

CONWAY PLANNING BOARD

MINUTES

JUNE 9, 2022

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CONWAY PLANNING BOARD

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JUNE 9, 2022

A meeting of the Conway Planning Board was held on Thursday, June 9, 2022 beginning at 7:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Ben Colbath; Selectmen’s Representative, Steven Porter; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Alternate, Ted Phillips; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternate Steven Hartmann was in attendance.

APPOINTMENT OF ALTERNATE MEMBER

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

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Barbin made a motion, seconded by Mr. Porter, to approve the Minutes of May 12, 2022 – Work Session as written. Motion carried with Mr. Colbath abstaining from voting.

Mr. Porter made a motion, seconded by Ms. Grant, to approve the Minutes of May 12, 2022 – Regular Session as written. Motion carried with Mr. Colbath abstaining from voting.

Mr. Porter made a motion, seconded by Ms. Grant, to approve the Minutes of May 26, 2022 as written. Motion carried unanimously.

PINE HILL HOMEOWNERS COOPERATIVE, INC. (FILE #FR22-05) – FULL SITE PLAN REVIEW (PID 215-25)

Jeannie Oliver of Vermont Law School Energy Clinic, Wes Smith of Horizons Engineering, and Ted Vansant of New England Commercial Solar Services appeared before the Board. This is an application to install a 50 kW AC/60 kW DC ground mounted community solar array. **Mr. Porter made a motion, seconded by Ms. Grant, to accept the application of Pine Hill Homeowners Cooperative, Inc. for a full site plan review as complete. Motion carried unanimously.**

Ms. Oliver reviewed the project. Mr. Smith reviewed the site plan. Ms. Oliver stated this services the residents of Pine Hill.

Mr. Colbath asked for Board comment; Mr. Colbath stated the fencing is only on the southern border; there is no fencing proposed on the other three borders. Ms. Oliver stated the primary concern they heard at the conceptual consultation was in regard to the abutting land owners to the south, and that fence is to mitigate their viewshed. Ms. Oliver stated for the sides of the project there will be some vegetation in place, and for the front of the project they are proposing four plantings along Benson Circle and possibly some shrubs.

Mr. Vasant stated the intent is to cut the larger trees and keep the screening to Lamplighters Mobile Home Park. Mr. Porter asked if there has been conversation with the Board members of Lamplighters. Ms. Oliver answered in the affirmative. Mr. Colbath asked if there are any concerns for safety. Mr. Vasant stated the intent is to cover the back of the array and all of the wiring so the wiring is not accessible.

Mr. Colbath asked for public comment; Ralph Newman asked how many solar panels will there be, and what size are they. Ms. Vasant stated there are two rows, and each row is approximately 122-feet; the whole thing is 43-feet wide. Mr. Vasant stated they are fixed and don't move, and are tilted toward Lamplighter's. Mr. Newman asked if there is any reflection. Mr. Vasant stated solar panels are designed to absorb and not reflect. Mr. Newman stated so there will be no glare. Mr. Vasant agreed.

Richard Favia was concerned with radiation. Mr. Vasant stated the conclusion of the report by North Carolina State University is that there are no health or safety concerns.

Mr. Porter made a motion, seconded by Ms. Grant, to conditionally approve the full site plan review for Pine Hill Homeowners Cooperative conditionally upon Town Engineer approval; Conway Village Fire Chief approval; Conway Police Chief approval; adding notes under §110-42.C., D. & E. to sheet 1; submitting four copies of revised plans with original stamps and signatures; \$200 for Inspection Fees; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements [if necessary]; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on June 8, 2023. Motion carried unanimously.

OTHER BUSINESS

Settlers R2, Inc. (File #NA22-06): Derek Lick of Sulloway & Hollis appeared before the Board. This is a request to allow the change-of-use from 11,281 square feet of retail to a 238-restaurant seat, 49 lounge seat restaurant at 25 Settlers Green Drive, Unit G, North Conway (PID 262-79).

Mr. Lick submitted a letter to the Board dated June 9, 2022 [in file] and referred to a letter he emailed dated May 13, 2019 [in file]. Mr. Lick stated they would like to change the use of building G, and building G was part of the Market Basket application in 2018. Mr. Lick stated they are not proposing any change in the square footage, the only change is from a retail facility to restaurant with a small retail component. Mr. Lick stated they have looked at the parking standard that was applied by the Board at the time of the Market Basket approval, and they looked to see what this change-of-use would do under that standard, and they discovered that it does nothing.

Mr. Lick stated a particular alternate standard that was allowed by the Board at the time called the 1999 version of the Urban Land Use Institute shopping center standard looks at the project as a whole, looks at all the uses and then determines how to apply the standard to those uses. Mr. Lick stated under that standard, as long as the restaurant use is less than 10% of the total footprint of the buildings, you can count the parking as if it were for retail.

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Mr. Lick stated they have provided an updated parking computation of all the square footage in the development; 10,941 square feet of restaurant space with 630 square feet of retail and the percentage of dining in the project is 9.3%. Mr. Lick stated that means it has no impact, no change to the parking calculations from the time it was approved. Mr. Lick stated they are asking the Board to take that information and find that this particular change-of-use is a change that is so insignificant relative to the existing development and does not require a full site plan review.

Mr. Colbath asked for Board comment; Mr. Porter stated he has concerns because it is a change-of-use with a sizable restaurant and bar. Mr. Lick stated the Board back in 2019 specifically found that this standard works for this development as a whole given all the uses. Mr. Lick stated the Urban Land Use Institute parking standard is based on studies, and through testing and review ultimately concluded, so long as you are less than 10%, additional parking is not needed.

Mr. Colbath stated that the ordinance allows developers to use alternate standards, and they are using an alternative standard here. Mr. Colbath stated he would be curious if the 630 square feet of retail were added to the restaurant if it would be over the 10%.

Mr. Hounsell stated he is not convinced that this doesn't need a site plan review. Mr. Hounsell stated he thinks it should have to stand on its own merits, and it needs site plan review. Mr. Lick stated we would come in with exactly the same site plan as last time and present this parking standard as everything else is exactly the same. Mr. Lick stated there was an open question by the Judge in Carroll County Superior Court on what exactly the Board did, and it was sent back to the Board. Mr. Lick stated there was a special hearing, and there are five or six pages of minutes talking about the 1999 standard is the preferred one. Mr. Lick stated they are asking to apply the exact same standard applied back then.

Mr. Lick stated the percentages have changed with respect to the uses, but the standard was workable then, the Board found it to be appropriate and nothing has changed in perspective to the standard. Mr. Lick stated the Board is going to follow the same analysis as the last time; the standard is exactly the same, we are applying the same standard; that is why they thought this was really administrative in nature, not a significant enough change.

Ms. Grant stated her concern is not parking, and she doesn't believe it is a small undertaking. Ms. Grant stated her concerns are that there have been changes to landscaping, greenspace and tree requirements, and this site needs to be reviewed for those items. Ms. Grant stated we have changed multiple standards in the last year. Ms. Grant stated she accepts the parking, but she doesn't believe this is a non-applicable situation.

Mr. Lick stated this particular project that has been approved is not done yet, we are still in the process of building it; due to litigation it has been delayed for three years. Mr. Lick stated when the project is complete, you will see the trees in place as they were approved and that may satisfy those concerns. Ms. Grant stated trees and landscaping need to be reassessed if this level of change is being made.

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Mr. Hounsell stated his objection is not about parking, he shares the same concerns with regard to landscaping. Mr. Hounsell stated he is all about process on this; we need to have a better understanding of the impact of a 200 plus seat restaurant is going to have. Mr. Hounsell stated this is a significant change-of-use.

Mr. Colbath stated if they had brought in peak usage for settlers and the restaurant it would have been beneficial; think the shared parking is fine. Mr. Colbath stated he doesn't think the peak time of the restaurant will overlap with the peak use of the retail space. Mr. Lick stated the UTI takes that into account. Mr. Colbath asked would there be any changes to the architecture of the building. Mr. Lick answered in the negative. Mr. Colbath asked if there is a patio proposed. Mr. Lick answered in the negative and stated nothing changes on the outside.

Mr. Colbath asked for public comment; Roy Tilsley of Bernstein Shur representing Bellevue Properties who owns and operates North Conway Grand Hotel referred to a letter [dated 06/09/22] sent in an email earlier in the day [in file]. Mr. Tilsley stated it is our position that it should be subject to a full site plan review; there will be a chance for public comment, we will have time to review it and respond. Mr. Tilsley stated it is appropriate to have a public hearing.

Mr. Tilsley stated in regard to the 10% issue, it glosses over the fact that Merlino's Steak House has an easement to use this area, and Carroll County Superior Court says they have 32-spaces. Mr. Tilsley stated whatever the standard is, the restaurant use will be different. Mr. Tilsley stated the material submitted with their initial calculations, which they replaced today, suggests that there will be times of a parking load three or four times more for this nearly 300 seat restaurant and bar then there was for the retail; that is significant.

Mr. Tilsley stated this is a waiver or substitution request, the Board has to decide if that standard works in the context of this project before it is accepted to deviate from the regular parking standards in the site plan review regulations. Mr. Tilsley stated that is part of full site plan review; the Board cannot do a waiver or substitution unless you are looking at a site plan. Mr. Tilsley stated it is appropriate to have a full site plan review for this particular project.

Mr. Lick stated with respect to Merlino's Steak House, under the shopping center standard we were required to have 768 parking spaces and there are actually 801 parking spaces approved in the development and that was specifically to allow for the extra 33 parking spaces for Merlino's. Mr. Lick stated they are asking for the same substitution as last time; this is not a new substitution request.

Tom Eastman of the Conway Daily Sun indicated that the Settlers Green website indicates that the restaurant is to be the Thirsty Moose.

Mr. Porter made a motion, seconded by Mr. Barbin, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that the change-of-use from 10,941 ~~11,281~~ square feet of retail to a 238-restaurant seat, 49-lounge seat restaurant is not subject to a Full Site Plan Review because it has been demonstrated that the change of use and/or physical changes to the site are insignificant relative to the existing development. Motion defeated unanimously.

Selectmen's Report: There was nothing to report.

Steven Steiner: Mr. Steiner submitted a request under NHRSA 91-A for all communications pertaining to his nomination as an alternate. It was determined that such a request should be made with the Town Clerk's office.

Meeting adjourned at 8:05 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant