

CONWAY PLANNING BOARD

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AUGUST 26, 2021

A meeting of the Conway Planning Board was held on Thursday, August 26, 2021 beginning at 7:00 pm at the Conway Town Office in Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, Steven Porter; Vice Chair, Ailie Byers (via video); Secretary, Sarah Frechette; Bill Barbin; Eliza Grant; Erik Corbett; Planning Consultant, Will Haskell of Gorrill-Palmer; Town Engineer, Paul DegliAngeli; and Planning Assistant, Holly Whitelaw. Alternates Steven Hartmann, Ted Phillips and Steven Steiner were in attendance. Peter Malia, Town Counsel of Hastings Law Firm, was in attendance.

VIEWPOINT NORTH CONWAY, LLC (FILE #FR21-01) – FULL SITE PLAN REVIEW CONTINUED (PID 202-168)

Josh McAllister of HEB Engineers and John Ratigan of Donahue, Tucker & Ciandella appeared before the Board. This is an application to demolish existing motel and site features and construct a 59,412 ~~105,836~~ square foot, 3-story ~~4-story~~, 98 ~~105~~-room hotel with associated infrastructure. This application was accepted as complete on February 11, 2021.

Mr. Porter made a motion, seconded by Mr. Colbath, to continue Viewpoint North Conway, LLC until September 9, 2021 at the Conway Park and Recreation Marshall Gymnasium at 7:00 pm. Motion carried unanimously.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Barbin, to approve the Minutes of August 12, 2021 as written. Motion carried unanimously.

AGENDA OUT-OF-ORDER

Mr. Colbath made a motion, seconded by Mr. Porter, to take the agenda out-of-order. Motion carried unanimously.

OTHER BUSINESS

The Rock Development, LLC/Barnes Development, LLC/1675 WMH, LLC/Settlers' R2, Inc./ 13 Green Street, LLC/Town of Conway (PID 235-78.01, 82, 85, 89 & 92) – Request to extend conditional approval (File #FR18-05 & #S18-09):

Mark Lucy of White Mountain Survey and Engineering appeared before the Board. **Mr. Porter made a motion, seconded by Mr. Colbath, to extend the conditional approval for The Rock Development, LLC/Barnes Development, LLC/1675 WMH, LLC/Settler's R2, Inc./ 13 Green Street, LLC/Town of Conway until September 8, 2022. Motion carried with Ms. Grant abstaining from voting.**

FAIRWAY NOMINEE TRUST/NEW ENGLAND RETAIL PROPERTIES (FILE #FR21-05) – FULL SITE PLAN REVIEW CONTINUED (PID 246-56)

Matthew Darling of New England Retail Properties appeared before the Board. Casey Burch of Solli Engineering was in attendance. This is an application to construct a 19,028 square foot retail building and associated infrastructure. This was accepted as complete on March 11, 2021.

There was a lengthy discussion regarding architectural design, and the Board agreed that the CMU is to be changed to split face on two sides (with the other two sides being hearty plank); adding four gables two-feet out from the building; and indicating the faux window percentage on the plans to meet the regulation.

There was discussion regarding lighting trespass. Mr. Darling withdrew waiver requests for §110-26.D.; §110-30.C.(1)(a); and §110-30.C.(2). Mr. Colbath read a waiver request for §110-29.D.1. **Mr. Porter made a motion, seconded by Ms. Frechette, to grant the waiver request for §110-29.D.1.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath read a waiver request for §110-29.D.8. **Mr. Porter made a motion, seconded by Mr. Corbett, to grant the waiver request for §110-29.D.8.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Porter made a motion, seconded by Mr. Colbath, to accept the parking substitution request for §110-21. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath asked for public comment; Steve Hartmann stated he as driven by quite a few Tractor Supplies in the past couple of weeks and has taken notice of the parking lots as a whole. Mr. Hartmann stated the stores are small, but there is a ton of outdoor display. Mr. Hartmann stated the Board has come down on Home Depot, Lowe's and other businesses in regard to displaying inventory outside of the building area. Mr. Hartmann asked if this is the plan for this store.

Mr. Darling stated we have requested 1,000 square feet of outdoor display area in front and to the left of the entrance to the building as well as the fenced in area. Mr. Hartmann asked if there would be trailers parked in the parking lot. Mr. Darling answered in the negative and stated they would be within the fenced in area.

Roy Tilsley of Bernstein Shur Law Firm representing Bellevue Properties stated that if this is conditionally approved one of the conditions would be the final design and approval of the third traffic circle/roundabout. Mr. Tilsley asked if that condition is precedent so they cannot build until that is resolved or will it be a situation that we have a Tractor Supply store built with no access or egress. Mr. DegliAngeli read the proposed conditions subsequent to final approval.

Mr. Tilsley asked if they can build the building before the roundabout is approved, but cannot obtain a certificate of occupancy. Mr. DegliAngeli stated that is correct. Mr. Tilsley stated their concern is with the Common Court connector, and if there is access south of the Common Court connector heading north onto North-South Road that people wanting to go south are going to exit using the Common Court connector for a U-turn; the Common Court connector leads to the hotel.

**Adopted: September 9, 2021 – As Written
CONWAY PLANNING BOARD – AUGUST 26, 2021**

Mr. Tilsley stated the previous applications at least had proposals in lieu of the traffic circle. Mr. Tilsley stated if this is going to be approved it should be a condition precedent that gets resolved before they can construct the building. Mr. Tilsley stated if they construct the building and the traffic circle goes south the Town is in a tough spot.

Mr. Tilsley stated there could be a brand-new building with no egress and no south bound access; that is a potential concern of theirs. Mr. Tilsley stated before this building is constructed if the roundabout is not constructed there should be a backup plan that doesn't cause problems on the Common Court connector.

Mr. Darling stated he doesn't think they are going to build something without something that we know we are going to be able to access. Mr. Darling stated if he knows something is coming in, he would like the right to get a head start. Mr. Darling stated should the doomsday scenario occur there is still access to Hemlock Lane; the Town is not going to be compelled to grant access onto North-South Road.

Mr. DegliAngeli stated the applicant was working on designs that showed the existing currently proposed entrance only from North-South Road and an exit to Hemlock Lane. Mr. DegliAngeli stated we could ask them to include that design with this plan as an alternate and add to the conditions of approval should the roundabout not get going the applicant would be required to construct the alternate.

Mr. Tilsley asked whatever the egress is, whether to the roundabout or to Hemlock Lane, would there be another opportunity for public comment when that is actually designed. Mr. DegliAngeli stated it has not been presented to the public, only staff has reviewed it. Mr. Tilsley stated they are more concerned with the connection to the traffic circle. Mr. DegliAngeli stated they cannot provide plans to the roundabout when the Town does not have roundabout plans.

Mr. Tilsley stated at some level then the Board is approving this prematurely, normally would not approve something that doesn't show egress shown specifically. Mr. Tilsley stated the Board could have some sort of hearing on the condition of whether or not this plan meets the condition; they are mostly concerned with location. Mr. DegliAngeli stated on this plan now it shows that, and it wouldn't deviate from that; it is a matter of we don't have the roundabout plans so we don't have the vertical data for them to complete the design to it.

Mr. Malia asked if he wants the Planning Board to hold a public hearing on one of the subsequent conditions. Mr. Tilsley stated it is not designed, it is an approximate location, and it could be that the roundabout is somewhere else on the plan; normally approved site plans show access and egress and here we have approximate locations. John Ratigan of Donahue, Tucker & Ciandella stated he believes the condition is fine, the issue is addressed by the alternate access point.

Derek Lick of Sulloway and Hollis representing Settlers' Green stated he is here in regard to the roundabout issue as he is not sure what the Town is expecting with Settlers' Green versus Tractor Supply in respect to this roundabout; we have two different applicants with opposing roundabouts and it is unclear to him on who is going to build it.

**Adopted: September 9, 2021 – As Written
CONWAY PLANNING BOARD – AUGUST 26, 2021**

Mr. Lick stated they have a lawsuit pending with Mr. Tilsley's client who has sued us and that case is with the Supreme Court right now. Mr. Lick stated if it goes one way the roundabout will never be built; if it goes the other way, it is likely to be built, but not for over a year from now. Mr. Lick stated he is trying to figure out what Settlers' is obligated to do; we do not want to be obligated to build a roundabout at a greater design and a greater cost because Tractor Supply has decided to attach to the roundabout.

Mr. Lick stated there has been zero discussion between Tractor Supply and Settlers'; what is the Town's view on what Settlers' obligation is with respect to Tractor Supply and is Tractor Supply obligated to contribute for the roundabout they want to use. Mr. DegliAngeli stated it is our expectation that Settlers has a conditional approval and are obligated to construct a roundabout, which is an off-site improvement that will become Town infrastructure.

Mr. DegliAngeli stated the Town is requiring Tractor Supply to submit a Construction Permit to open a curb cut. Mr. DegliAngeli stated if it is never built, then a condition to the approval will require the applicant to submit the alternate design sheet where egress is onto Hemlock Lane.

Mr. Lick stated Settlers is going to be shouldering the burden of the roundabout benefitting another site, and prior to being asked to put in that roundabout we approached the owners of this parcel asking for them to participate and they said no. Mr. Lick stated Settlers concerns that they will be obligated to put in a prong. Mr. DegliAngeli stated they are not obligated; the applicant would put in the prong. Mr. Lick stated any additional changes to the roundabout that are necessary for the Tractor Supply store the cost will be born by Tractor Supply. Mr. DegliAngeli agreed.

Mr. Porter made a motion, seconded by Mr. Colbath, to conditionally approve the full site plan for Fairway Nominee Trust/New England Retail Properties conditionally upon (precedent to final approval) Town Engineer approval; North Conway Fire Chief approval; North Conway Water and Sewer approval; NHDES Alteration of Terrain Permit and indicating permit number on plan; revising snow storage area to avoid conflicts with proposed landscaping; updating Waiver Granted table as necessary; resolving outstanding items on deficiency list dated 08/11/21; Final approval of File #S21-01; a note must be added to the plan indicating temporary construction ingress/egress will be from Hemlock Lane, and such temporary access will be removed and stabilized prior to issuance of a Certificate of Occupancy;

the Erosion Control Plan must be revised to show temporary construction ingress/egress from Hemlock Lane; applicant shall resubmit drawings with the alternate Hemlock Lane access/egress to be used in lieu of the roundabout if necessary; revising architectural elevations per 08/26/21 Planning Board meeting minutes; revising lighting plan to eliminate off-site spillages; submitting four copies of revised plan sets [three to remain with the Town] with original stamps and signatures; \$600 for Inspection Fees; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements; any substantive changes will require reapplication to the Planning Board; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval expires on August 25, 2022; and

**Adopted: September 9, 2021 – As Written
CONWAY PLANNING BOARD – AUGUST 26, 2021**

(conditions subsequent to final approval) temporary construction ingress/egress from Hemlock Lane shall be removed and permanently stabilized; and submitting a Town of Conway Construction Permit application complete with design, surety, insurances, and inspection fees for connection to the roundabout. Motion carried unanimously.

Meeting adjourned at 8:22 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant