

**CONWAY PLANNING BOARD**

**MINUTES**

**MAY 26, 2022**

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## CONWAY PLANNING BOARD

### MINUTES

MAY 26, 2022

A meeting of the Conway Planning Board was held on Thursday, May 26, 2022 beginning at 6:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Ben Colbath; Selectmen's Representative, Steven Porter; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternate Ted Phillips was in attendance.

#### REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of May 12, both the work session and regular session, will be reviewed at the June 9, 2022 Planning Board meeting.

#### AGENDA OUT-OF-ORDER

**Mr. Colbath made a motion, seconded by Ms. Byers, to take Steven Lafavore/Thistledown, LLC out-of-order. Motion carried unanimously.**

#### OTHER BUSINESS

**Steven Lafavore/Thistledown, LLC (File #NA22-05):** Steven Lafavore and Andrew Tine, Attorney, appeared before the Board. Jason Dennis, Town Counsel, was in attendance. This is a request to develop a sober home at 379 White Mountain Highway (PID 265-154).

Mr. Torres stated they have been working with staff since February 2021; the existing use is a residential use and the proposed use is a commercial by our standards and the building code standards, so a site plan approval is required, but they have decided to request a non-applicable. Mr. Torres stated they are not doing any modifications to the site; it is simply a change-of-use that staff is not comfortable approving without Board approval.

Mr. Colbath stated this was initially a hotel, that the previous owner requested to convert to a duplex, but never used it as a duplex, it was used continuously as a short-term rental. Mr. Torres stated he believes so, but it was not the permitted use; it was permitted as a residential duplex for long-term rentals.

Mr. Colbath asked for Board comment; Mr. Hounsell stated it was a motel and asked at that time was it in a commercially zoned district. Mr. Torres answered in the affirmative. Mr. Hounsell stated so it became residential in use, but remained in a commercial district. Mr. Colbath stated it is unclear if they used it for residential, but they had applied for it to be residential. Mr. Torres stated it is going from a residential use to a commercial use. Mr. Tine stated their position is that it is staying residential because it is going to be used for sober housing, people in long-term housing, people in recovery. Mr. Tine stated they are unrelated individuals that will be using the house, like any other person would, living like a family.

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Mr. Tine stated that the Town has taken the position that it is commercial, but that it not what we are accepting or applying for. Mr. Porter stated it is a change-of-use. Mr. Porter stated for the longest time it was either used as a commercial short-term rental, and then used as a long-term rental. Mr. Porter stated what you are using it for is slightly different then what the Town may look at as a traditional long-term rental, more as a half-way house. Mr. Tine stated it is not a half-way house, usually half-way houses provide treatment on-site; there is no treatment on-site, this is peer support.

Mr. Tine stated people living together that have a common thread of recovery, practicing abstinence, urine and drug testing, nightly meetings, and having rules and regulations to make sure they can live together as a family. Mr. Tine stated it is not a half-way house as those are people who are receiving treatment on-site from the program. Mr. Porter asked how do we have surety of that. Mr. Tine stated it is no different than any representation that says they are going to use a house as a single-family, so you trust them until you find out otherwise.

Mr. Torres asked if each client or tenant signs a lease for a year. Mr. Lafavore answered in the negative. Mr. Colbath asked if they are a tenant-at-will. Mr. Tine stated they would live as a community and pay a weekly for monthly fee and live as part of a community; they live like a family, they share a kitchen, they share space.

Mr. Hounsell asked if they pay a fee. Mr. Tine answered in the affirmative. Mr. Hounsell asked if the fee included anything else other than a place to stay. Mr. Lafavore answered utilities. Mr. Hounsell asked if the fee included food. Mr. Lafavore answered in the negative and stated that they have to cook together and eat together; they have to live together to reincorporate themselves back into society.

Mr. Hounsell stated he is trying to figure out if this is a commercial operation, and it seems to him that it is very close and could be perceived a commercial operation. Mr. Tine stated they are not offering anything other than a place to live, and a structured environment. Mr. Hounsell asked if a structured environment is enough to cause it from being residential to being a commercial activity.

Mr. Porter asked do they receive counseling. Mr. Tine stated there are no professional services provided to them. Mr. Porter asked if they are being counseled. Mr. Tine stated it is peer support; all of them are in recovery, and they live together. Mr. Porter asked if there is support via counseling. Mr. Lafavore stated we don't have counselors. Mr. Porter asked who monitors. Mr. Lafavore stated they monitor themselves; they are responsible to take care of the house, themselves and one another. Mr. Tine stated it is a structured environment when they don't want to be around others who are using drugs and alcohol. Mr. Colbath stated it is not the Board's position to not support, this is not about supporting or not supporting sobriety; we are trying to navigate between it being commercial or residential, that is it.

Ms. Grant stated this is zoned highway commercial, and commercial enterprises are permitted. Ms. Grant stated the Board can allow them, if we decided this is commercial, to be commercial in this zone. Ms. Grant stated the triggers for site plan review are whether you are actually changing the site. Ms. Grant stated they are not changing the site at all, then they do qualify for an exemption from site plan review. Ms. Grant stated the Board can simply allow them to have this location go back to being commercial; and she doesn't have a problem with that because it is commercial zoned. Ms. Grant stated this sounds commercial, and they bought a commercial property to operate this business and they are not changing the site. Ms. Grant stated based on those things being in the Board's purview, she does not see a problem.

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Mr. Colbath stated he had a conversation with David Pandora, the Building Inspector, who indicated that this site has sprinkler systems, fire suppression systems and fire alarms. Mr. Colbath stated if it did go to site plan review there would be a laundry list of waivers, which would not be obtainable.

Mr. Barbin stated he is still trying to drill down on the it looks commercial it sounds commercial, but it is not commercial. Mr. Barbin asked if there are any employees on site. Mr. Lafavore answered in the negative. Mr. Tine stated the intention is to have the residents there and then there will be a house leader or manager, which is someone usually farther along in sobriety and management is off-site. Mr. Tine stated someone would visit regularly or get reports for the house manager and monitor the situation off-site.

Mr. Barbin asked if the owner receives any income from any other sources than the fees being paid. Mr. Tine answered it is a rental property; they are renting this space to a group of individuals. Mr. Barbin asked why are we debating whether or not it is commercial, why are you not just going through the commercial process. Mr. Tine stated it was previously used as a residential property, and the only difference from the previous use to the current proposed use is it is individuals in recovery from substance use. Mr. Tine stated we don't think that should trigger a requirement that they change the property to commercial; it was previously used as an Airbnb. Mr. Tine stated it is a giant property, and a number of unrelated people were using it or renting it on a short-term basis. Mr. Tine stated it shouldn't be triggering this just because it is a sober house.

Mr. Barbin stated it seems like it keeps this property away from fire code inspections; he knows it had some problems meeting fire codes as a commercial property. Mr. Tine stated it has full sprinkler system and a full alarm system. Mr. Lafavore stated we have done everything we were requested to do for fire safety. Mr. Barbin stated he thinks it is a great thing that they are doing, we just need to make sure it complies.

Mr. Colbath stated it is a little concerning that we know that it was being used as a short-term rental. Mr. Torres stated illegally. Mr. Colbath stated this rubs against the enforcement issue and are admitting it was a residential property and we were okay with it operating as a short-term rental there; that seems like a conflict of interest for us to make them go through a change-of-use permit because it was being used as a commercial entity.

Mr. Dennis stated there is case law that addresses the commercial use question of properties like this, and it is not necessarily consistent with what the actual perceived use would be. Mr. Dennis stated it may seem to be a commercial use because people are paying for something different than just a standard lease agreement; it is his understanding that these folks would be able to be kicked out and not have to go through the eviction process.

Mr. Dennis stated that arguably it takes it out of a more standard residential, because if you are a tenant and you don't get rights under 540-A., the statute that protects tenants' rights then you can make the argument that it is not residential. Mr. Dennis stated if it comes to anything like a group home type of situation, and he is not necessarily saying this is a group home, there is case law that discusses how potentially regardless of whether there is a look, seems, feel and all other practical aspects to be a commercial use they are legally carved out from being a commercial use.

Mr. Dennis stated it is similar to short-term rentals where municipalities are viewing them as one way and courts are viewing them as a different way. Mr. Dennis stated we are squarely in that unknown zone.

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Mr. Hounsell stated he agrees that we need tightening up on life safety and sprinklers; even more than commercial. Mr. Hounsell stated if we determine that it is residential that is a whole different set of rules, but if we recognize that it is commercial, we put the applicant in an awkward position. Mr. Hounsell stated he thinks they are very close to being commercial but don't think they are quite commercial; what they are doing is a residential use and would be permitted. Mr. Hounsell stated he has concerns with life safety in this particular building. Mr. Hounsell stated he is willing to accept it as a residential use.

Mr. Colbath stated he spoke with David Pandora and he was okay with the life safety items that had been done. Mr. Colbath stated due to the size of the property and the shape of the lot it would be impossible for anybody to bring it up to complete compliance without several waivers. Mr. Colbath stated Mr. Pandora was okay with the non-applicable. Mr. Torres agreed and stated staff is comfortable with this request. Mr. Dennis stated from a legal perspective he is comfortable with it too.

Mr. Corbett asked how the two units would they be used. Mr. Lafavore stated the 3-bedroom unit would be used as a traditional living unit and the 7-bedroom unit will be used for up to 15-people. Mr. Hounsell stated he is concerned with the possibility the tenants, the people leasing the space, might have trouble defending any tenants' rights that they would have under the current law for tenants in a residential unit, primarily eviction.

Mr. Tine stated there is a Supreme Court case in New Hampshire that if a tenant waives their rights up front and agree to this sort of housing environment then they lose their tenant rights if they relapse. Mr. Hounsell stated they have to sign off their rights in order to move in. Mr. Tine answered in the affirmative.

Mr. Colbath asked for public comment; there was none.

**Mr. Hounsell made a motion, seconded by Mr. Corbett, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that the development of a sober home 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 carried with Mr. Porter voting in the negative.**

**Selectmen's Report:** Mr. Porter stated the Board of Selectmen discussed a few projects at their last meeting. Mr. Porter stated they discussed the 10-year highway plan with the State, and the East Conway Road, which is a State-owned Road, that is in major disrepair.

Mr. Porter stated we have an option every year to submit requests for funding to have those roads upgraded. Mr. Porter stated they have put that on the list to see if the State would approve it, and the Board has suggested the entire East Conway Road. Mr. Porter stated he brought up the Intervale Crossroad intersection. Mr. Porter stated those two projects will be applied for to the State.

Mr. Porter stated Selectmen Carl Thibodeau spoke with Governor Chris Sununu; Concord has taken notice of the short-term rentals in Conway and has ear-marked money to update the Master Plan and Zoning Ordinance. Mr. Porter stated there will be an application available to us to apply for up to \$400,000.

The Board discussed the Master Plan process. Mr. Torres stated they hope to develop an RFP between July 1 and July 15, have them due by September 1, then conduct interviews through September and have someone on board by November.

**DELANEY REVOCABLE TRUST OF 1998 (FILE #FR22-04) – FULL SITE PLAN REVIEW (PID 215-25)**

Shawn Bergeron of Bergeron Technical Services appeared before the Board. This is an application to construct an 8,726 square foot, 207-seat restaurant with associated infrastructure. Mr. Colbath stepped down at this time. **Mr. Porter made a motion, seconded by Ms. Byers, to appoint Mr. Phillips as a voting member. Motion carried unanimously. Mr. Porter made a motion, seconded by Mr. Hounsell, to accept the application of Delaney Revocable Trust of 1998 as complete. Motion carried unanimously.**

Mr. Bergeron reviewed the application with the Board. Mr. Bergeron stated the building meets the new height requirements. Mr. Bergeron stated they are providing parking spaces at a 1 to 2.6 ratio. Mr. Bergeron stated they are proposing electric vehicle charging stations, and stated there is nothing in the regulations for charging stations and asked if there is anything specific the Board was looking for. Mr. Torres stated it is general practice for the applicant to provide a detail. Mr. Bergeron submitted a detail sheet for a post mounted charging station, rather than a wall mounted.

Mr. Bergeron stated staff was concerned with existing trees to remain; we have more trees than we need and will be thinning out some that are not favorably growing. Mr. Bergeron stated we also have landscaped islands, and were going to maintain some of the existing street trees. Mr. Bergeron stated there are trees along the frontage that were not counted as they are not on our property, but they will leave them if they are healthy.

Mr. Bergeron reviewed the architectural elevations. Mr. Bergeron stated he is concerned with a request for a floor plan. Mr. Porter stated we have not addressed the interior layout before; the Board's purview is strictly outside. Mr. Torres stated it was a verification of the number of seats, but the plan can be removed. Mr. Bergeron stated as long as it is known that sheet 14 is for discussion purposes only and the applicant is not going to be held to that.

Ms. Byers stated when it comes to seating the applicant is providing the total number of parking spaces needed, but the calculations are not correct. Ms. Byers stated it is 207-seats total, but there are bar seats and bar seats are calculated at one parking space per two seats. Ms. Byers stated 73-parking spaces are required and the applicant is providing 79 parking spaces. Ms. Byers stated she appreciates having the floor plan. Mr. Bergeron stated we will adjust the numbers accordingly. Mr. Hounsell stated he doesn't want overreach, and going inside the building is an overreach. Mr. Torres stated it can be a condition of approval that the floor plan is removed from the plan set.

Ms. Byers asked for Board comment; Ms. Grant asked if the whole lot is paved. Mr. Bergeron stated all of the parking and access from White Mountain Highway to the building and the dumpster is paved. Mr. Bergeron stated that are looking at a light color pavement, which is significantly better for the environment, but not sure we can get it. Mr. Corbett asked about the trail to be abandoned. Mr. Bergeron stated he thinks it was used by the Delaney's to access the river. Mr. Corbett stated it is not part of the Ski Touring network. Mr. Bergeron stated it is not. Ms. Byers asked if the lights are not International Dark Sky approved, what is the other affiliation. Mr. Bergeron answered Night Time Friendly.

Mr. Colbath asked for public comment; Tom Eastman of the Conway Daily Sun asked if this is the Delaney's. Mr. Bergeron stated he cannot say.

Mr. Bergeron read a waiver request for §110-20.F/§130-66.C.(8)(i). **Mr. Porter made a motion, seconded by Mr. Barbin, to grant the waiver request for §110-20.F/§130-66.C.(8)(i).** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Bergeron read a waiver request for §110-20.I. **Mr. Porter made a motion, seconded by Mr. Corbett, to grant the waiver request for §110-20.I.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Bergeron read a waiver request for §110-26.E. **Mr. Barbin made a motion, seconded by Ms. Grant, to grant the waiver request for §110-26.E.** Mr. Colbath asked for Board comment; Mr. Torres stated the note regarding International Dark Sky approved should be removed from the lighting plan. Mr. Bergeron asked for it to be part of the conditional approval. **Motion carried unanimously.**

Mr. Bergeron reviewed the architectural elevations. Mr. Porter asked what is the actual height. Mr. Bergeron answered 28-feet, 10-inches.

**Mr. Barbin made a motion, seconded by Mr. Porter, to conditionally approve the full site plan review for Delaney Revocable Trust of 1998 upon Town Engineer approval; NHDOT Driveway Permit and indicating permit number on plan; updating the site layout plan to indicate the correct number of required parking spaces as discussed by the Planning Board; removing sheet 14 from the plan set as discussed by the Planning Board; removing the note on the lighting plan indicating that all light fixtures shall be International Dark Sky compliant; updating Waivers Granted table as necessary; 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 May 25, 2023. Motion carried unanimously.**

#### **OTHER BUSINESS CONTINUED**

**Appointment of Alternate Members:** Mr. Colbath rejoined the Board at this time. Mr. Porter recommend Mr. Corbett recuse himself. Mr. Corbett stepped down at this time. Mr. Colbath appointed Ted Phillips as a voting member.

**Mr. Porter nominated, seconded by Mr. Hounsell, Steve Hartmann as an alternate for one-year. Motion carried unanimously.**

**Mr. Hounsell made a motion, seconded by Mr. Barbin, to reconsider Ray Shakir as an alternate. Motion defeated with Mr. Phillips, Ms. Byers, Mr. Porter, Ms. Grant and Mr. Barbin voting in the negative and Mr. Hounsell and Mr. Colbath voting in the affirmative.**

**Mr. Hounsell made a motion, seconded by Mr. Colbath, to appoint Steven Steiner as an alternate for a one-year term. Motion defeated with Mr. Phillips, Ms. Byers, Mr. Porter and Ms. Grant voting in the negative and Mr. Hounsell, Mr. Colbath and Mr. Barbin voting in the affirmative.**

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Ms. Byers stated we have established two alternates and we are not required to have any alternates; we just choose to have them. **Ms. Byers made a motion, seconded by Mr. Porter, that we are done for the year establishing alternate members.** Mr. Colbath asked for Board comment; Mr. Hounsell stated a discussion of alternates is an important discussion. Mr. Hounsell stated there may come a time that this Board needs to consider adding an alternate, and we shouldn't close that door. Mr. Hounsell stated he is very much opposed to the motion.

Ms. Grant stated we have never been in a situation that we could not proceed because we didn't have an alternate. Ms. Grant stated she thinks it is reasonable to leave it as it is and close the alternate discussion. Mr. Colbath stated we have two alternates, and there are plenty of times that we just don't need them. Mr. Hounsell stated we have two very capable alternates and that probably will suffice, but he doesn't like closing the door on something that might pop up at a later date.

Mr. Hounsell stated if this motion passes that means we cannot appoint an alternate unless we rescind the previous action which would require a two-thirds vote; why complicate it. Mr. Hounsell stated this motion is inappropriate. **Motion carried with Mr. Phillips, Ms. Byers, Mr. Colbath, Mr. Porter and Ms. Grant voting in the affirmative and Mr. Hounsell and Mr. Barbin voting in the negative.**

Meeting adjourned at 7:34 pm.

Respectfully Submitted,

Holly L. Whitelaw  
Planning Assistant